45. Citywide Document Management Services

Action: A. Approve unit price contracts with the following companies for Document Management Services for an initial term of three years each:
- Advanced Imaging Systems, Inc.,
- Automated Shredding Inc.,
- COR365 Information Solutions,
- Iron Mountain,
- Records Reduction Inc., and
- Ricoh USA Inc., and

B. Authorize the City Manager to approve two consecutive one year renewal options with possible price adjustments as authorized by the contract, contingent upon the company’s satisfactory performance.

Staff Resource(s): Marie Harris, Shared Services

Explanation
- Currently, the City uses a variety of outside service providers to supply electronic document imaging services, offsite records storage, and shredding services.
- These services are required for effective retention, management, and disposal of records per the North Carolina Records Retention Schedule, various City initiatives, and departmental business processes.
- By soliciting as part of the Charlotte Cooperative Purchasing Alliance (CCPA), the City and Participating Public Agencies (PPAs) are able to realize certain economies of scale to include volume and uniform pricing, decreased administrative burden and overhead, increased ability to capture usage data and expenditures, and improved service levels.
- Scanning services will include pick-up and/or receipt of records or source documents, imaging of records at a central location, indexing, storage and delivery of records as required, and access to images through either a secure web-based portal or a portable storage device.
- Confidential records storage services will be provided in compliance with all North Carolina records requirements per state statutes regarding storage, retention, and record destruction procedures.
- Both secure and non-secure shredding services will be provided along with a Certificate of Destruction as required.
- The service providers will be compensated for each service performed at the negotiated price schedule as stated in their respective contract.
- Total contract expenditures are anticipated to be $500,000 annually in the aggregate across all contracts.

Selection Process
- On August 22, 2014, a Request for Proposal (RFP) was issued for Citywide Document Management Services; nine proposals were received from interested service providers.
- The Project Team, consisting of City staff from Shared Services Procurement Management, the Charlotte-Mecklenburg Police Department, Planning, Solid
Waste Services, Neighborhood & Business Services, and Mecklenburg County staff from the Sherriff’s Office and the Land Use & Environmental Services Agency (LUESA) evaluated the proposals and recommends awarding contracts to the indicated service providers, as best meeting the City’s needs in terms of qualifications, experience, proposed solutions, cost effectiveness and value, WBE/MBE/SBE utilization, and acceptance of the terms of the contract.

- The Project Team is recommending multiple awards to ensure alternative solutions, flexibility, and availability in the provision of services to best fit the particular needs of each department.

**Charlotte Business INClusion**

No subcontracting goals were set because there are no opportunities (Part C: Section 2.1(a) of the Charlotte Business INClusion Policy).

However, one of the selected firms, Advanced Imaging Systems, has proposed 5% to the following SBE firm: Pro Shred (shredding services).

Additionally, Automated Shredding, Inc. is a certified SBE, and Advanced Imaging Systems, Inc. is a City WBE.

**Funding**

Various Departments’ Operating Budgets
STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

AGREEMENT TO PROVIDE  
CITYWIDE DOCUMENT MANAGEMENT SERVICES

THIS PROFESSIONAL SERVICES CONTRACT (the “Contract”) is made and entered into as of this 1st day of December, 2014 (the “Effective Date”), by and between Records Reduction, Inc., a North Carolina corporation doing business in North Carolina (the "Company"), and the City of Charlotte, a North Carolina municipal corporation (the "City"), a political subdivision of the State of North Carolina.

RECITALS

WHEREAS, the City issued a Request For Proposals (RFP # 269-2014-085) for Citywide Document Management Services dated August 22, 2014. This Request for Proposals together with all attachments and addenda, is referred to herein as the “RFP”; and

WHEREAS, the City desires that the Company provide certain Citywide Document Management Services (“Services”), and the Company desires to provide such Services; and

WHEREAS, the City and the Company have negotiated and agreed regarding the above-referenced Services and desire to reduce the terms and conditions of their agreement to this written form.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in further consideration of the covenants and representations contained herein, the parties agree as follows:

CONTRACT

1. EXHIBITS.

The Exhibits below are hereby incorporated into and made a part of this Contract. In interpreting this Contract and resolving any ambiguities, the main body of this Contract will take precedence over the Exhibits, and any inconsistency between the Exhibits will be resolved in the order in which the Exhibits appear below. Each reference to Records Reduction, Inc. in the Exhibits and Appendices shall be deemed to mean the Company.

1.1. EXHIBIT A: PRICE SCHEDULE
1.2. EXHIBIT B: SCOPE OF WORK
1.3. APPENDIX 1: CITY OF CHARLOTTE CLOUD TECHNOLOGY REQUIREMENTS
1.4. APPENDIX 2: QUALITY CONTROL PLAN

2. DEFINITIONS.

2.1. ACCEPTANCE – Refers to the receipt and approval by the City of a Deliverable or Service in accordance with the acceptance process and criteria set forth in this Contract.

2.2. AFFILIATES – Refers to all departments or units of the City and all other governmental units, towns, boards, committees or municipalities for which the City processes data or performs services that involve the Deliverables or Services.

2.3. CITY – Refers to the City of Charlotte, North Carolina.

2.4. CHARLOTTE COOPERATIVE PURCHASING ALLIANCE/CCPA – Refers to a cooperative purchasing alliance that allows other public agencies regionally and nationwide to use contracts competitively solicited and awarded by the City.

2.5. CCPA ADMINISTRATOR – Refers to a specified City employee monitoring Contract usage by Participating Public Agencies.
2.6. CITY PROJECT MANAGER – Refers to a specified City employee representing the best interests of the City for this Project.

2.7. CONTRACT – Refers to this written agreement executed by the City and Company for the Services as outlined herein.

2.8. COMPANY – Refers to Records Reduction, Inc.

2.9. COMPANY PROJECT MANAGER – Refers to a specified Company employee representing the best interests of the Company for this Project.

2.10. CONTRACT – Refers to this written agreement executed by the City and Company for the Services as outlined herein.

2.11. DELIVERABLES – Refers to all tasks, reports, information, designs, plans and other items, which the Company is required to complete and deliver to the City in connection with this Contract.

2.12. DEPARTMENT – Refers to a department within the City of Charlotte.

2.13. DOCUMENTATION – Refers to all written, electronic, or recorded works, that describe the use, functions, features, or purpose of the Deliverables or Services or any component thereof, and which are published or provided to the City by the Company or its subcontractors, including without limitation all end user manuals, training manuals, guides, program listings, data models, flow charts, logic diagrams, and other materials related to or for use with the Deliverables or Services.

2.14. EFFECTIVE DATE - Refers to the date this Contract is fully executed by all parties to the Contract.

2.15. LEAD PUBLIC AGENCY – Refers to the City of Charlotte, North Carolina.

2.16. PARTICIPATING PUBLIC AGENCY/PPA – A public entity that is a county, city, town, village, district, school, or authority.

2.17. QUALITY CONTROL – Refers to a process of activities utilized by the Company in which it assesses the quality of a scanned image and performs necessary corrections in order to ensure image quality and readability.

2.18. RECORD – Refers to any document or file provided by the City for Scanning by the Company.

2.19. RE-FILE – Refers to any return of a City Record / file to a Storage location.

2.20. SCANNING – Refers to reproduction of Records in the form of a digital image or file.

2.21. SERVICES – Refers to the Citywide Document Management Services as requested in this Contract.

2.22. SPECIFICATIONS AND REQUIREMENTS - Refers to all definitions, descriptions, requirements, criteria, and performance standards relating to the Deliverables and Services which are set forth or referenced in: (i) this Contract; (ii) the Documentation; and (iii) any functional and/or technical specifications which are published or provided by the Company or its licensors or suppliers from time to time with respect to all or any part of the Deliverables or Services.

2.23. WORK PRODUCT - Refers to the Deliverables and all other programs, algorithms, reports, information, designs, plans and other items developed by the Company in connection with this Contract, and all partial, intermediate or preliminary versions of any of the foregoing.

3. DESCRIPTION OF SERVICES.

3.1. The Company shall be responsible for providing the Services described in Exhibit B attached to this Contract and incorporated herein by reference. Without limiting the foregoing, the Company will perform the Services and meet the requirements as set forth in Exhibit B. However, the Company shall not be responsible for tasks specifically assigned to the City in this Contract or in Exhibit B.
4. COMPENSATION.

4.1. TOTAL FEES AND CHARGES.
   The City agrees to pay the Company on a time and materials basis. The City agrees to pay the
   Company for the Services at the prices set forth in Exhibit A, which shall remain firm for the
duration of the Contract. These prices constitute the maximum total fees and charges payable to the
Company under this Contract including Expenses and will not be increased except by a written
instrument duly executed by both parties.

4.2. NO EXPENSES CHARGEABLE.
   The Company shall not be entitled to charge the City for any travel, mileage, meals, materials or
   other costs or expenses associated with this Contract outside of the specific Delivery and Pickup
   fees detailed in Exhibit A.

4.3. EMPLOYMENT TAXES AND EMPLOYEE BENEFITS.
   The Company represents and warrants that the employees provided by the Company to perform the
   Services (“Consultants”) are actual employees of the Company, and that the Company shall be
   responsible for providing all salary and other applicable benefits to each Consultant. The Company
   further represents, warrants and covenants that it will pay all withholding tax, social security,
   Medicare, unemployment tax, worker’s compensation and other payments and deductions that are
   required by law for each Consultant. The Company agrees that the Consultants are not employees of
   the City.

4.4. INVOICES.

4.4.1. Each invoice sent by the Company shall detail all Services performed and delivered which
   are necessary to entitle the Company to the requested payment under the terms of this
   Contract. Every invoice must reference an individual City Purchase Order #. Invoices shall
   not be accepted if multiple Purchase Order #s are referenced.

4.4.2. The Company shall email all invoices to cocap@ci.charlotte.nc.us

   OR

   The Company shall mail all invoices to:

   City of Charlotte AP
   Attn: DEPARTMENT/CONTACT NAME
   P. O. Box 37979
   Charlotte, NC 28237-7979

   For either option, Accounts Payable (or AP) must be in the first line. On the Attn: line,
   you must indicate the department or area, along with the appropriate contact name.

   Invoices that are addressed directly to City departments and not to Accounts Payable may not be
   handled as quickly as invoices that are addressed correctly.

5. RECORDS.
   The Company shall be responsible for keeping a record that accurately states the type of Service performed
   and the number of hours worked by the Consultant(s). The City shall have the right to audit the Company’s
   invoices, expense reports and other documents relating to the Services performed under the Contract, and
   shall not be required to pay for Services which did not occur, or which occurred in breach of the Contract.
The Company shall make such documents available for inspection and copying by the City in Charlotte,
North Carolina between the hours of 9:00 a.m. to 5:00 p.m. Monday through Friday, whenever requested by
the City.

6. TIME IS OF THE ESSENCE.
   Time is of the essence in having the Company perform all Services and deliver all Deliverables within the
time frames provided by this Contract and Exhibit A, including all completion dates, response times and
resolution times (the “Completion Dates”). Except as specifically stated in this Contract, there shall be no extensions of the Completion Dates. All references to days in this Contract (including the Exhibits) shall refer to calendar days rather than business days, unless this Contract provides otherwise for a specific situation.

7. NON-APPROPRIATION OF FUNDS.
If the Charlotte City Council does not appropriate the funding needed by the City to make payments under this Contract for any given fiscal year, the City will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the City will promptly notify the Company of the non-appropriation and this Contract will be terminated at the end of the fiscal year for which the funds were appropriated. No act or omission by the City, which is attributable to non-appropriation of funds shall constitute a breach of or default under this Contract.

8. COMPANY PROJECT MANAGER.
The duties of the Company Project Manager include, but are not limited to:

8.1. Coordination of Project schedules and the Company’s resource assignment based upon the City’s requirements and schedule constraints;

8.2. Management of the overall Project by monitoring and reporting on the status of the Project and actual versus projected progress, and by consulting with the City’s Project Manager when deviations occur and by documenting all such deviations in accordance with agreed upon change control procedures;

8.3. Provision of consultation and advice to the City on matters related to Project implementation strategies, key decisions and approaches, and Project operational concerns/issues and acting as a conduit to the Company’s specialist resources that may be needed to supplement the Company’s normal implementation staff;

8.4. Acting as the Company’s point of contact for all aspects of contract administration, including invoicing for Services, and status reporting;

8.5. Facilitation of review meetings and conferences between the City and the Company’s executives when scheduled or requested by the City;

8.6. Communication among and between the City and the Company’s staff;

8.7. Promptly responding to the City Project Manager when consulted in writing or by E-mail with respect to Project deviations and necessary documentation;

8.8. Identifying and providing the City with timely written notice of all issues that may threaten the Company’s Services in the manner contemplated by the Contract (with “timely” meaning immediately after the Company becomes aware of them);

8.9. Ensuring that adequate quality assurance procedures are in place through the Project; and

8.10. Meeting with other service providers working on City projects that relate to this effort as necessary to resolve problems and coordinate the Services.

9. CITY PROJECT MANAGER.
The duties of the City Project Manager are to (1) ensure that the Company delivers all requirements and specifications in the Contract; (2) coordinate the City’s resource assignment as required to fulfill the City’s obligations pursuant to the Contract; (3) promptly respond to the Company Project Manager when consulted in writing or by E-mail with respect to project issues; and (4) act as the City’s point of contact for all aspects of the Project including contract administration and coordination of communication with the City’s staff. The City shall be allowed to change staffing for the City Project Manager position on one (1) business day’s notice to the Company.
10. PROGRESS REPORTS.
The Company shall prepare and submit to the City bi-weekly (or at such other times as may be agreed in Exhibit A) written progress reports, which accomplish each of the following:

10.1. Update the project schedule set forth in Exhibit A, indicating progress for each task and Deliverable.
10.2. Identify all information, personnel, equipment, facilities and resources of the City that will be required for the Company to perform the Services for the subsequent month.
10.3. Identify and report the status of all tasks and Deliverables that have fallen behind schedule.
10.4. Identify and summarize all risks and problems identified by the Company, which may affect the performance of the Services.
10.5. For each risk and problem, identify the action and person(s) responsible for mitigating the risk and resolving the problem.
10.6. For each risk and problem identified, state the impact on the project schedule.

11. DUTY OF COMPANY TO IDENTIFY AND REQUEST INFORMATION, PERSONNEL AND FACILITIES.
The Company shall identify and request in writing from the City in a timely manner: (i) all information reasonably required by the Company to perform each task comprising the Services, (ii) the City’s personnel whose presence or assistance reasonably may be required by the Company to perform each task comprising the Services, and (iii) any other equipment, facility or resource reasonably required by the Company to perform the Services. Notwithstanding the foregoing, the Company shall not be entitled to request that the City provide information, personnel or facilities other than those that Exhibit A specifically requires the City to provide, unless the City can do so at no significant cost. The Company shall not be relieved of any failure to perform under this Contract by virtue of the City’s failure to provide any information, personnel, equipment, facilities or resources: (i) that the Company failed to identify and request in writing from the City pursuant to this Section; or (ii) that the City is not required to provide pursuant to this Contract. In the event the City fails to provide any information, personnel, facility or resource that it is required to provide under this Section, the Company shall notify the City in writing immediately in accordance with the notice provision of this Contract. Failure to do so shall constitute a waiver by Company of any claim or defense it may otherwise have based on the City’s failure to provide such information, personnel, facility or resource.

12. COMPANY PERSONNEL REMOVAL, REPLACEMENT, PROMOTION, ETC.
12.1. The City will have the right to require the removal and replacement of any personnel of the Company or the Company’s subcontractors who are assigned to provide Services to the City based on experience, qualifications, performance, conduct, compatibility, and violation of City policy or any other reasonable grounds. The addition or promotion of any personnel to key positions within the Project must be approved by the City in writing. The Company will replace any personnel that leave the Project, with persons having at least equivalent qualifications who are approved by the City in writing.
12.2. As used in this Contract, the “personnel” includes all staff provided by the Company or its subcontractors.

13. BACKGROUND CHECKS.
Prior to starting work under this Contract, the Company is required to conduct a background check on each Company employee assigned to work under this Contract, and shall require its subcontractors (if any) to perform a background check on each of their employees assigned to work under this Contract (collectively, the “Background Checks”). Each Background Check must include: (a) the person’s criminal conviction record from the states and counties where the person lives or has lived in the past seven (7) years; and (b) a reference check.
After starting work under this Contract, the Company is required to perform a Background Check for each new Company employee assigned to work under this Contract during that year, and shall require its subcontractors (if any) to do the same for each of their employees. If the Company undertakes a new project under this Contract, then prior to commencing performance of the project the Company shall perform a Background Check for each Company employee assigned to work on the project, and shall require its subcontractors (if any) to do the same for each of their employees.

If a person’s duties under this Contract fall within the categories described below, the Background Checks that the Company will be required to perform (and to have its subcontractors perform) shall also include the following additional investigation:

- If the job duties require driving: A motor vehicle records check.
- If the job duties include responsibility for initiating or affecting financial transactions: A credit history check.
- If job duties include entering a private household or interaction with children: A sexual offender registry check.

The Company must follow all State and Federal laws when conducting Background Checks, including but not limited to the Fair Credit Reporting Act requirements, and shall require its subcontractors to do the same.

The Company shall notify the City of any information discovered in the Background Checks that may be of potential concern for any reason.

The City may conduct its own background checks on principals of the Company as the City deems appropriate. By operation of the public records law, background checks conducted by the City are subject to public review upon request.

14. ACCEPTANCE OF TASKS AND DELIVERABLES.
Within a reasonable time after a particular Deliverable has been completed (or such specific time as may be set forth in Exhibit A), the Company shall submit a written notice to the City’s Project Manager stating the Deliverable(s) that have been met. This notice shall include a signature page for sign-off by the City Project Manager indicating acceptance of such Deliverable(s).

If the City Project Manager is not satisfied that the Deliverable(s) have been met, a notice of rejection (a “Rejection Notice”) shall be submitted to the Company by the City Project Manager that specifies the nature and scope of the deficiencies that the City wants corrected. Upon receipt of a Rejection Notice, the Company shall: (a) act diligently and promptly to correct all deficiencies identified in the Rejection Notice, and (b) immediately upon completing such corrections give the City a written, dated certification that all deficiencies have been corrected (the “Certification”). In the event the Company fails to correct all deficiencies identified in the Rejection Notice and provide a Certification within thirty- (30) days after receipt of the Rejection Notice, the City shall be entitled to terminate this Contract for default without further obligation to the Company and without obligation to pay for the defective work.

Upon receipt of the corrected Deliverable(s) or a Certification, whichever is later, the above-described Acceptance procedure shall recommence. The City shall not be obligated to allow the Company to recommence curative action with respect to any deficiency previously identified in a Rejection Notice, or more than once for any given Deliverable (and shall be entitled to terminate this Contract for default if the Company does not meet this time frame).

15. NON-EXCLUSIVITY.
The Company acknowledges that it is one of several providers of Professional Services to the City and the City does not represent that it is obligated to contract with the Company for any particular project.

16. EACH PARTY TO BEAR ITS OWN NEGOTIATION COSTS.
Each party shall bear its own cost of negotiating this Contract and developing the exhibits. The City shall not be charged for any Services or other work performed by the Company prior to the Effective Date.
17. REPRESENTATIONS AND WARRANTIES OF COMPANY.

17.1. GENERAL WARRANTIES.

17.1.1. The Services shall satisfy all requirements set forth in the Contract, including but not limited to the attached Exhibits;

17.1.2. The Services provided by the Company under the Contract will not infringe or misappropriate any patent, copyright, trademark, or trade secret rights of any third party;

17.1.3. The Company has taken and will continue to take sufficient precautions to ensure that it will not be prevented from performing all or part of its obligations under the Contract by virtue of interruptions in the computer systems used by the Company;

17.1.4. All Services performed by the Company and/or its subcontractors pursuant to this Contract shall meet the highest industry standards and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;

17.1.5. Neither the Services, nor any Deliverables provided by the Company under this Contract will infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party;

17.1.6. The Company and each Consultant provided by the Company to the City shall have the qualifications, skills and experience necessary to perform the Services described or referenced in Exhibit A;

17.1.7. All information provided by the Company about each Consultant is accurate; and

17.1.8. Each Consultant is an employee of the Company, and the Company shall make all payments and withholdings required for by law for the Company for such Consultant.

17.2. ADDITIONAL WARRANTIES.

The Company further represents and warrants that:

17.2.1. It is a legal entity and if incorporated, duly incorporated, validly existing and in good standing under the laws of the state of its incorporation or licensing and is qualified to do business in North Carolina;

17.2.2. It has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Contract;

17.2.3. The execution, delivery, and performance of this Contract have been duly authorized by the Company;

17.2.4. No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Contract;

17.2.5. In connection with its obligations under this Contract, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses; and

17.2.6. The performance of this Contract by the Company and each Consultant provided by the Company will not violate any contracts or agreements with third parties or any third party rights (including but not limited to non-compete agreements, non-disclosure agreements, patents, trademarks or intellectual property rights).
18. OTHER OBLIGATIONS OF THE COMPANY.

18.1. WORK ON CITY’S PREMISES.
The Company and all Consultants will, whenever on the City's premises, obey all instructions and City policies that are provided to them with respect to performing Services on the City’s premises.

18.2. RESPECTFUL AND COURTEOUS BEHAVIOR.
The Company shall assure that its employees interact with City employees and with the public in a courteous, helpful and impartial manner. All employees of the Company in both field and office shall refrain from belligerent behavior and/or profanity. Correction of any such behavior and language shall be the responsibility of the Company.

18.3. REPAIR OR REPLACEMENT OF DAMAGE EQUIPMENT OR FACILITIES.
In the event that the Company causes damage to the City’s equipment or facilities, the Company shall, at its own expense, promptly repair or replace such damaged items to restore them to the same level of functionality that they possessed prior to the Company’s action.

18.4. REGENERATION OF LOST OR DAMAGED DATA.
With respect to any data that the Company or any Consultants have negligently lost or negligently damaged, the Company shall, at its own expense, promptly replace or regenerate such data from the City's machine-readable supporting material, or obtain, at the Company's own expense, a new machine-readable copy of lost or damaged data from the City’s data sources.

18.5. E-VERIFY.
As a condition for payment under this Contract, Company shall: (i) comply with the E-Verify requirements set forth in Article 2 of Chapter 64 of the North Carolina General Statutes (the "E-Verify Requirements"); and (ii) cause each subcontractor under this Contract to comply with such E-Verify Requirements as well. Company will indemnify and save harmless the City from all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, interest charges and other liabilities (including settlement amounts) incurred on account of any failure by Company or any subcontractor to comply with the E-Verify Requirements.

19. REMEDIES.

19.1. RIGHT TO COVER.
If the Company fails to meet any completion date or resolution time set forth in this Contract (including the Exhibits), the City may take any of the following actions with or without terminating this Contract, and in addition to and without limiting any other remedies it may have:

a. Employ such means as it may deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and the Company is again able to resume performance under this Contract; and

b. Deduct any and all expenses incurred by the City in obtaining or performing the Services from any money then due or to become due the Company and, should the City’s cost of obtaining or performing the services exceed the amount due the Company, collect the amount due from the Company.

19.2. RIGHT TO WITHHOLD PAYMENT.
If the Company breaches any provision of this Contract, the City shall have a right to withhold all payments due to the Company until such breach has been fully cured.

19.3. SPECIFIC PERFORMANCE AND INJUNCTIVE RELIEF.
The Company agrees that monetary damages are not an adequate remedy for the Company’s failure to provide the Services or Deliverables as required by this Contract, nor could monetary damages be the equivalent of the performance of such obligation. Accordingly, the Company hereby consents to an order granting specific performance of such obligations of the Company in a court of competent jurisdiction within the State of North Carolina. The Company further consents to the City obtaining
injunctive relief (including a temporary restraining order) to assure performance in the event the Company breaches the Contract.

19.4. SETOFF.
Each party shall be entitled to setoff and deduct from any amounts owed to the other party pursuant to this Contract all damages and expenses incurred or reasonably anticipated as a result of the other party’s breach of this Contract.

19.5. OTHER REMEDIES.
Upon breach of this Contract, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

20. TERM AND TERMINATION OF CONTRACT.

20.1. TERM.
This Contract shall commence on the Effective Date and shall continue in effect for three (3) years with the City having the unilateral right to renew for two (2) consecutive one (1) year terms.

20.2. TERMINATION BY THE CITY.
The City may terminate the Contract at any time without cause by giving thirty (30) days prior written notice to the Company. As soon as practicable after receipt of a written notice of termination without cause, Company shall submit a statement to the City showing in detail the Services performed under this Contract through the date of termination. The foregoing payment obligation is contingent upon: (i) the Company having fully complied with Section 21.8; and (ii) the Company having provided the City with written documentation reasonably adequate to verify the number of hours of Services rendered by each Consultant through the termination date and the percentage of completion of each task.

20.3. TERMINATION FOR DEFAULT BY EITHER PARTY.
By giving written notice to the other party, either party may terminate the Contract upon the occurrence of one or more of the following events:

a. The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in the Contract, provided that, unless otherwise stated in the Contract, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party; or

b. The other party attempts to assign, terminate or cancel the Contract contrary to the terms hereof; or

c. The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under the Contract shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party’s assets or properties.

Any notice of default shall identify this Section of the Contract and shall state the party’s intent to terminate the Contract if the default is not cured within the specified period.

Notwithstanding anything contained herein to the contrary, upon termination of this Contract by the Company for default, the Company shall continue to perform the Services required by this Contract for the lesser of: (i) six (6) months after the date the City receives the Company’s written termination notice; or (ii) the date on which the City completes its transition to a new service provider.
20.4. ADDITIONAL GROUNDS FOR DEFAULT TERMINATION BY THE CITY. 
By giving written notice to the Company, the City may also terminate the Contract upon the occurrence of one or more of the following events (which shall each constitute separate grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):

a. Failure of the Company to complete a particular task by the completion date set forth in this Contract;

b. The Company makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Contract, or any covenant, agreement, obligation, term or condition contained in this Contract; or

c. The Company takes or fails to take any action which constitutes grounds for immediate termination under the terms of the Contract, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by the Contract, or failure to provide the proof of insurance as required by the Contract.

20.5. NO SUSPENSION. 
In the event that the City disputes in good faith an allegation of default by the Company, notwithstanding anything to the contrary in the Contract, the Company agrees that it will not terminate the Contract or suspend or limit the Services or any warranties or repossess, disable or render unusable any software supplied by the Company, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.

20.6. CANCELLATION OF ORDERS AND SUBCONTRACTS. 
In the event this Contract is terminated by the City for any reason prior to the end of the term, the Company shall upon termination immediately discontinue all service in connection with this Contract and promptly cancel all existing orders and subcontracts, which are chargeable to this Contract. As soon as practicable after receipt of notice of termination, the Company shall submit a statement to the City showing in detail the Services performed under this Contract to the date of termination.

20.7. AUTHORITY TO TERMINATE. The following persons are authorized to terminate this Contract on behalf of the City: (a) the City Manager, any Assistant City Manager, or any designee of the City Manager; or (b) the Department Director of the City Department responsible for administering this Contract.

20.8. OBLIGATIONS UPON EXPIRATION OR TERMINATION. 
Upon expiration or termination of this Contract, the Company shall promptly return to the City (i) all computer programs, files, documentation, media, related material and any other material and equipment that is owned by the City; (ii) all Deliverables that have been completed or that are in process as of the date of termination; and (iii) a written statement describing in detail all work performed with respect to Deliverables which are in process as of the date of termination. The expiration or termination of this Contract shall not relieve either party of its obligations regarding “Confidential Information”, as defined in this Contract.

20.9. NO EFFECT ON TAXES, FEES, CHARGES OR REPORTS. 
Any termination of this Contract shall not relieve the Company of the obligation to pay any fees, taxes or other charges then due to the City, nor relieve the Company of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve the Company from any claim for damages previously accrued or then accruing against the Company.
20.10. OTHER REMEDIES.
The remedies set forth in this Section and Section 19 shall be deemed cumulative and not exclusive, and may be exercised successively or concurrently, in addition to any other remedies available under this Contract or at law or in equity.

21. TRANSITION SERVICES UPON TERMINATION.
Upon termination or expiration of this Contract, the Company shall cooperate with the City to assist with the orderly transfer of the Services provided by the Company to the City. Prior to termination or expiration of this Contract, the City may require the Company to perform and, if so required, the Company shall perform certain transition services necessary to shift the Services of the Company to another provider or to the City itself as described below (the “Transition Services”). Transition Services may include but shall not be limited to the following:

- Working with the City to jointly develop a mutually agreed upon Transition Services Plan to facilitate the termination of the Services;
- Notifying all affected service providers and subcontractors of the Company;
- Performing the Transition Service Plan activities;
- Answering questions regarding the Services on an as-needed basis; and
- Providing such other reasonable services needed to effectuate an orderly transition to a new service provider.
- Pulling a full listing of all electronic or stored Records, and immediately providing the report to the City;
- Working with each City Department to facilitate transfer of electronic Records to CD, flash drive, and/or a location to be specified by the Department; and
- Working with the City Department(s) to facilitate transfer of Records and boxes to a location(s) specified by the Department(s).

22. CHANGES.
In the event changes to the Services (collectively “Changes”), become necessary or desirable to the parties, the parties shall follow the procedures set forth in this Section. A Change shall be effective only when documented by a written, dated agreement executed by both parties that expressly references and is attached to this Contract (a “Change Statement”). The Change Statement shall set forth in detail: (i) the Change requested, including all modifications of the duties of the parties; (ii) the reason for the proposed Change; and (iii) a detailed analysis of the impact of the Change on the results of the Services and time for completion of the Services, including the impact on all delivery dates and any associated price.

In the event either party desires a Change, the Project Manager for such party shall submit to the other party’s Project Manager a proposed Change Statement. If the receiving party does not accept the Change Statement in writing within ten (10) days, the receiving party shall be deemed to have rejected the Change Statement. If the parties cannot reach agreement on a proposed Change, the Company shall nevertheless continue to render performance under this Contract in accordance with its (unchanged) terms and conditions.

Changes that involve or increase in the amounts payable by the City may require execution by the City Manager or a designee depending on the amount. Some increases may also require approval by Charlotte City Council.

23. CITY OWNERSHIP OF WORK PRODUCT.
23.1. The parties agree that the City shall have exclusive ownership of all reports, documents, designs, ideas, materials, reports, concepts, plans, creative works, and other work product developed for or provided to the City in connection with this Contract, and all patent rights, copyrights, trade secret rights and other intellectual property rights relating thereto (collectively the “Intellectual Property”). The Company hereby assigns and transfers all rights in the Intellectual Property to the City. The
23.2. Company further agrees to execute and deliver such assignments and other documents as the City may later require to perfect, maintain and enforce the City’s rights as sole owner of the Intellectual Property, including all rights under patent and copyright law. The Company hereby appoints the City as attorney in fact to execute all such assignments and instruments and agree that its appointment of the City as an attorney in fact is coupled with an interest and is irrevocable.

23.3. The City grants the Company a royalty-free, non-exclusive license to use and copy the Intellectual Property to the extent necessary to perform this Contract. The Company shall not be entitled to use the Intellectual Property for other purposes without the City’s prior written consent, and shall treat the Intellectual Property as “Confidential Information” pursuant to Section 28 of the Contract.

23.4. The Company will treat as Confidential Information under the Confidentiality and Non-Disclosure Contract all data in connection with the Contract. City data processed by the Company shall remain the exclusive property of the City. The Company will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the City in any manner except that contemplated by the Contract.

24. LICENSING.

The Company shall provide copies of all valid licenses and certificates required for performance of the Services. The copies shall be delivered to the City no later than ten (10) days after the Company receives the notice of award from the City. Current copies of licenses and certificates shall be provided to the City within twenty-four (24) hours of demand at any time during the Contract term. Licenses and certificates required for this contract include, by way of illustration and not limitation, the following: 1) a business license valid in North Carolina; 2) any additional licenses pertaining to or that may be required to be held by field professionals participating in the contract work.

Failure to obtain a valid Charlotte Business License within thirty (30) days of receiving contract award notification will result in garnishment by the Tax Office from any payments made to the Company.

25. RELATIONSHIP OF THE PARTIES.

The relationship of the parties established by this Contract is solely that of independent contractors, and nothing contained in this Contract shall be construed to (i) give any party the power to direct or control the day-to-day administrative activities of the other; or (ii) constitute such parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking; or (iii) make either party an agent of the other, or any Consultant an agent or employee of the City, for any purpose whatsoever. Neither party nor its agents or employees is the representative of the other for any purpose, and neither has power or authority to act as agent or employee to represent, to act for, bind, or otherwise create or assume any obligation on behalf of the other.

26. INDEMNIFICATION.

To the fullest extent permitted by law, the Company shall indemnify, defend and hold harmless each of the “Indemnitees” (as defined below) from and against any and all “Charges” (as defined below) paid or incurred as a result of any claims, demands, lawsuits, actions, or proceedings: (i) alleging violation, misappropriation or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to the Services or any products or deliverables provided to the City pursuant to this Contract (“Infringement Claims”); (ii) seeking payment for labor or materials purchased or supplied by the Company or its subcontractors in connection with this Contract; (iii) arising from the Company’s failure to perform its obligations under this Contract, or from any act of negligence or willful misconduct by the Company or any of its agents, employees or subcontractors relating to this Contract, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible; (iv) arising from any claim that the Company or an employee or subcontractor of the Company is an employee of the City, including but not limited to claims relating to worker’s compensation, failure to withhold taxes and the like.

For purposes of this Section: (a) the term “Indemnitees” means the City and each of the City’s officers, officials, employees, agents and independent contractors (excluding the Company); and (b) the term “Charges” means any and all losses, damages, costs, expenses (including reasonable attorneys’ fees),
obligations, duties, fines, penalties, royalties, interest charges and other liabilities (including settlement amounts).

If an Infringement Claim occurs, the Company shall either: (i) procure for the City the right to continue using the affected product or service; or (ii) repair or replace the infringing product or service so that it becomes non-infringing, provided that the performance of the overall product(s) and service(s) provided to the City shall not be adversely affected by such replacement or modification. If the Company is unable to comply with the preceding sentence within thirty (30) days after the City is directed to cease use of a product or service, the Company shall promptly refund to the City all amounts paid under this Contract.

This Section 26 shall remain in force despite termination of this Contract (whether by expiration of the term or otherwise).

27. SUBCONTRACTING.

Should the Company choose to subcontract, the Company shall be the prime contractor and shall remain fully responsible for performance of all obligations that it is required to perform under the Contract. Any subcontract entered into by Company shall name the City as a third party beneficiary.

28. CONFIDENTIAL INFORMATION.

28.1. CONFIDENTIAL INFORMATION.

Confidential Information includes any information, not generally known in the relevant trade or industry, obtained from the City or its vendors or licensors or which falls within any of the following general categories:

28.1.1. Trade secrets. For purposes of this Contract, trade secrets consist of information of the City or any of its suppliers, contractors or licensors: (a) that derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.

28.1.2. Information of the City or its suppliers, contractors or licensors marked “Confidential” or “Proprietary.”

28.1.3. Information relating to criminal investigations conducted by the City, and records of criminal intelligence information compiled by the City.

28.1.4. Information contained in the City’s personnel files, as defined by N.C. Gen. Stat. 160A-168. This consists of all information gathered and/or maintained by the City about employees, except for that information which is a matter of public record under North Carolina law.

28.1.5. Citizen or employee social security numbers collected by the City.

28.1.6. Computer security information of the City, including all security features of electronic data processing, or information technology systems, telecommunications networks and electronic security systems. This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software and codes.

28.1.7. Local tax records of the City that contains information about a taxpayer’s income or receipts.

28.1.8. Any attorney / City privileged information disclosed by either party.

28.1.9. Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.

28.1.10. The name or address of individual homeowners who, based on their income, have received a rehabilitation grant to repair their home.

28.1.11. Building plans of city-owned buildings or structures, as well as any detailed security plans.
28.1.12. Billing information of customers compiled and maintained in connection with the City providing utility services.

28.1.13. Other information that is exempt from disclosure under the North Carolina public records laws.

Categories 28.1.3 through 28.1.13 above constitute “Highly Restricted Information,” as well as Confidential Information. The Company acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Contract, and agrees that: (a) all provisions in this Contract applicable to Confidential Information shall apply to Highly Restricted Information; and (b) the Company will also comply with any more restrictive instructions or written policies that may be provided by the City from time to time to protect the confidentiality of Highly Restricted Information.

The parties acknowledge that in addition to information disclosed or revealed after the date of this Contract, the Confidential Information shall include information disclosed or revealed within one year prior to the date of this Contract.

28.2. RESTRICTIONS.

The Company shall keep the Confidential Information in the strictest confidence, in the manner set forth below:

28.2.1. It shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information.

28.2.2. It shall not, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information of the other to any third party or to any individual employed by the Company, other than an employee, agent, subcontractor or vendor of the City or Company who: (i) has a need to know such Confidential Information, and (ii) has executed a confidentiality agreement incorporating substantially the form of this Section of the Contract and containing all protections set forth herein.

28.2.3. It shall not use any Confidential Information of the City for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written agreements between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.

28.2.4. It shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information of the other.

28.2.5. The Company shall use its best efforts to enforce the proprietary rights of the City and the City’s vendors, licensors and suppliers (including but not limited to seeking injunctive relief where reasonably necessary) against any person who has possession of or discloses Confidential Information in a manner not permitted by this Contract.

28.2.6. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, the Company shall assert this Contract as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.

28.2.7. All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to the City or destroyed upon satisfaction of the purpose of the disclosure of such information.

28.3. EXCEPTIONS.

The parties agree that the Company shall have no obligation with respect to any Confidential Information which the Company can establish:
28.3.1. Was already known to the Company prior to being disclosed by the disclosing party;
28.3.2. Was or becomes publicly known through no wrongful act of the Company;
28.3.3. Was rightfully obtained by the Company from a third party without similar restriction and without breach hereof;
28.3.4. Was used or disclosed by the Company with the prior written authorization of the City;
28.3.5. Was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, the Company shall first give to the City notice of such requirement or request;
28.3.6. Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the Company shall take use its best efforts to obtain an agreement or protective order providing that, to the greatest possible extent possible, this Contract will be applicable to all disclosures under the court order or subpoena.

28.4. UNINTENTIONAL DISCLOSURE.
Notwithstanding anything contained herein to the contrary, in the event that the Company is unintentionally exposed to any Confidential Information of the City, the Company agrees that it shall not, directly or indirectly, disclose, divulge, reveal, report or transfer such Confidential Information to any person or entity or use such Confidential Information for any purpose whatsoever.

28.5. REMEDIES.
The Company acknowledges that the unauthorized disclosure of the Confidential Information of the City will diminish the value of the proprietary interests therein. Accordingly, it is agreed that if the Company breaches its obligations hereunder, the City shall be entitled to equitable relief to protect its interests, including but not limited to injunctive relief, as well as monetary damages.

29. INSURANCE.
29.1. TYPES OF INSURANCE.
Company shall obtain and maintain during the life of this Contract, with an insurance Company rated not less than “A” by A.M. Best, authorized to do business in the State of North Carolina, acceptable to the Charlotte-Mecklenburg, Risk Management Division the following insurance:

29.1.1. Automobile Liability - Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than $1,000,000 bodily injury each person, each accident and $1,000,000 property damage, or $1,000,000 combined single limit - bodily injury and property damage.

29.1.2. Commercial General Liability - Bodily injury and property damage liability as shall protect the Company and any subcontractor performing Services under this Contract, from claims of bodily injury or property damage which arise from performance of this Contract, whether such operations are performed by the Company, any subcontractor, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than $1,000,000 bodily injury each occurrence/aggregate and $1,000,000 property damage each occurrence/aggregate, or $1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, operations, personal injury liability and contractual liability, assumed under the indemnity provision of this Contract.

29.1.3. Workers’ Compensation and Employers Liability - meeting the statutory requirements of the State of North Carolina, $500,000 per accident limit, $500,000 disease per policy limit, $500,000 disease each employee limit.
29.1.4 Professional Liability, including Network Security and Privacy Liability as shall protect the Company and Company’s employees for negligent acts, errors or omissions in performing the services under this contract. Network Security and Privacy Liability as shall protect the Company and its employees from claims alleging from the failure: (1) to provide adequate electronic or physical security to safeguard against the theft, loss or other threat to confidential information; or, (2) to protect information of the City in any format. This policy shall be specific to the performance of this Contract and shall provide combined single limit each occurrence/aggregate of $3,000,000. Policy will include acts of rogue employees and have a retroactive date of no later than the first date services under this contract are to be performed.

The Company shall not commence any Services in connection with this Contract until it has obtained all of the foregoing types of insurance and such insurance has been approved by the City. The Company shall not allow any subcontractor to commence Services on its subcontract until all similar insurance required of the subcontractor has been obtained and approved.

29.2. OTHER INSURANCE REQUIREMENTS.
29.2.1. The City shall be exempt from, and in no way liable for any sums of money, which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Company and/or subcontractor providing such insurance.

29.2.2. City of Charlotte shall be named as an additional insured for operations or services rendered under the automobile and general liability coverage. The Company’s insurance shall be primary of any self-funding and/or insurance otherwise carried by the City for all loss or damages arising from the Company’s operations under this agreement.

29.2.3. Certificates of such insurance will be furnished to the City and shall contain the provision that the City be given thirty (30) days’ written notice of any intent to amend coverage reductions or material changes or terminate by either the insured or the insuring Company.

29.2.4. Should any or all of the required insurance coverage be self-funded/self-insured, a copy of the Certificate of Self-Insurance or other documentation from the North Carolina Department of Insurance shall be furnished to the City.

If any part of the Services under this Contract is sublet, the subcontractor shall be required to meet all insurance requirements as listed above. However, this will in no way relieve the Company from meeting all insurance requirements or otherwise being responsible for the subcontractor.

30. CLOUD TECHNOLOGY REQUIREMENTS.
In providing the Services, the Company shall comply with the City of Charlotte Cloud Technology Requirements set forth in Appendix 1, which are attached and incorporated into this Contract by reference. Notwithstanding anything contained in this Contract or any Exhibit to the contrary, in the event of a conflict between the language in Appendix 1 and the main body of this Contract or any other Exhibit to this Contract, the language in Appendix 1 shall prevail.

31. COMMERCIAL NON-DISCRIMINATION.
The City has adopted a Commercial Non-Discrimination Ordinance that is set forth in Section 2, Article V of the Charlotte City Code, and is available for review on the City’s website (the “Non-Discrimination Policy”). As a condition of entering into this Contract the Company agrees to comply with the Non-Discrimination Policy, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the Company shall not discriminate on the basis of race, gender, religion, national origin, sexual orientation, ethnicity, age, disability, or political affiliation in the solicitation, selection, hiring, or treatment of subcontractors, vendors, suppliers, or commercial customers in connection with a City contract or contract solicitation process, nor shall the Company retaliate against any person or entity for reporting instances of such discrimination. The Company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on City contracts.
provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace.

As a condition of entering into this Contract, the Company agrees to: (a) promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation, selection, treatment and payment of subcontractors in connection with this Contract; and (b) if requested, provide to the City within sixty (60) days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Company has used on City contracts in the past five (5) years, including the total dollar amount paid by Company on each subcontract or supply contract. The Company further agrees to fully cooperate in any investigation conducted by the City pursuant to the City’s Non-Discrimination Policy, to provide any documents relevant to such investigation that are requested by the City, and to be bound by the award of any arbitration conducted under such Policy.

The Company agrees to provide to the City from time to time on the City’s request, payment affidavits detailing the amounts paid by Company to subcontractors and suppliers in connection with this Contract within a certain period of time. Such affidavits shall be in the format specified by the City from time to time.

The Company understands and agrees that violation of this Commercial Non-Discrimination provision shall be considered a material breach of this Contract and may result in contract termination or disqualification of the Company from participating in City contracts and other sanctions.

32. DRUG-FREE WORKPLACE.
The Company shall provide a drug-free workplace during the performance of this Contract. This obligation is met by:

32.1. Notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the Company’s workplace and specifying the actions that will be taken against employees for violations of such prohibition;

32.2. Establishing a drug-free awareness program to inform employees about (i) the dangers of drug abuse in the workplace, (ii) the Company’s policy of maintaining a drug-free workplace, (iii) any available drug counseling, rehabilitation, and employee assistance programs, and (iv) the penalties that may be imposed upon employees for drug abuse violations;

32.3. Notifying each employee that as a condition of employment, the employee will (i) abide by the terms of the prohibition outlined in (a) Section 31.1, and (ii) notify the Company of any criminal drug statute conviction for a violation occurring in the workplace not later than five (5) days after such conviction;

32.4. Notifying the City within ten days after receiving from an employee a notice of a criminal drug statute conviction or after otherwise receiving actual notice of such conviction;

32.5. Imposing a sanction on, or requiring the satisfactory participation in a drug counseling, rehabilitation or abuse program by, an employee convicted of drug crime;

32.6. Making a good faith effort to continue to maintain a drug-free workplace for employees; and

32.7. Requiring any party to which it subcontracts any portion of the Services under the Contract to comply with the provisions of 31.1 through 31.6.

Failure to comply with the above drug-free workplace requirements during the performance of the Contract shall be grounds for suspension, termination or debarment.

33. NOTICES AND PRINCIPAL CONTACTS.
Any notice, consent or other communication required or contemplated by this Contract shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by telefax to the intended recipient at the address set forth below:
34. MISCELLANEOUS.

34.1. ENTIRE AGREEMENT.
This Contract is the entire agreement between the parties with respect to its subject matter, and there are no other representations, understandings, or agreements between the parties with respect to such subject matter. This Contract supersedes all prior agreements, negotiations, representations and proposals, written or oral.

34.2. AMENDMENT.
No amendment or change to this Contract shall be valid unless in writing and signed by both parties to this Contract.

34.3. GOVERNING LAW AND JURISDICTION.
The parties acknowledge that this Contract is made and entered into in Charlotte, North Carolina, and will be performed in Charlotte, North Carolina. The parties further acknowledge and agree that North Carolina law shall govern all the rights, obligations, duties and liabilities of the parties under this Contract, and that North Carolina law shall govern interpretation and enforcement of this Contract and any other matters relating to this Contract (all without regard to North Carolina conflicts of law principles). The parties further agree that any and all legal actions or proceedings relating to this Contract shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By the execution of this Contract, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections, which they may have with respect to venue in any court sitting in Mecklenburg County, North Carolina.

34.4. BINDING NATURE AND ASSIGNMENT.
This Contract shall bind the parties and their successors and permitted assigns. Neither party may assign any of the rights and obligations thereunder without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void.
34.5. CITY NOT LIABLE FOR DELAYS.

It is agreed that the City shall not be liable to the Company, its agents or representatives or any subcontractor for or on account of any stoppages or delay in the performance of any obligations of the City or any other party hereunder caused by injunction or other legal or equitable proceedings or on account of any other delay for any cause beyond the City’s reasonable control. The City shall not be liable under any circumstances for lost profits or any other consequential, special or indirect damages.

34.6. FORCE MAJEURE.

34.6.1. The Company shall not be liable for any failure or delay in the performance of its obligations pursuant to this Contract (and such failure or delay shall not be deemed a default of this Contract or grounds for termination hereunder if all of the following conditions are satisfied: (i) if such failure or delay: (a) could not have been prevented by reasonable precaution, and (b) cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and (ii) if and to the extent such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, or court order.

34.6.2. Upon the occurrence of an event which satisfies all of the conditions set forth above (a “Force Majeure Event”) the Company shall be excused from any further performance of those of its obligations pursuant to this Contract affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) the Company continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

34.6.3. Upon the occurrence of a Force Majeure Event, the Company shall immediately notify the City by telephone (to be confirmed by written notice within two (2) days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents the Company from performing its obligations for more than five (5) days, the City may terminate this Contract.

34.6.4. Strikes, slow-downs, walkouts, lockouts, and individual disputes are not excused under this provision.

34.7. SEVERABILITY.

The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Contract shall not affect the validity of the remaining portion of the Contract so long as the material purposes of the Contract can be determined and effectuated. If any provision of this Contract is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Contract shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

34.8. NO PUBLICITY.

No advertising, sales promotion or other materials of the Company or its agents or representations may identify or reference this Contract or the City in any manner absent the written consent of the City.

34.9. APPROVALS.

All approvals or consents required under this Contract must be in writing.

34.10. WAIVER.

No delay or omission by either party to exercise any right or power it has under this Contract shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant
or breach of this Contract shall not be constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Contract shall be effective unless in writing and signed by the party waiving the rights.

34.11. SURVIVAL OF PROVISIONS.
The following sections of this Contract shall survive the termination hereof:

- Section 4.3 “Employment Taxes and Employee Benefits”
- Section 17 “Representations and Warranties of Company”
- Section 20 “Term and Termination of Contract”
- Section 23 “City Ownership of Work Product”
- Section 26 “Indemnification”
- Section 28 “Confidential Information”
- Section 29 “Insurance”
- Section 30 “Cloud Technology Requirements”
- Section 33 “Notices and Principal Contacts”
- Section 34 “Miscellaneous”

34.12. CHANGE IN CONTROL.
In the event of a change in “Control” of the Company (as defined below), the City shall have the option of terminating this Contract by written notice to the Company. The Company shall notify the City within ten (10) days of the occurrence of a change in control. As used in this Contract, the term “Control” shall mean the possession, direct or indirect, of either (i) the ownership of or ability to direct the voting of, as the case may be fifty-one percent (51%) or more of the equity interests, value or voting power in the Company or (ii) the power to direct or cause the direction of the management and policies of the Company whether through the ownership of voting securities, by contract or otherwise.

34.13. DRAFTER’S PROTECTION.
Each of the Parties has agreed to the use of the particular language of the provisions of this Contract and any questions of doubtful interpretation shall not be resolved by any rule or interpretation against the drafters, but rather in accordance with the fair meaning thereof, having due regard to the benefits and rights intended to be conferred upon the Parties hereto and the limitations and restrictions upon such rights and benefits intended to be provided.

34.14. FAMILIARITY AND COMPLIANCE WITH LAWS AND ORDINANCES.
The Company agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Services. The Company further agrees that it will at all times during the term of this Contract be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to, workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all OSHA regulations applicable to the Services.

34.15. CONFLICT OF INTEREST.
The Company covenants that its officers, employees and shareholders have no interest and shall not acquire any interest, direct or indirect that would conflict in any manner or degree with the performance of Services required to be performed under the Contract.

34.16. NO BRIBERY.
The Company certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the forgoing has bribed or attempted to bribe an officer or employee of the City in connection with the Contract.
34.17. **HARASSMENT.**
The Company agrees to make itself aware of and comply with the City's Harassment Policy. The City will not tolerate or condone acts of harassment based upon race, sex, religion, national origin, color, age, or disability. Violators of this policy will be subject to termination.

34.18. **TRAVEL UPGRADES.**
The City has no obligation to reimburse the Company for any travel or other expenses incurred in connection with this Contract unless this Contract specifically requires reimbursement. If this Contract requires reimbursement by the City: (a) the City will only pay coach/economy rate airline fares, and (b) the Company’s invoices shall include sufficient detail of travel expenses to demonstrate that fares were at coach/economy rates. Notwithstanding the forgoing, nothing in this provision shall preclude complimentary upgrades to first class or business class seating, mileage, points, or credits based upgrades, or upgrades paid for by the contractor so long as the City is not charged for or asked to reimburse the upgrade charge or the value of the miles, points, or credits used.

34.19. **TAXES.**
Except as specifically stated elsewhere in this Contract, the Company shall pay all applicable federal, state and local taxes which may be chargeable against the performance of the Services. The Company consents to and authorizes the City to collect any and all delinquent taxes and related interest, fines, or penalties of the Company by reducing any payment, whether monthly, quarterly, semi-annually, annually, or otherwise, made by the City to the Company pursuant to this Contract for an amount equal to any and all taxes and related interest, fines, or penalties owed by the Company to the City. The Company hereby waives any requirements for notice under North Carolina law for each and every instance that the City collects delinquent taxes pursuant to this paragraph. This paragraph shall not be construed to prevent the Company from filing an appeal of the assessment of the delinquent tax if such appeal is within the time prescribed by law.

34.20. **COUNTERPARTS.**
This Contract may be executed in any number of counterparts, all of which taken together shall constitute one single agreement between the parties.

[Signature Page Follows]
IN WITNESS WHEREOF, and in acknowledgment that the parties hereto have read and understood each and every provision hereof, the parties have caused this Contract to be executed on the date first written above.

RECORDS REDUCTION INC.:

BY: [Signature]
PRINT NAME: M. Shane Hunt
TITLE: President
DATE: 11-21-14

CITY OF CHARLOTTE:
CITY MANAGER'S OFFICE

BY: [Signature]
PRINT NAME: Randy Harrington
TITLE: CFO
DATE: 12/1/14

CITY OF CHARLOTTE:
CITY CLERK'S OFFICE

BY: [Signature]
PRINT NAME: Emily A. Kluge
TITLE: Deputy City Clerk
DATE: 12/1/14

CITY OF CHARLOTTE:
RISK MANAGEMENT DIVISION

BY: [Signature]
PRINT NAME: Chrislee Gibson
TITLE: As Mgr
DATE: 11/21/14
**EXHIBIT A**

**PRICE SCHEDULE**

This Price Schedule is an Exhibit to and is incorporated into the Services Contract between the City of Charlotte and Records Reduction, Inc. (the “Contract”). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract.

<table>
<thead>
<tr>
<th>Scanning Services</th>
<th>Unit Of Measure</th>
<th>Cost</th>
<th>Additional information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regular Scanning of 8 ½”x11” Records</td>
<td>Per Image</td>
<td>0.035</td>
<td>Includes all Scanning, indexing, Quality Control, and Re-Filing of Records in City boxes</td>
</tr>
<tr>
<td>Regular Scanning of 8”x14” Records</td>
<td>Per Image</td>
<td>0.036</td>
<td>Includes all Scanning, indexing, Quality Control, and Re-Filing of Records in City boxes</td>
</tr>
<tr>
<td>Regular Scanning of 11”x17” Records</td>
<td>Per Image</td>
<td>0.050</td>
<td>Includes all Scanning, indexing, Quality Control, and Re-Filing of Records in City boxes</td>
</tr>
</tbody>
</table>
| Bulk Scanning of 8½”x11” Records. * Include all Scanning, indexing, Quality Control, and Re-Filing of Records in City boxes.
  **Indicate Pricing by single project volume tier.** | Per Image       | 0.035| 1 to 10,000 images                                                                     |
|                                                        | Per Image       | 0.034| 10,000 to 50,000 images                                                                |
|                                                        | Per Image       | 0.033| 50,001 or more images                                                                  |
| Bulk Scanning of 8½”x14” Records. * Include all Scanning, indexing, Quality Control, and Re-Filing of Records in City boxes.
  **Indicate Pricing by single project volume tier.** | Per Image       | 0.036| 1 to 10,000 images                                                                     |
|                                                        | Per Image       | 0.035| 10,000 to 50,000 images                                                                |
|                                                        | Per Image       | 0.034| 50,001 or more images                                                                  |
| Bulk Scanning of 11”x17” Records. * Include all Scanning, indexing, Quality Control, and Re-Filing of Records in City boxes.
  **Indicate Pricing by single project volume tier.** | Per Image       | 0.050| 1 to 10,000 images                                                                     |
<p>|                                                        | Per Image       | 0.049| 10,000 to 50,000 images                                                                |
|                                                        | Per Image       | 0.048| 50,001 or more images                                                                  |
| Setup/Preparation of Records * Include all removal of fasteners, separation of folded forms, and/or paste-up of small documents | Per Hour | 15.00 | Average of 1,000 pages/hour, or 1/3 of a standard 15 inch bankers box/hour |
| Transportation fee                                      | Per Trip        | 14.00| Pickup from City or deliver to City (round-trip)                                        |</p>
<table>
<thead>
<tr>
<th>Service</th>
<th>Unit of Measure</th>
<th>Cost</th>
<th>Additional Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Storage in Records Management Portal</td>
<td>Per User/Per Month</td>
<td>15.00</td>
<td>Unlimited Storage. Volume discounts depending on number of Users.</td>
</tr>
<tr>
<td>Copy Records to CD - R</td>
<td>Per CD</td>
<td>5.00</td>
<td>CD-R size = 700 Megabytes</td>
</tr>
<tr>
<td>Copy Records to CD - RW</td>
<td>Per CD</td>
<td>5.00</td>
<td>CD-RW size = 700 Megabytes</td>
</tr>
<tr>
<td>Copy Records to flash drive</td>
<td>Per Flash Drive</td>
<td>10.00</td>
<td>Flash drive size = 8 Gigabytes</td>
</tr>
<tr>
<td>Copy Records to City supplied portable hard drive</td>
<td>Per Hard Drive/Per Hr.</td>
<td>5.00</td>
<td></td>
</tr>
<tr>
<td>Copy Records to Company supplied portable hard drive</td>
<td>Per Hard Drive/Per Hr.</td>
<td>75.00</td>
<td></td>
</tr>
</tbody>
</table>

**Additional Services**

<table>
<thead>
<tr>
<th>Services</th>
<th>Unit Of Measure</th>
<th>Cost</th>
<th>Additional Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>OCRing Images</td>
<td>Per Image</td>
<td>0.01</td>
<td>OCR - Optical Character Recognition</td>
</tr>
</tbody>
</table>
EXHIBIT B

SCOPE OF WORK

This Scope of Work is an Exhibit to and is incorporated into the Services Contract between the City of Charlotte and Records Reduction, Inc. (the “Contract”). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract.

1. SCOPE OF CITYWIDE DOCUMENT MANAGEMENT SERVICES.

   1.1. General Scope.

   The Company shall supply Document Management Services including, but not limited to:

   - Scanning.

   While the City is flexible with respect to certain elements of its relationship with the Citywide Document Management Services Provider, the City does have certain preferences for that relationship and has developed the following model for that relationship.

   1.2. Charlotte Cooperative Purchasing Alliance.

   Pursuant to N.C. G.S. 160A-461 and 143-129(e)(3), the City of Charlotte Procurement Management Division has established the Charlotte Cooperative Purchasing Alliance (CCPA). The purpose of the CCPA is to allow other public agencies regionally and nationwide to use contracts competitively solicited and awarded by the City. Combining the volumes of government agencies achieves cost effective pricing and reduces the administrative and overhead costs of suppliers and public agencies alike. By providing a comprehensive and competitively solicited Contract through a single RFP process, county, city, special district, local government, school district, private K-12 school, technical or vocational school, higher education institution (including community colleges, colleges and universities, both public and private), state, other government agency or nonprofit organization can utilize the subsequent contract(s) without the need for further solicitation. Participation by other entities is strictly voluntary and no volumes are guaranteed. Participating Public Agencies (PPA’s) must register with the CCPA at: www.charlottealliance.org.

   The objective of this Contract is to utilize participation among the City, as well as various other Public Agencies, to provide low cost reliable Services. The Company agrees to receive orders from the City and all Participating Public Agencies and to provide all Services ordered to a specified City and Participating Public Agency address.

   1.2.1. CCPA Administrative Fee.

   Company shall submit to the City an Administrative Fee of one percent (1%) of overall CCPA Program spend by the City and all Participating Public Agencies (PPAs) during the term of the Contract. The Administrative Fee shall be paid no later than thirty (30) days after the end of each calendar quarter during the term of the Contract, and include a report as mutually agreed to by the parties outlining the CCPA spend, to be submitted to the CCPA Administrator.

   1.2.2. Marketing Plan.

   The City shall post all awarded contracts on the CCPA website, along with the Company’s information. The Company shall:

   - Allow the City to utilize Company’s logo on the CCPA website;
   - Advertise the CCPA logo and website on Company’s website; and
   - Market the Contract by contacting current PPAs to determine possible interest, and providing information and marketing materials as requested.
1.3. Service Components.

1.3.1. Account Setups.
The Company shall setup and invoice each department of the City under a separate account. At each department’s discretion, they may choose to further separate invoicing by division, project, or other grouping system.

1.3.2. Service Requests.
The Company shall allow Service requests via telephone, fax, email, and/or web portal.

1.3.3. Service Reporting.
The Company shall provide reporting to both the City Project Manager and the CCPA Administrator on a monthly basis that is a combined report of usage and other required metrics for all combined City departments.

1.4. Scanning Services.
Company shall maintain the following requirements:

1.4.1. Service Requirements.
- Pickup and securely transport Records to the scanning facility as requested by the City;
- Maintain a facility to capture and image the source material (Records) in a central location;
- Prepare Records for scanning, including removal of fasteners, separation of folded forms, and/or paste-up of small documents;
- Scan, index, Quality Control, and Re-File Records in City boxes;
- Deliver scanned electronic Records to the City; and
- Return/deliver original Records to the City as required.

1.4.2. Formatting.
The Company shall format Records in such a way as to minimize or eliminate the possibility of such Record becoming obsolete or inaccessible over time. Given technology advances, it is possible that a very common format in use today, may not be in existence five (5) years from now. Therefore, it is critical that the data be coded in such a way that it will continue to be readable in the future. The file formats and protocols utilized must be approved by the respective Department.

1.4.3. Quality Control.
The Company shall perform Quality Control on each scanned image to verify readability, de-skew, de-speckle, and preparation defects, and will rescan as necessary to correct all issues. The Company’s Quality Control Plan is provided as Appendix 2.

1.4.4. Security.
The Company shall ensure the security of the Records and the data contained therein throughout the project workflow, including Records that contain confidential information and sensitive data protected by law (e.g. HIPAA).

1.4.5. Electronic Records Management Portal.
The Company shall utilize a web-based electronic Records Management Portal (“Records Management Portal”) that allows users to locate electronic Records, edit the Records database, and produce a variety of reports on demand. The Records Management Portal shall meet the following requirements, at a minimum:
- Secure storage of the City’s electronic Records upon request in a web-hosted repository on a dedicated server or cloud hosting solution;
- Back-up of Records Management Portal on a remote server or computer with a network connection, in order to prevent any potential loss of City’s electronic Records;
- Immediate secure access by City to Records through a web browser;
- Indexing and secure web-based search functionality to allow the City to search for, locate, and retrieve documents 24/7;
- Access to export reports in a searchable format such as Microsoft Excel; and
- Company shall meet all Cloud Technology Requirements detailed in Exhibit B.

1.4.6. **Other Media for storing Records**

Company shall also provide the following media on an as needed basis for retainage of electronic Records, at a minimum:

- Compact disc (CD);
- Flash drive; and
- Portable hard drive.

Company shall supply additional media options as technology advances and additional options become accessible.

1.4.7. **Document Retention.**

The Company must retain a copy of all images and data for six (6) months of the later of Contract termination or expiration. In the event of disaster or data loss at the City, on request, the Company shall transmit a copy of the missing images to the City at no cost to the City. If the Company is unable to satisfy this request, all expenses for reprocessing the documents shall be incurred by the Company.

1.4.8. **Back-up Protection.**

The Company shall utilize mirrored storage for disaster protection against any potential loss of City’s electronic Records. Additionally, the Company shall also keep scanned images as back-ups.

1.5. **Reporting.**

1.5.1. General Reporting Requirements.

A. Quarterly Reports.

The Company shall furnish quarterly usage reports in a searchable format with querying capabilities, showing a summary of the ordering and history of each City Department and for each PPA for the previous quarter to the Procurement Management Division. The report must show at minimum:
- description and total volume of each service utilized during the period;
- reporting period;
- City Department;
- City Contact Person; and
- total dollars expended per Department.

The City reserves the right to request additional information, if required, when reviewing contract activity.

B. Monthly and Annual Reports.

Provide monthly and annual reports of all Scanning, Storage, and/or Shredding Services provided by the Company and City.
1.5.2. Environmental Reporting Requirements.
The Company shall furnish quarterly and annual environmental impact reports showing a summary of the ordering and history of each City Department for the previous quarter to each Department. The report must show at minimum, description and total volume of each service utilized during the period, reporting period, City Department, City Contact Person, and total dollars expended per Department. The City reserves the right to request additional information, if required, when reviewing contract activity.

1.6. Customer Service
The City is very focused on Customer Service with a philosophy to provide all customers with quality services in a manner that is courteous, responsive, accessible, and seamless. The Services will be delivered with patience, understanding, good will, and without regard to our own convenience. The Company shall use the following guidelines in providing the Services:

- Accessible, courteous, responsive and seamless customer service is of highest priority for the City;
- Accessible service means that citizens have easy access to the organization;
- Seamless customer service means that a customer gets good service no matter who is responsible;
- Responsible customer service means that our employees know what they are doing; that information they give is accurate; that they have a good understanding of how to get problems and decisions made; that they are trained and evaluated for the jobs they are doing;
- Customer Service goals must be measurable and regularly evaluated; and
- Continuous improvements in customer service must be made in order to make City services accessible, responsive and as seamless as possible.
APPENDIX 1 TO CITYWIDE DOCUMENT MANAGEMENT SERVICES CONTRACT
CITY OF CHARLOTTE CLOUD TECHNOLOGY REQUIREMENTS

This Exhibit is attached and incorporated into the Citywide Document Management Services Contract (the “Contract” between the City of Charlotte and Records Reduction, Inc. (“Company”). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract.

1. Definitions. The following definitions shall apply to this Exhibit and the rest of the Contract:

1.1. “Software” means the Box.com software application provided by the Company, (including but not limited to customizations, the platform software and any third party software), and all modifications, updates, new releases and new versions of such software, other than software that the Contract specifically requires the City to license on its own.

1.2. “Cloud Services” means the services through which the Company will make the Software accessible to the City over the Internet, and all other services, data import / export, monitoring, support, backup and recovery, change management, technology upgrades, and training necessary for the City’s productive use thereof.

1.3. “Contract Data” means all data generated by, provided to or made available to Company or the Software in connection with this Contract, and all report structures in which such data are reported.

2. Cloud Services. This Contract sets forth the terms and conditions under which Company agrees to provide the Cloud Services. Company will complete the following tasks as part of day to day management of these Cloud Services on all environments (dev, test, prod, etc.). For all Cloud Services the Company will be responsible for any third party support required.

2.1. Operations

2.1.1. Company will be fully responsible for all infrastructure and Software implementation and maintenance. The City's responsibilities will be limited to end-user administration of the Cloud Services.

2.1.2. Company will facilitate the deployment of and manage a dedicated circuit, with redundancy, from Company's hosting facilities to the City's primary data center.

2.1.3. Company will provide a Cloud Services configuration that provides average City on site response time of 1 second to any end user inquiry or submission. Maximum response time to any end user inquiry or submission will be five (5) seconds. Extended deviations from these performance targets will be treated as priority two or priority one incidents according to language established in the Service Level Agreement section.

2.1.4. Communications between Company and any other hosted vendor services will be routed through the City's network rather than directly connecting from vendor to vendor. The City is responsible for network integrations to all third party products.

2.2. Backup And Recovery

2.2.1. As a part of the Cloud Services, Company is responsible for maintaining a backup of Contract Data, for an orderly and timely recovery of such data in the event that the Cloud Services may be interrupted.

2.2.2. Company shall maintain a contemporaneous backup of Contract Data that can be recovered within 2 hours at any point in time.
2.2.3. Backup strategy shall ensure that the City will never have any more than 15 minutes of data loss in the event of a required recovery or failover to the disaster recovery installation.

2.2.4. Company will acquire City authorization before performing any recovery operation that will result in any Contract Data loss.

2.2.5. Additionally, Company shall store a backup of Contract Data in a remote facility (physically separate from the production facility) no less than daily, maintaining the security of Contract Data, the security requirements of which are further described herein.

2.3. Maintenance And Upgrades

2.3.1. **Scope.** Company maintenance and upgrade responsibilities include all Company-delivered customizations, modifications, integrations, and configurations.

2.3.2. **Scheduled Maintenance.** Company will conduct regular maintenance and upgrades only during scheduled times. The agreed upon scheduled time for maintenance and upgrades is Saturday nights from 11pm to Sunday mornings 11:00am EST (the “Scheduled Maintenance Window”). Company will get authorization from the City before performing any scheduled maintenance.

2.3.3. **Unscheduled Maintenance.** In the event that Company determines that any unscheduled maintenance is necessary, Company will contact the City to get authorization to perform the unscheduled maintenance.

2.3.4. **Release Upgrades.** Unless the City directs otherwise in writing, Company will upgrade to new releases within 1 year of release. Company will closely coordinate these upgrades with the City, including scheduled time and expected duration. Maintenance activities will be completed within the Scheduled Maintenance Window defined above.

2.4. Subcontractors.

Company shall not enter into any subcontracts for the performance of the Cloud Services, or assign or transfer any of its rights or obligations under this Agreement, without the City’s prior written consent and any attempt to do so shall be void and without further effect. City’s consent to the Company’s right to subcontract any of the Services shall not relieve the Company of any of its duties or obligations under this Agreement, and the Company shall indemnify and hold the City harmless from any payment required to be paid to any such subcontractors.

3. License Grant.

3.1. The Company grants the City a royalty free, non-exclusive, perpetual license to use and access the Software through the Cloud Services. Any configurations and/or integrations created by Company shall become part of the Software. Licensing of the Software shall remain subject to the terms of the Master Contract and any software license that may be included in the Master Contract at all times, provided that such license terms shall not restrict the City’s ability to use the Cloud Services as provided in this Exhibit.

3.2. As these Cloud Services are hosted by the Company, licensing of the Software to the City includes licensing and maintenance for any and all necessary components required for the Company to provide the Cloud Services (hardware, Platform Software, etc.).
3.3. The City may, at its sole option, cancel the Cloud Services and bring the Software on premise or the City may hire a third party to host the Software at no penalty to the City.

4. **License from the City.** The City grants Company the non-exclusive, non-transferable, license to copy, store, record, transmit, maintain, display, view, print or otherwise use Contract Data solely to the extent necessary to provide the Cloud Services to the City and its Affiliates.

5. **Modification To or Discontinuation of Services.** The City acknowledges that the Company may periodically, with written authorization from the City, need to modify, temporarily or permanently, the Cloud Services (or any part thereof). In the event that Company modifies the Cloud Services in a manner which removes or disables a feature or functionality on which the City materially relies, the Company, at the City’s request, shall use commercially reasonable efforts to substantially restore such functionality to the City. Without limiting any other rights the City has to terminate the Contract, in the event that Company is unable to substantially restore such functionality, the City shall have the right, at its option, to either (i) terminate the Cloud Services and receive a pro-rata refund of the fees paid for use of the Cloud Services which was paid for by the City, but not yet furnished by Company as of the date of such termination, or (ii) terminate the Cloud Services as provided in the preceding subpart (i) and terminate the Contract as provided in Section 20 of the Contract. The City also acknowledges that Company reserves the right to discontinue offering the Services. However, because moving to another solution may be a substantial effort for the City, the Company agrees to give the City as much written notice as possible, but not less than 180 days, before discontinuing the Services.

6. **Transition Assistance Services.** Upon termination or expiration of this Contract, the Company shall, at no cost to the City, cooperate with the City to assist with the orderly transfer of the Cloud Services, functions and operations provided by the Company, in whole or in part, hereunder to another provider selected by the City (such supplier shall be known as the “Successor Service Provider”) or to the City as determined by the City in its sole discretion. The transition services that the Company shall perform if requested by the City include but are not limited to:

6.1. Working with the City to jointly develop a mutually agreed upon transition services plan to facilitate the termination of the Services;

6.2. Notifying all affected service providers and subcontractors of the Company of transition activities;

6.3. providing reasonable training to City staff or the Successor Service Provider in the performance of the Cloud Services then being performed by the Successor Service Provider;

6.4. using commercially reasonable efforts to assist the City in acquiring any necessary rights to legally and physically access and use any third party technologies and documentation then being used by the Company in connection with the Cloud Services;

6.5. using commercially reasonable efforts to make available to the City, pursuant to mutually agreeable terms and conditions, any third party services then being used by the Company in connection with the Cloud Services;

6.6. Performing the transition service plan activities;

6.7. Answering questions on an as-needed basis; and

6.8. Providing such other reasonable services needed to effectuate an orderly transition to a new system.
The provisions of this Section shall survive the termination of this Agreement.

7. **Transition of Contract Data.** Upon expiration or termination of this Contract for any reason, The Company shall at no cost to the City provide such services as are reasonably requested by the City to transition the Contract Data to the City or to another service provider, including without limitation providing information regarding data fields and data format and responding to questions. Data will be transitioned in a format in which the City can use, search, copy and access.

8. **Security.**

8.1. Data Security And Privacy

8.1.1. **Contract Data.** The parties acknowledge that the City has exclusive ownership of all Contract Data. The Company will treat the Contract Data as Confidential Information under the Confidentiality and Non-Disclosure Agreement. The Company will not reproduce, copy, duplicate, disclose, or use the Contract Data in any manner except as necessary to perform this Contract.

8.1.2. **General Requirements.** With respect to Contract Data, the Company shall:

8.1.2.1. Establish and maintain safeguards against the destruction, loss, unauthorized alteration of, or unauthorized access to the Contract Data;

8.1.2.2. Comply with all laws and regulations that may apply to the Contract Data, including without limitation all laws relating to identity theft;

8.1.2.3. Store all Contract Data in accordance with Peripheral Component Interconnect (or successor) standards then in effect (“PCI Standards”);

8.1.2.4. Encrypt all personally identifiable information, credit card data that is transmitted to or from the Company’s systems in connection with this Contract;

8.1.2.5. Ensure that Contract Data Storage complies with all relevant laws, regulations and standards, including but not limited to states laws, and applicable regulatory and professional standards; and

8.1.2.6. Ensure that transmission of Contract Data to and from the Company’s system is secure.

8.1.3. **Authentication.** The Company will require an authentication process approved by the City as a condition to releasing Contract Data to City employees. At a minimum, such process will require a City user ID and password. It may also require validation challenge questions if specified by the City in writing from time to time.

8.1.4. **Preventing Unauthorized Access.** The Company shall identify in writing a security administrator to coordinate with the City. The Company shall take appropriate measures to protect against the misuse of and/or unauthorized access to the Contract Data, including the use of passwords and validated user identification for Company employees. The Company will take appropriate measures to address any such misuse or unauthorized access.

8.1.5. **If Unauthorized Access is suspected.** The Company shall promptly investigate any suspicion or allegation of misuse or unauthorized access to Contract Data. If the Company learns or has reason to believe that Contract Data has been disclosed or accessed by an unauthorized party, the Company shall notify the City immediately and
shall take at the Company’s expense all remedial action required by law or as reasonably requested by the City to remedy such disclosure or unauthorized access. All remediation for third party software security vulnerabilities that are clearly identified as such by the Company are the responsibility of the third party to provide. This in no way limits the Company’s responsibility for notifying the City of the identified vulnerability.

8.1.6. **City’s Right to Obtain Contract Data.** The Company shall provide the City with prompt access to Contract Data when requested (subject to the authentication requirements referenced herein), which such access shall in any event be within three (3) business days after the request. The Company shall retain all Contract Data through the duration of this Contract. When requested by the City from time to time, the Company shall provide the City with a copy of all Contract Data accumulated to date (or such smaller subset as may be requested by the City) in a format in which the City can use, search, copy and access the Contract Data. Within thirty (30) days after expiration or termination of this Contract for any reason, the Company shall: (a) return all Contract Data to the City in a format in which the City can use, search, copy and access the Contract Data; and (b) following such return destroy all copies of the Contract Data in the Company’s possession, except to the extent the Company is required to maintain copies of such Contract Data by state or federal law or regulation. If requested by the City, the Company shall allow the City access to the Company’s systems if reasonably needed to use, search, and copy or access the Contract Data. The Company shall comply with its obligations under this Section at no cost to the City.

8.1.7. **Contract Data to Remain in the U.S.** The Company will ensure that all Contract Data remains within the confines of the United States including any backup data, replication sites, and disaster recovery sites.

8.1.8. **Right of Audit by City.** The City shall have the right to review the Company’s information security program prior to the commencement of Cloud Services and from time to time during the term of this Agreement. During the performance of the Cloud Services, on an ongoing basis from time to time and without notice, the City, at its own expense, shall be entitled to perform, or to have performed, an on-site audit of the Company’s information security program. In lieu of an on-site audit, upon request by the City, the Company agrees to complete, within 45 days of receipt, an audit questionnaire provided by Customer regarding Company’s information security program.

8.2. **Other Security Constraints.** In order to assist the Company to comply with the City's requirements regarding security under the Contract, Company's security strategy will be to protect Contract Data at multiple levels, which includes data security, data integrity, and data privacy.

8.2.1. **Hosting Facility Security.** All servers and network equipment are housed in locked cabinets at the hosting facility which provides 24x7 security. To access the cabinets there are several levels of security that must be passed where each entry point provides state of the art card readers, scanners, and other access devices.

8.2.2. **Network Security.** Company's network is protected by redundant firewalls and monitored for unauthorized access. City access will be configured through a dedicated VLAN. Firewall logs are constantly monitored, and the logs are reviewed on a regular basis. Leading-edge firewall equipment has been chosen to protect the network. The
network has been architected to be highly reliable and redundant. If a router, load balancer, or firewall should fail, there is redundancy built in that would allow failover to take place, without causing a loss of service to our customers. Company uses ssh encryption via RSA (sshl) and DSA (ssh2) public keys for communication between servers.

8.2.2.1. Firewall Management within the Company data centers. The Company shall complete the following activities:

8.2.2.1.1. Monitoring and management of firewall appliances, and VPN connectivity to the Company data centers;
8.2.2.1.2. VPN City connectivity to the City's on-premise firewall;
8.2.2.1.3. Management of firewall firmware upgrades;
8.2.2.1.4. Get approval from the City before making any Changes to the firewall configuration;
8.2.2.1.5. Logging for the firewall and servers needs to be sent to the City SIEM solution at the City discretion;
8.2.2.1.6. In the event Company identifies a suspected security breach, Company will notify the City of the breach immediately; and
8.2.2.1.7. Provide Check Point Firewall, IPS, and Web Security logs via an OPSEC integration with the hosted Check Point SmartCenter.
8.2.2.1.8. Database users are restricted to a controlled list; individual activities are restricted, logged and monitored.

8.2.3. Server Security. The City's installation will be implemented on dedicated virtual or physical servers, meaning these server environments will only be used for and accessible by the City of Charlotte and Company staff;

8.2.3.1. Anti-Virus. The Company shall complete the following activities:

8.2.3.1.1. Install anti-virus software on Company managed servers;
8.2.3.1.2. Maintain all anti-virus and anti-spam systems with the latest patches, engines and heuristics; and
8.2.3.1.3. Scan, quarantine, and clean all in-bound and out-bound files (including email attachments) for viruses.

8.2.4. Cloud Services Security. Customers access the Cloud Services using password authentication. The robust design of the application prevents a customer from accessing another customer's data. There are several layers of protected servers that stand between the web page where the customer logs in and the actual data.

8.2.5. Security Patches. Where it doesn't impact application supportability, security patches to Platform Software will be applied within 6 months of being released.

8.2.6. Passwords. Company uses tightly controlled passwords on its servers and network equipment. Passwords are changed on a regular basis. Company's Platform Software does not share the same passwords.
9. Service Level Agreement

9.1. **Availability.** Outside of Scheduled Maintenance, the Company guarantees 99.9% or greater uptime. Availability will be calculated per month, as follows:

\[
\text{Availability} = \left( \frac{\text{Service Time} - \text{Non-excluded Downtime} - \text{Excluded Downtime}}{\text{Service Time} - \text{Excluded Downtime}} \right) \times 100
\]

9.1.1. “**Service Time**” is the total minutes for a given calendar month;

9.1.2. “**Excluded Downtime**” is all unavailability caused by (1) scheduled or mutually agreed upon downtime; (2) downtime on non-production systems; (3) failure of City’s Internet access or City-managed connectivity components; or (4) equipment or software managed by the City;

9.1.3. “**Non-excluded Downtime**” is all downtime that is not Excluded Downtime;

9.2. **Other Service Level Definitions.**

9.2.1. “**Resolution**” means the problem was completely repaired and that no further actions are necessary

9.2.2. “**Workaround**” means a temporary repair established to allow the City to continue use of the Cloud Services, until a permanent Resolution can be implemented

9.3. **Service Level Reports.** Company will provide monthly Service Level Reports, which will include performance and availability statistics. Company will perform the performance and availability calculations, but will provide the source data to the City on request, in the event that the City would like to validate the results.

9.4. **Service Levels Reviews.** Company and Customer will meet as often as shall be reasonably requested by the City, but no more than monthly, to review the performance of the Company as it relates to the Service Levels further described below.

9.5. Company will monitor all aspects of Cloud Services availability and will notify the City of any outage within 30 minutes of discovery via telephone and email for any Priority 1 outage, and by email for any Priority 2 or below outage.

9.6. The City shall assign an initial priority level for each problem reported, either verbally or in writing, based on the conditions described below. The Company will work with the City to upgrade or downgrade the level of a particular problem to a different priority level, if after examining the problem there is reason to do so. Notwithstanding the foregoing, the Company shall not upgrade or reduce the level of priority of a particular error to a different priority without the City's consent, which consent may not be unreasonably withheld or delayed.

9.7. **Remedies for Failure to Meet Resolution and Workaround Times.** The City shall be entitled to invoke the following remedies for the Company’s failure to meet the Workaround times or Resolution times stated below. Such amounts shall be in the form of a refund for amounts paid, or, at the Company’s option, service credit for amounts payable during the year in question, provided that if there are no amounts payable during the year in question, the Company shall provide the City with a refund of amounts paid for such year. Workarounds and resolutions must be agreed to by the City to be considered valid. The requirements set forth in the following chart apply to Cloud Services in the production environment, and not to testing or development environments.
### Priority One: Critical

**Priority One** applies if the problem results in:
- Cloud Service down with no workaround or performance degraded by more than 10% from performance standards set forth in the Contract (measured end-to-end) for more than 15 minutes and multiple users are impacted, OR
- Loss of data or data corruption, OR
- Jeopardized safety or security.

**Service Level**
- Immediate email escalation to Technical Support, followed by warm handoff
- Resolution Time: 8 Hours
- Workaround Time: 1 Hour
- Target Updates: Every 30 minutes until Resolution

**Service Level Credit**
- Six percent (6%) of the annual Cloud Services Fees paid or payable by the City for each instance where the Company fails to address a Priority One problem within the Resolution and Workaround times specified above.
- For each twenty-four hour period that a Priority One Defect continues beyond the Resolution or Workaround times stated above, an additional six percent (6%) of the annual Cloud Services Fees paid or payable by the City.

**Termination Trigger**
Without limiting any other rights the City has to terminate the Contract, the City may exercise the right to terminate this Contract immediately for default upon written notice to the Company in the event that a Priority One problem continues in duration without either a Resolution or Workaround for more than 24 hours after it is first reported by the City.

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### Priority Two: High

**Priority Two** applies if the problem results in:
- Production Service is severely impaired making use of the Service difficult, complicated, cumbersome, or slow and multiple users or Records are impacted, OR
- The Service is at risk because of a known vulnerability.

**Service Level**
- Immediate email escalation to Technical Support, followed by warm handoff
- Resolution Time: 24 Hours
- Workaround Time: 2 Hours
- Target Updates: Every hour until Resolution

**Service Level Credit**
- Six percent (6%) of the annual Cloud Services Fees paid or payable by the City for each instance where the Company fails to address a Priority Two problem within the Resolution and Workaround times specified above.
- For each forty-eight hour period that a Priority Two Defect continues beyond the Resolution or Workaround times stated above, an additional six percent (6%) of the annual Cloud Services Fees paid or payable by the City.
| Termination Trigger | Without limiting any other rights the City has to terminate the Contract, the City may exercise the right to terminate this Contract immediately for default upon written notice to the Company in the event that a Priority Two problem continues in duration without either a Resolution or Workaround for more than 120 hours after it is first reported by the City. |

<table>
<thead>
<tr>
<th>Priority Three: Medium</th>
<th>Priority Three applies if the problem results in:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service Level</td>
<td>• Small maintenance issues, non-critical bug fix with workaround, no immediate impact, single user or Record impact.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Notification upon awareness of the incident. Begin resolution within 4 hours.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Target Resolution Time: 96 Hours or Planned Release</td>
</tr>
<tr>
<td></td>
<td>Target Workaround Time: 8 Hours</td>
</tr>
<tr>
<td></td>
<td>Target Updates: Every 24 hours until Resolution</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Priority Four: Low</th>
<th>Any problem related to the Service which does not fall within Priority One, Two, or Three and results in:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service Level</td>
<td>• Enhancement Requests</td>
</tr>
<tr>
<td></td>
<td>• Cosmetic Changes</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Notification upon awareness of the incident. Begin resolution within 1 Business Day.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Target Resolution Time: 5 Business Days or Planned Release</td>
</tr>
<tr>
<td></td>
<td>Target Workaround Time: 5 Business Days</td>
</tr>
<tr>
<td></td>
<td>Target Updates: Every 10 Business Days until Resolution</td>
</tr>
</tbody>
</table>
APPENDIX 2 TO CITYWIDE DOCUMENT MANAGEMENT SERVICES CONTRACT
QUALITY CONTROL PLAN

The Company’s goal is to capture the best digital copy possible of every piece of paper in your files. The Company shall accomplish this by strictly adhering to the following procedures:

1. PREPARATION: Each document is reviewed at this time and prepared for the scanning process. Staples and paperclips are removed, edges are smoothed, paper is unfolded, etc. If the Company can enhance an old document by making a copy, this quality control procedure shall be done.

2. SCANNING: As each document is scanned, the page appears on the screen for the technician to review for quality. The technician instantly sees images that aren't acceptable. They are immediately re-scanned. Any items that cannot be scanned will be pulled, labeled, and returned.

3. INDEXING: The technician will manually add the index to each document for easy retrieval. The technician again reviews the documents to make sure that each page was scanned correctly. If a bad image is detected during this process, the page(s) will be re-scanned.

4. QUALITY CONTROL: Lastly, a manager will review the contents of the CD before it is delivered. If a bad image is detected during this process, the page(s) will be re-scanned.