"Menominee – Where the best of Michigan begins"

MENOMINEE COUNTY BOARD OF COMMISSIONERS

Menominee County Courthouse
839 10th Avenue
Menominee, Michigan 49858-3000

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The Menominee County Board of Commissioners
will meet for a Special Called Meeting on
Friday ~ November 20, 2009 at 11:00 a.m. CST
at the Menominee County Courthouse – Courtroom B

AGENDA

A. Call to Order
B. Pledge of Allegiance
C. Roll Call
D. Public Comment *(statements, not debate, limited to five minutes per person on agenda items only)*
E. Approval of the Agenda
F. Action Items

1. Moved by _____, seconded by _____ to discuss/amend/approve the County Administrator's Employment Contract.

2. Moved by _____, seconded by _____ to offer the approved County Administrator Employment contract to Michael D. Erdman.

G. Public Comment
H. Adjourn

Gary Eichhorn - Chairperson *Dick Peterson - Vice Chairperson*

Bernie Lang *James Furlong* *Garry Anderson*

EMPLOYMENT AGREEMENT

THIS AGREEMENT dated this ____ day of November, 2009, by and between the **County of Menominee**, through its board of Commissioners, whose address is 839 10th Avenue, Menominee, MI 49858 (hereinafter referred to as the "County"); and **Michael D. Erdman**, whose address is N1236 River Drive, Menominee, MI 49858 (hereinafter referred to as the "Employee"). The County and the Employee may hereinafter be individually referred to as a "Party" or may hereinafter be jointly referred to as the "Parties."

WITNESSETH:

WHEREAS, the County is desirous of hiring the Employee as the County Administrator of Menominee County pursuant to the terms and conditions herein provided; and

WHEREAS, the Employee is willing and desirous of committing his full time professional efforts toward serving the County as its County Administrator pursuant to the terms and conditions herein provided.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and obligations hereinafter set forth, the County and the Employee hereto hereby agree as follows:

1) **Employment.** The county hereby agrees to employ the Employee as the County Administrator of the County during the Employment Term (as defined in Section 3), and the Employee hereby accepts such Employment and agrees to serve the County subject to the general supervision, advice and direction of the Board of Commissioners of the County ("Board") and upon the terms and conditions set forth in this Agreement.

2) **Duties.** During the Employment Term, or any extension thereof, the Employee shall be the County Administrator of the County with such authority and duties as is customary for the chief administrative officer in such position, and shall perform such other services and duties as the Board may from time to time designate or require consistent with such position.

   The Employee shall devote his full time, best efforts and undivided attention to the business and affairs of the County except for part time teaching at the University of Wisconsin, vacations and leave time to which he is entitled pursuant to the terms of this Agreement and except for illness or incapacity; provided, however, that the Employee may serve, or continue to serve in any position or capacity that will not present a conflict of interest with the county or materially affect the performance of the Employee's duties pursuant to this Agreement.

   The parties agree that the Employee's performance shall be reviewed by the County after the completion of the Employee's first six (6) months of Employment, at the completion of the Employee's first year of Employment and on an annual basis thereafter.

3) **Employment Term.**

(a) The Employee shall be Employed under this Agreement for a term (the "Employment Term") commencing on _____ ("Commencement Date") and terminating on the close of business on December 31, 2010, unless sooner terminated as provided in Section 6 hereof. Upon expiration of the initial term on December 31, 2010, this Agreement shall thereafter automatically be renewed from year to year unless either party provides written notification to the other of its intention not to so renew, which such notice must be given not later than sixty (60) days prior to the end of the initial term or any yearly renewal hereof. Neither the expiration of this Agreement nor the giving of notice by either party that said Party does not wish to extend the Employment Term (or any extension thereof) shall constitute a breach of this Agreement or termination of the Employee for the purposes of Section 6 or 7 of this Agreement.

(b) The date on which the Employment Term or any extensions thereof is scheduled to terminate under Sections 3(a) or 3(b) shall hereinafter be referred to as the "Scheduled Termination Date."

4) Compensation.

a) **Base Salary.** The County shall pay the Employee annual base salary as compensation for his services hereunder as follows:

November _____, 2009 through December 31, 2010 - $80,000.00 per year.

January 1, 2011 through December 31, 2011 - $80,000.00 per year.

The Employee's compensation shall be payable in approximately equal installments in accordance with the payroll practices of the County for salaried Employees.

b) **Varied Work Hours.** The Parties acknowledge that the Employee is a supervisory Employee, will work varied hours, and is compensated on a salary basis. Without regard to the hours actually worked by the Employee, the Employee shall regularly receive each pay period a predetermined amount which shall be a prorata portion of the Employee's annual base salary. The amount of the Employee's regular compensation shall not be subject to reduction for any week in which the Employee works more or less hours than in other weeks, except that the Employee's compensation may be reduced by unpaid leaves of absences as approved by the Board.

c) **Additional Benefits.** During the Employment Term, or any extension thereof, in addition to base salary, the Employee shall be entitled to participate in and receive other additional benefits available to non-union salaried County Employees, except as otherwise provided in this Agreement. The Employee shall be eligible to participate in and receive the following benefits: life insurance benefits, travel allowance benefits, funeral leave benefits, military reserve training leave benefits, worker's

compensation benefits, jury leave benefits, and leaves of absence without pay. The Employee will not receive retirement benefits or health insurance benefits.

In lieu of being provided the same vacation and/or personal leave benefits provided non-union salaried County Employees (including the personal leave benefits in Section 15 of the April, 2007 Menominee County Personnel Manual), it is expressly agreed by and between the parties that the Employee shall be granted 22 days of vacation leave during each year of the Employment Term, and each year thereafter if the Employment Term is extended.

5) **Reimbursement of Expenses.** In addition to the compensation provided for pursuant to Section 4 of this Agreement, upon submission of proper vouchers and in accordance with the policies and procedures established by the County in effect from time to time, the County shall pay or reimburse the Employee for all normal and reasonable expenses, including travel expenses, incurred by the Employee during the Employment Term, or any extension thereof, in connection with the Employee's responsibilities to the County.

   In the event it becomes necessary for Employee to be represented by counsel for County-related issues, the County shall be responsible for all of Employee's attorney fees, and Employee shall retain an attorney of his choosing.

6) **Termination.** Notwithstanding Section 3 hereof, the Employment Term, or any extension thereof, shall terminate prior to the Scheduled Terminate Date upon the occurrence of any of the following events:

   a) **Death.** The death of the Employee.

   b) **Disability.** The Employee's Permanent Disability [as such term is defined in Section 6(e)].

   c) **Termination Without Cause.** The Employee's Termination Without Cause [as such term is defined in Section 6(e)].

   d) **Termination For Cause.** The Employee's Termination For Cause [as defined in Section 6(e)].

   e) **Definitions.** For purposes of this Agreement;

      i) "Permanent Disability" shall mean that by reason of a physical or mental disability or infirmity which has continued for a period of six months, the Employee is continuously unable to perform the duties contemplated by this Agreement. The determination of Permanent Disability shall be made by a medical board certified physician mutually acceptable to the County and the Employee (or the Employee's legal representative, if one has been appointed). The Employee agrees to submit to such medical evidence regarding such disability or infirmity as is reasonably requested by the County.

ii) "Termination For Cause" shall mean any termination of the Employment of the Employee for "Cause." For purposes of this Agreement, the termination of the Employee's Employment shall be deemed to have been for Cause only:

(a) If termination of his Employment shall have been the result of Employee's willful engaging in dishonest or fraudulent actions resulting or intended to result directly or indirectly in any demonstrable material harm to the County; or

(b) If there has been a willful and continued failure by the Employee (except by reason of incapacity due to physical or mental illness) to comply with the provisions of this Agreement or the directives or policies of the Board, and the Employee shall have either failed to remedy such alleged breach within ten (10) days from his receipt of written notice from the County demanding that he remedy such alleged breach or shall have failed to take all reasonable steps to that end during such ten (10) day period and thereafter; or

(c) If the Employee is convicted or pleads guilty or nolle contendre to a felony or any work-related misdemeanor;

(d) If the Employee's Employment shall be terminated by the County for Cause, the Employee shall have the right to contest such termination.

iii) "Termination Without Cause" shall mean any termination of the Employment of the Employee by the County other than Termination For Cause or upon death or Permanent Disability. Termination With or Without Cause may occur only upon the affirmative vote of at least a majority of the entire membership of the Board at a meeting called and held for that purpose.

iv) Any termination of the Employee's Employment by the County [other than termination pursuant to Section 6(a)] shall be communicated by written "Notice of Termination" to the Employee. For purposes of this Agreement, a "Notice of Termination" shall mean a notice which shall indicate the specific termination provision in this Agreement relied upon and shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Employee's Employment under the provision so indicated.

v) The "Date of Termination" shall mean (A) if the Employee is terminated by his death, the date of this death, (B) if the Employee's Employment is terminated due to a Permanent Disability, the date specified in the Notice of Termination, (C) if the Employee's Employment is terminated pursuant to a Termination for Cause, the date specified in the Notice of Termination, (D) if the Employee's Employment is terminated for any other reason, the date specified in the Notice of Termination.

7) Termination Benefits.

a) **Death.** If the Employee's Employment is terminated by his death, the County shall pay to his surviving spouse, or if he leaves no spouse, to his estate, any and all earned but unpaid compensation and benefits earned by the Employee or vested under Section 4 of this Agreement through the Employee's date of Termination.

b) **Permanent Disability.** If the Employee's Employment is terminated by his Permanent Disability, the County shall pay through the Employee's Date of Termination any compensation and benefits earned or vested by the Employee under Section 4 of this Agreement. To the extent permitted under the life and disability plans then maintained by the County for non-union Employees, the County shall, at the Employee's or the Employee's legal representative's request and upon the Employee's payment of all costs and premiums, cause to be continued benefits under such group plans to the Employee at the same coverage levels maintained by the County for non-union salaried County Employees.

c) **Termination for Cause.** In the case of a termination of the Employee pursuant to Section 6(e)(ii) of this Agreement, the County's obligations to the Employee shall cease after the Employee's Date of Termination and the County shall not be liable to pay the Employee's Base Salary and supplemental compensation; nor shall the Employee have any rights to further participate in Employee benefit plans of the county pursuant to Section 4, except the Employee shall be entitled to any rights or benefits that have become vested prior to the Date of Termination. The county shall pay the Employee his Base Salary and any other compensation or benefits earned or vested through the Date of Termination, at the rate in effect at the time the Notice of Termination is given, in a lump sum, within thirty (30) days of the Date of Termination.

d) **Termination Without Cause.** If during the Employment Term, or any extension thereof, the Employee shall be terminated from Employment based on a Termination Without Cause, the Employee shall be benefited to receive the following payments and benefits:

   i) **Salary.** The Employee's Base Salary earned through the Date of Termination at the rate in effect at the time the Notice of Termination is given.
   ii) **Benefits.** All fringe benefits shall cease upon the Date of Termination.
   iii) **Severance Payment.** In the even that the Employee's termination pursuant to his Section 7(d) causes the Employment Term, or any extension thereof, to end before the Scheduled Date of Termination, the County shall pay as severance compensation to the Employee an amount equal to the next six (6) months of Employee's Base Salary (excluding any and all fringe benefits costs) that the County would have paid to the Employee if the County had elected not to terminate this Agreement.

   Any such payments, unless otherwise agreed to the contrary by the parties, shall be paid in a single sum within forty-five (45) days following the Employee's Termination Date.

8) **Return of Property.** Upon termination of this Agreement for any reason, the Employee agrees to promptly return all documents, correspondences, files, papers, or property of any kind, in all type or nature pertaining to the County that the Employee may have in his possession or control. The Employee agrees to sign a statement verifying the return of all such property.

9) **Notices.** Any notice required or permitted by this Agreement shall be in writing, sent by registered or certified mail, return receipt requested, addressed to the County and the Employee at the County's then principal office, or to the Employee at the address set forth in the preamble, as the case may be, or to such other address or addresses as any party hereto may from time to time specify in writing for the purpose in a notice given to the other parties in compliance with this Section 9. Notices shall be deemed given when received, or ten (10) days after mailing, whichever is first.

10) **Reporting and Disclosure.** The County, from time to time, may be required by law to provide government agencies with reports concerning this Agreement. The county shall provide the Employee with such disclosure concerning this Agreement as may be required by law or as the County may deem appropriate.

11) **Complete Agreement.** This Agreement constitutes the complete agreement concerning the Employment arrangements between the Parties and shall, as of the effective date hereof, supersede any and all prior contracts, oral or written, between the Parties, if any. It is understood and agreed that this Contract shall supersede and take precedence over any other document, handbook, benefit plan, compensation scale system, or other material which could otherwise be construed as being contractual in nature, whether in existence prior to, currently, or subsequent to the execution of this Agreement, unless such other document, handbook, plan, compensation scale system, or material is made expressly applicable to the Employee by formal resolution of the county. It is further understood that no County personnel has authority to enter in any Employment agreement with the Employee for any specified period of time or to make any agreement contrary to the provisions herein, except when the same is approved by the Board.

12) **Modification and Waiver.** No modification or amendment of this Agreement shall be valid unless in writing and signed by or on behalf of the parties to this Agreement. A waiver of the breach of any term or condition of this Agreement shall not be deemed to constitute a wavier of any subsequent breach of the same or any other term or condition.

13) **Severability.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by all applicable laws, ordinances, rules, and regulations. If any provisions of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be held invalid or unenforceable, such invalidity and unenforceability shall not affect the remaining provisions hereof and the application of such provisions to other persons or circumstances, all of which shall be enforced to the greatest extent permitted by law.

14) **Withholding.** The compensation provided to the Employee pursuant to his Agreement shall be subject to any withholdings and deductions required by any applicable tax laws. In the event the County fails to withhold such sums for any reason, it may require the Employee to promptly remit the County sufficient cash to satisfy applicable income and Employment withholding taxes.

15) **Headings.** The headings in this Agreement are inserted for convenience of reference only and shall not be a part of or control or affect the meaning of any provision hereof.

16) **Consultation with Attorney.** Both Parties expressly acknowledge the opportunity to consult with one (1) or more attorneys of said Party's choosing prior to the executing of this Agreement.

17) **Governing Law.** To the extent not governed by Federal law, this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Michigan.

18) **Assignment or Subcontracting.** The Employee may not assign, subcontract, or otherwise transfer the Employee's duties and/or obligations pursuant to this Agreement.

IN WITNESS WHEREOF, the parties have duly executed and delivered this Agreement as of the day and year first above written.

IN THE PRESENCE OF:

_____

_____

COUNTY OF MENOMINEE:

_____

By: Gary Eichhorn
Its: Chairman of the Board of Commissioners

IN THE PRESENCE OF:

_____

_____

EMPLOYEE: Michael D. Erdman

_____

Michael D. Erdman

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