

EXHIBIT VII
I.T. SERVICES AGREEMENT
DATA CENTER USE & SERVICES

INTRODUCTION

- A. The County desires to make space available in its Data Center (as described below in Section 1) to the Public Body to enable the Public Body to locate and install hardware and software to support the general operations of the Public Body and/or to receive I.T. Services from the County (as defined in the Agreement, Section 1).
- B. The Parties agree to the following terms and conditions regarding the use of space in the Data Center:

LICENSE AGREEMENT

1. Use of County Property.

- 1.1. Description of Property. The County grants a License for use of _____ square feet of its property to the Public Body, which is described and illustrated in Attachment A (hereinafter "Data Center"). Attachment A is incorporated by referenced into this Exhibit and Agreement.
- 1.2. Use of Property. The Public Body shall only use the Data Center for the location and installation of hardware and software (hereinafter "Equipment") to support the general operations of the Public Body and to receive I.T. Services from the County. I.T. Services are defined in Section 1 of the Agreement. The Public Body must execute separate exhibits for other I.T. Services.
- 1.3. Length of Use/Termination. This Exhibit and use of the Data Center shall commence upon full execution of this Exhibit and shall end when the Agreement terminates or expires (whichever occurs first) pursuant to the Agreement. At the expiration or termination of this Exhibit or Agreement (whichever occurs first), the Public Body shall remove of all of its Equipment or personal property located in the Data Center within thirty (30) days. If the Public Body does not remove its Equipment or personal property within the thirty (30) day period, then the County shall remove and dispose of the Equipment or personal property, including all data stored on the hardware at the Data Center and bill the Public Body for all costs associated with the removal and disposal of the Equipment or personal property. The costs associated with the removal and disposal of the Equipment or personal property are in addition to the License Fee or other costs or fees set forth in this Agreement.
- 1.4. No Termination Fee. Except for the costs set forth in this Exhibit, there is no fee for the termination of this Exhibit.

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- 1.5. License Fee/Costs. The Public Body understands and accepts that the Oakland County Board of Commissioners sets the “gross square footage rental rate” for all Oakland County property on October 1st of every year. This “gross square footage rental rate,” set by the Oakland County Board of Commissioners, shall be the license fee for this Exhibit (hereinafter “License Fee”). The License Fee is in effect from October 1st until September 30th of the following year. The License Fee in effect upon execution of this Exhibit is _____ (\$_____) per square foot per year, payable in quarterly installments of _____ (\$_____). During the term of this Exhibit or any extension thereof, on each October 1, the License Fee will be adjusted up or down by the County, based upon the “gross square footage rental rate” set by the Oakland County Board of Commissioners. The License Fee is payable, in advance, on a quarterly basis (January 1, April 1, July 1, and October 1) as set forth in the Agreement. If this Exhibit commences upon a date other than the first day of a quarter, then the License Fee shall be pro-rated per day. Other costs or fees due under this Exhibit shall be payable as set forth in the Agreement.
- 1.6. Signs. The Public Body shall not place any signs or advertisements on or around the Data Center or on the building where the Data Center is located without the prior written consent of the County’s Director of Facilities Management or his/her successor and the County’s Director of Information Technology or his/her successor.
- 1.7. The Public Body shall keep the Equipment and any other personal property located or stored at the Data Center in good order and repair. The Public Body shall conduct its operations at the Data Center, so as not to cause harm to the Data Center and keep it in good order and repair and in a clean, safe, and healthful condition.
- 1.8. Alterations, Additions or Improvements. The Public Body shall not make any alternations, additions, improvements or changes to the Data Center, unless prior written approval is given by the County’s Director of Facilities Management or his/her successor and the County’s Director of Information Technology or his/her successor. Any alterations, additions, improvements or changes to the Data Center, requested by the Public Body to facilitate the installation and operation of its Equipment and approved by the Directors in the previous sentence, shall be performed by the County or contractor’s authorized by the County’s Director of Facilities Management or his/her successor; provided however, that the Public Body shall be responsible for all costs associated with the alterations, additions, improvements, or changes to the Data Center. The costs associated with the alterations, additions, improvements, or changes shall be in addition to the License Fee set forth in this Exhibit or other costs or fees set forth in this Agreement.
- 1.9. The Public Body acknowledges that it had the opportunity to inspect the Data Center and accepts the Data Center AS IS.
- 1.10. The Public Body shall leave the Data Center in the same condition that the Public Body found it and clean of all rubbish.

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2. **Public Body Responsibilities.**

- 2.1. The Public Body shall provide all Equipment to be located in the Data Center and shall provide the County with all building, electrical, networking or other specifications required for the installation and operation of the Equipment. The Public Body (and not the County) shall be responsible for the installation, operation, maintenance, repair and replacement of the Equipment and shall be responsible for all costs associated with the installation, operation, maintenance, repair and replacement of the Equipment; provided however, a County employee or agent may accompany the Public Body Employee, at all times, during the installation, maintenance, repair and replacement of the Equipment at the Data Center.
- 2.2. The Equipment located in the Data Center shall remain the personal property of the Public Body.
- 2.3. The Public Body and the Public Body Employee shall not in any manner hold themselves out to be agents, volunteers or employees of the County.
- 2.4. The Public Body is responsible for and shall obtain, at its sole expense, all necessary licenses, permits, and other governmental approvals that are necessary for use of the Data Center.
- 2.5. **Authorized Public Employees.** The Public Body shall provide a written list, to the County, of persons who are authorized, by the Public Body, to have remote access to the Equipment located or stored in the Data Center and of persons who are authorized, by the Public Body, to have physical access to the Equipment located or stored in the Data Center.
- 2.6. **Points of Contact.** The Public Body shall designate individuals to act as primary and secondary Points of Contact with County. The responsibilities of these Points of Contact are set forth in Section 3 of the Agreement.
- 2.7. **Software/Application Licenses.** The Public Body is responsible for obtaining, maintaining, and paying for all software/application licenses for the Equipment located or stored at the Data Center.

3. **County Responsibilities.**

- 3.1. **Utilities.** The County shall provide all utilities, including gas, electricity, heat, and air conditioning, necessary to operate the Public Body's Equipment located in the Data Center. The utility costs are contained in the License Fee; provided however, that the Public Body shall be responsible for all costs associated with the connection to the utilities and for all costs associated with any alterations, improvements or changes to the electrical/heating and cooling systems of the Data Center that are required because of the installation and operation of the Public Body's Equipment. The costs associated with the utility connections, alternations, improvements, or changes shall be in addition to the License Fee set forth in this Exhibit or other costs or fees set forth in this Agreement. **THE COUNTY DOES NOT WARRANT THAT THE DATA CENTER WILL HAVE UTILITIES/POWER/ELECTRICITY 100% OF TIME DURING THE TERM OF THIS EXHIBIT.**

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- 3.2. Security. The County will use its best efforts to ensure that the Data Center is a secure facility and protected from power outages through back-up power sources or generator power.
- 3.3. Physical and Network Connections. The County shall provide the physical and network connections for the Equipment located in the Data Center, according to the specifications provided by the Public Body. The terms, conditions and costs for providing these connections shall be set forth in another exhibit to the Agreement, specifically Exhibit V to the Agreement. The costs for these connections are not contained in the License Fee.
- 3.4. Backup and Disaster Recovery. Notwithstanding any other provisions in the Agreement to the contrary (specifically Section 2.4 of the Agreement), the County will not provide and perform, through this Exhibit, backup and disaster recovery services for the Public Body's Equipment located in the Data Center and for data that resides on the Public Body's Equipment located in the Data Center. If the Public Body desires or requires backup or disaster recovery services, then the Public Body shall contact the County and request such services. The County will inform the Public Body if it is able to perform the requested services. If the County is able to provide the services, then the County will inform the Public Body of the extra cost associated with the services and the terms and conditions of the services. The Parties shall enter into a separate written agreement for the services.
- 3.5. Support Procedure/Service Center. I.T. Service incidents requiring assistance from the County must be reported to the Service Center, by the Points of Contact, to the phone number or e-mail provided below. The Service Center can receive calls to report I.T. Service outages 24 hours a day, 7 days a week. Outages are defined as unexpected service downtime or error messages. Depending on severity, outage reports received outside of County's normal business hours may not be responded to until the resumption of County's normal business hours. Service Center Phone Number: 248-858-8812 & Service Center Email Address: servicecenter@oakgov.com.
4. Access to Data Center/Security. The Public Body and Public Body Employees, who are on the list submitted to the County pursuant to Section 2.5 of this Exhibit, shall have access to the Data Center 24 hours a day/7 days a week. The Public Body and the Public Body Employees shall comply with all County policies and procedures for access to the Data Center and the building that houses the Data Center. The County, at its cost, will provide identification cards for Public Body Employees to enter the Data Center and the building that houses the Data Center. The Public Body Employees may be subject to security or background checks, at the County's sole cost and discretion. In its sole discretion, the County may deny access to the Data Center to any Public Body Employee.
5. Assurances/Liability.
 - 5.1. Damage to County Property. The Public Body shall be responsible for any damage to any County property or facilities that is caused by the Public Body or Public Body Employees. If damage occurs, the County shall make the necessary repairs and/or replacements or cause a third party to make the necessary repairs or replacements; provided, however, that the Public Body shall reimburse the County for all costs

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associated with repairing and/or replacing the damaged property or facilities. The costs contained in this Section are in addition to the License Fee or other costs or fees set forth in this Agreement.

- 5.2. Damage to Public Body's Equipment. The Public Body shall be solely liable and responsible for any loss or damage resulting from fire, theft or other means to the Public Body's Equipment or other personal property located, kept, or stored at the Data Center. The County shall not insure the Equipment or other personal property of the Public Body that is located or stored at the Data Center. The Public Body, in its sole discretion, may insure the Equipment or other personal property located at the Data Center.
- 5.3. Claims or matters arising out of this Exhibit are also governed by the terms and conditions contained in the Agreement.

6. Insurance.

- 6.1. The Public Body shall provide and maintain, at its expense, all insurance as set forth below. The insurance shall be written for not less than any minimum coverage herein specified.
- 6.1.1. **Commercial General Liability Insurance** Occurrence Form including: a) Premises and Operations; b) Products and Completed Operations (including On and Off Premises Coverage); c) Personal and Advertising Injury d) Broad Form Property Damage e) Independent Contractors; f) Broad Form Contractual including coverage for obligations assumed in this contract;
- \$1,000,000 – Each Occurrence Limit**
\$1,000,000 – Personal & Advertising Injury
\$1,000,000 – Products & Completed Operations Aggregate Limit
\$2,000,000 – General Aggregate Limit
\$500,000 – Fire Damage Limit (Any One Fire)
- 6.1.2. **Fire Legal Liability Insurance** with limits of \$1,000,000 each accident, covering the personal and real property of Oakland County's IT building/Data Center.
- 6.1.3. **Workers' Compensation Insurance** with limits statutorily required by any applicable Federal or State Law and Employers Liability insurance with limits of no less than \$500,000 each accident, \$500,000 disease each employee, and \$500,000 disease policy limit.
- 6.1.4. **Commercial Umbrella/Excess Liability Insurance** with a minimum limits of \$2,000,000 each occurrence. Umbrella or Excess Liability coverage shall be no less than following form of primary coverages or broader.
- 6.1.5. **Commercial Property Insurance.** The Public Body shall be responsible for obtaining and maintaining insurance covering their equipment and personal property against all physical damage.
- 6.2. **General Insurance Conditions:** The aforementioned insurance shall be endorsed, as applicable, and shall contain the following terms, conditions, and/or endorsements.

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All certificates of insurance shall provide evidence of compliance with all required terms, conditions and/or endorsements.

- 6.2.1. All policies of insurance shall be on a primary, non-contributory basis with any other insurance or self-insurance carried by the County;
- 6.2.2. The insurance company(s) issuing the policy(s) shall have no recourse against the County for subrogation, premiums, deductibles, or assessments under any form;
- 6.2.3. Any and all deductibles or self-insured retentions shall be assumed by and be at the sole risk of the Lessee;
- 6.2.4. All policies, with the exception of Workers' Compensation, shall be endorsed to name the County as additional insured;
- 6.2.5. All policies shall be endorsed to provide a written waiver of subrogation in favor of County;
- 6.2.6. The Public Body shall require their contractors, or sub-contractors not protected under the Public Body's insurance policies, to procure and maintain insurance with coverages, limits, provisions, and/or clauses equal to those required in this Agreement;
- 6.2.7. Certificates of insurance must be provided no less than ten (10) working days prior to commencement of this Agreement and must bear evidence of all required terms, conditions and endorsements; and
- 6.2.8. All insurance carriers must be licensed and approved to do business in the State of Michigan and shall have and maintain a minimum A.M. Best's rating of A.

7. **Destruction of Data Center/Building Housing Data Center.**

- 7.1. Except as otherwise provided herein, in the event, that the building that houses the Data Center is partially or entirely damaged or destroyed as a result of the Public Body's actions/nonactions or the actions/nonactions of the Public Body Employees, the County shall repair the damage or destruction; however, the Public Body shall be responsible for all costs associated with repairing damage or destruction of the Data Center or the building that houses the Data Center, unless such damage or destruction is covered and paid for by the County's insurance, in which case the Public Body shall reimburse the County for any deductible it must pay in connection with the damage or destruction. The costs contained in this Section are in addition to the License Fee or other costs or fees set forth in this Agreement.
- 7.2. In the event that more than thirty-five (35%) percent of the building which houses the Data Center is damaged or destroyed by fire or other casualty, then the County may elect to either repair or rebuild the building or to terminate this Exhibit by giving written notice to the Public Body within ninety (90) days after the occurrence of such damage or destruction. The Public Body will have ninety (90) days from the date of the notice to vacate the Data Center.
- 7.3. In the event the building which houses the Data Center is partially damaged or destroyed by fire or other casualty and such event is not addressed by Sections 7.1 or 7.2, the County shall use its best effort to promptly repair or rebuild the building. In

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the event the building cannot be repaired or rebuilt within one hundred eighty (180) days after such destruction, the Public Body shall have the right to terminate this Exhibit and vacate the Data Center within ninety (90) days after the occurrence of such damage or destruction.

- 7.4. In no event shall County be required to repair or replace any property of the Public Body.
8. **Freedom of Information Act.** The Parties agree and acknowledge that the data which resides on the Equipment located or stored in the Data Center is not a “writing” as defined by the Freedom of Information Act, MCL 15.231, *et seq.*, because the data does not contain any meaningful content in the format possessed by the County. MCL 15.232(i). Under the Act, the County is not required to create a compilation, summary or report of information it possess. MCL 15.233(4)
9. **Survival.** Sections 1.3, 5, 6 and 7 of this Exhibit and the duties and obligations contained herein shall survive the expiration or termination of this Exhibit and Agreement.
10. **Eminent Domain.** If the whole building which houses the Data Center is taken by any public authority under the power of eminent domain, then this Exhibit shall be terminate on the day the public authority takes possession of the whole building. If less than the whole, but more than thirty-five percent (35%) of the building is taken by any public authority under the power of eminent domain, then either Party may terminate this Exhibit upon thirty (30) days written notice to the other Party. In the event neither Party elects to terminate this Exhibit, then the Exhibit shall terminate on the date the public authority takes possession of the building. Neither Party shall have any future liability or obligation under the Exhibit if it is terminated under this Section.
11. **No Interest in Property.** This Exhibit and Agreement shall not create and is not intended to create any right, title or interest in Data Center or any portion thereof. Public Body has no title in and to the Property or any portion thereof and has not, does not, and will not claim any such title or any easement over the Property.