

REQUEST FOR PROPOSALS

FATS OILS GREASE APPLICATION MANAGEMENT SOLUTION RFP # FY18-RFP-11



**CITY OF CHARLOTTE
NORTH CAROLINA**

JUNE 29, 2018

REQUEST FOR PROPOSALS
RFP # FY18-RFP-11
Fats Oils Grease Application

June 29, 2018

Dear Service Provider:

Charlotte Water, a department of the City of Charlotte, located in the State of North Carolina, is now accepting Proposals for Fats Oils Grease Application. The requirements for submitting a Proposal are stated in the attached Request for Proposals (the "RFP"). Please review them carefully.

A Pre-Bid Conference will not be held for this solicitation.

All Proposals are due to Charlotte Water located at 5100 Brookshire Blvd., Charlotte, NC 28216 no later than JULY 31, 2018 at 2:00 PM EST. Late proposals will not be accepted.

One (1) electronic copy of the Proposal on a flash drive in a searchable format such as Adobe Acrobat or MS Word and one (1) original Proposal signed in ink by a Service Provider official authorized to make a legal and binding offer plus Six (6) copies of your Proposal must be submitted in a sealed box or opaque envelope plainly marked with the Proposal number and service description as follows:

Request for Proposals

Attention: Lou Forrasi

Name of Service Provider Submitting Proposal

Fats Oils Grease Application

RFP # FY18-RFP-11

RFP questions must be directed to Lou Forrasi, per the enclosed instructions in Section 2. The City is an equal opportunity purchaser.

Sincerely,

Lou Forrasi
Procurement Officer

cc: RFP Project Team
RFP file

Checklist for submitting a Proposal:

Step 1-Read the document fully.

Steps 2-If you have any questions send them before the deadline listed in Section 2.1.

If you plan on submitting a Proposal you must follow this checklist, and must include everything detailed below.

Proposal Copies

- ☐ 1 Copy on flash drive
- ☐ 1 Copy marked "Original"
- ☐ Six (6) Copies marked "Copy"

Proposal Format-If submitting a Proposal you should be set-up just like this for all required copies.

- ☐ Proposed Solution per Section 4.1.3
- ☐ Section 6, Form 1, Addenda Receipt Confirmation
- ☐ Section 6, Form 2, Proposal Submission
- ☐ Section 6, Form 3, Pricing Worksheet
- ☐ Section 6, Form 4, Proposal Certification
- ☐ Section 6, Form 5, Service Provider Background and Experience
- ☐ Section 6, Form 6, References
- ☐ Section 6, Form 7, E-Verify Certification
- ☐ Section 6, Form 8, Key Personnel
- ☐ Section 6, Form 9, Data Conversion Responsibilities

This is all you have to include when you submit your Proposal.

If awarded a contract the following information shall be provided when the contract is signed:

- ☐ Insurance certificate per requirements in Exhibit A, Section 19.

It is the Service Provider's responsibility to check <http://charlottenc.gov/DoingBusiness/Pages/ContractOpportunities.aspx> for any addendums or changes to this Project. Search for bid # FY18-RFP-11 to find if any documents or changes have been posted.

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Section 1

Introduction and General Information

1. INTRODUCTION.

1.1. Objective.

The objective of this RFP is to solicit Proposals that will enable the City to determine which Service Provider and Proposed Solution will best meet the City's needs.

1.2. Definitions.

As used in this RFP, the following terms shall have the meanings set forth below:

Acceptance: Refers to receipt and approval by the City of a Product or Service in accordance with the acceptance process and criteria set forth in the Agreement.

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 System.

Agreement: Refers to a contract executed by the City and Service Provider for all or part of the Services covered by this RFP.

City: Refers to the City of Charlotte, North Carolina.

City Project Manager: Refers to a specified City employee representing the best interests of the City for this Project.

Service Provider: Refers to a Service Provider that has been selected by the City to provide the Services required by this RFP.

Service Provider Project Manager: Refers to a specified Service Provider employee representing the best interests of the Service Provider for this Project.

Service Provider Software: Refers to mean all pre-existing software owned by the Service Provider or any of its "Related Entities" which the Service Provider provides or is required to provide under this RFP, and all Updates and Enhancements to the foregoing. The term "Related Entity" shall mean any person or entity that is directly or indirectly in control of, controlled by, or under common control with the Service Provider, including but not limited to, parent, subsidiary, and affiliate entities. The word, "control," as used in this context, shall mean ownership of a sufficient percentage (not necessarily a majority) of the outstanding voting interests in an entity so as to afford effective control of the management of the entity.

Current Release: Refers to the latest version of the Software offered for general commercial distribution at a given point in time, including all Updates.

Customizations: Refers to all newly-developed software created by the Service Provider and/or its subcontractors pursuant to

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this RFP, including but not limited to all interfaces between different components of the System and between the System and other systems. Customizations will not include Updates and Enhancements that become part of the Service Provider Software.

<i>Defect:</i>	Refers to any failure of the System or any component thereof to fully conform to the Specifications and Requirements. A non-conformity is not a Defect if it results directly from the City's improper use or damage, unless it is reasonably likely that such non-conformity would have occurred on that or another occasion even without the City's improper use or damage.
<i>Deliverables:</i>	Refers to all tasks, reports, information, designs, plans and other items, which the Service Provider is required to complete and deliver to the City in connection with this Agreement.
<i>Department:</i>	Refers to a department within the City of Charlotte.
<i>Documentation:</i>	Refers to all written, electronic, or recorded works, that describe the use, functions, features, or purpose of the System or any component thereof, and which are published or provided to the City by the Service Provider 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 System.
<i>Enhancements:</i>	Refers to any products, parts of products, improvements, additions or materials which are not included in the Products at the time of execution of an Agreement or that are subsequently developed, which modify the Products to provide a function or feature not originally offered or an improvement in function.
<i>Evaluation Committee:</i>	Refers to a committee, as appointed by the City, responsible for determining the best Service Provider for the Services described in this RFP.
<i>Hardware:</i>	Refers to all hardware, equipment and materials which the Service Provider actually provides or is required to provide under the terms of this RFP (whether now or in the future).
<i>License:</i>	Refers to the license agreement.
<i>Maintenance Services:</i>	Refers to the maintenance services described in Section 3.

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<i>Project:</i>	Refers to the procurement process to choose a Service Provider to perform Fats Oils Grease Application for the City.
<i>Project Plan:</i>	Refers to the detailed plan for implementation of the System as described in Section 3, in the form accepted in writing by the City in accordance with the terms of this RFP and resultant Agreement.
<i>Products:</i>	Refers to all Software and all Hardware (both as herein defined).
<i>Proposal:</i>	Refers to the Proposal submitted by a Service Provider for the Services as outlined in this RFP.
<i>Services:</i>	Refers to the Fats Oils Grease Application as requested in this RFP.
<i>Service Provider:</i>	Refers to a Service Provider that has interest in providing the Services required by this RFP.
<i>Software:</i>	Refers to (i) all Service Provider Software; (ii) all Customizations; (iii) all Third Party Software; and (iv) all Updates and Enhancements of any of the foregoing.
<i>Specifications and Requirements:</i>	Refers to all definitions, descriptions, requirements, criteria, warranties and performance standards relating to the Products or System which are set forth or referenced in: (i) this RFP; (ii) the Documentation; and (iii) any functional and/or technical specifications which are published or provided by the Service Provider or its licensors or suppliers from time to time with respect to all or any part of the Products or the System.
<i>System:</i>	Refers to Fats Oils Grease Application to be supplied by the Service Provider under this RFP, including but not limited to all Products.
<i>System Acceptance:</i>	The term "System Acceptance" shall mean acceptance by the City of the complete System to be provided.
<i>Third Party Software:</i>	Refers to all software included within the System or required for the System to function in full compliance with the Specifications and Requirements that is provided by the Service Provider as a result of this RFP and was not manufactured, developed or otherwise created by the Service Provider, any Related Entity of the Service Provider, or any of the Service Provider's subcontractors. The phrase "Related Entity" shall mean any person or entity that is directly or indirectly in control of, controlled by, or under common control with the Service Provider, including

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but not limited to any parent, subsidiary, and affiliate entities. The word, "control," as used in this context, shall mean ownership of a sufficient percentage (not necessarily a majority) of the outstanding voting interests in an entity so as to afford effective control of the management of the entity.

Trade Secrets:

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. See N.C. Gen. Stat. § 66-152 et seq. 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.

Updates:

Refers to program logic changes made by Service Provider or its subcontractors or vendors to correct Defects in the Products and/or related Documentation delivered hereunder.

Warranty Period:

Refers to the twelve-month period following System Acceptance.

Workaround:

Refers to a reasonable change in the procedures followed or data supplied to avoid a Defect that does not impair the performance of the System or increase the cost of using the System.

Work Product:

Refers to the Deliverables and all other programs, algorithms, reports, information, designs, plans and other items developed by the Service Provider in connection with this RFP, and all partial, intermediate or preliminary versions of any of the foregoing.

1.3. Accuracy of RFP and Related Documents.

The City assumes no responsibility for conclusions or interpretations derived from the information presented in this RFP, or otherwise distributed or made available during this procurement process. In addition, the City will not be bound by or be responsible for any explanation, interpretation or conclusions of this RFP or any documents provided by the City other than those provided by the City through the issuance of addenda. In no event may a Service Provider rely on any oral statement by the City or its agents, advisors or consultants.

Should a Service Provider find discrepancies or omissions in this RFP or any other documents provided by the City, the Service Provider should immediately notify the City of such potential discrepancy in writing, and a written addendum may be issued if the City determines clarification necessary. Each Service Provider requesting an interpretation will be responsible for delivering such requests to the City's designated representative as directed in Section 2 of this RFP.

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1.4. City's Rights and Options.

The City reserves the following rights, which may be exercised at the City's sole discretion:

- 1.4.1. To supplement, amend, substitute or otherwise modify this RFP at any time;
- 1.4.2. To cancel this RFP with or without the substitution of another RFP;
- 1.4.3. To take any action affecting this RFP, this RFP process, or the Services or facilities subject to this RFP that would be in the best interests of the City;
- 1.4.4. To issue additional requests for information;
- 1.4.5. To require one or more Service Providers to supplement, clarify or provide additional information in order for the City to evaluate the Proposals submitted;
- 1.4.6. To conduct investigations with respect to the qualifications and experience of each Service Provider;
- 1.4.7. To waive any defect or irregularity in any Proposal received;
- 1.4.8. To reject any or all Proposals;
- 1.4.9. To share the Proposals with City employees other than the Evaluation Committee or City advisory committees as deemed necessary;
- 1.4.10. To award all, none, or any part of the Services that is in the best interest of the City, with one or more of the Service Providers responding, which may be done without or without re-solicitation.
- 1.4.11. To discuss and negotiate with selected Service Provider(s) any terms and conditions in the Proposals including but not limited to financial terms; and
- 1.4.12. To enter into any agreement deemed by the City to be in the best interest of the City, with one or more of the Service Providers responding.

1.5. Expense of Submittal Preparation.

The City accepts no liability for the costs and expenses incurred by the Service Providers in responding to this RFP, in preparing responses for clarification, in attendance at interviews, participating in contract development sessions, or in meetings and presentations required for the contract approval process. Each Service Provider that enters into the procurement process shall prepare the required materials and submittals at its own expense and with the express understanding that the Service Provider cannot make any claims whatsoever for reimbursement from the City for the costs and expenses associated with the procurement process.

1.6. Proposal Conditions.

The following terms are applicable to this RFP and the Service Provider's Proposal.

- 1.6.1. RFP Not an Offer.
This RFP does not constitute an offer by the City. No binding contract, obligation to negotiate, nor any other obligation shall be created on the part of the City unless the City and the Service Provider execute an Agreement. No recommendations or conclusions from this RFP process concerning the

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Service Provider shall constitute a right (property or otherwise) under the Constitution of the United States or under the Constitution, case law, or statutory law of North Carolina.

1.6.2. Right to Terminate Discussions.

The Service Provider's participation in this process might result in the City selecting the Service Provider to engage in further discussions. The commencement of such discussions, however, does not signify a commitment by the City to execute an Agreement or to continue discussions. The City can terminate discussions at any time and for any reason.

1.6.3. Trade Secrets and Personal Identification Information /Confidentiality.

Definition.

Upon receipt at the Procurement Management Division, all materials submitted by a Service Provider (including the Proposal) are considered public records except for (1) material that qualifies as "trade secret" information under N.C. Gen. Stat. § 66-152 et seq. ("Trade Secrets") or (2) "personal identification information" protected by state or federal law, to include, but not be limited to, Social Security numbers, bank account numbers, and driver's license numbers ("Personally Identifiable Information" or "PII").

Instructions for Marking and Identifying Trade Secrets.

If any Proposal contains Trade Secrets or PII, such Trade Secrets and PII must specifically and clearly be identified in accordance with this Section 1.6.3 by clearly separating them from the rest of the Proposal. For hard copy documents, it must be submitted in a separate, sealed envelope, marked either "Personally Identifiable Information – Confidential" or "Trade Secret—Confidential and Proprietary Information." For electronic submissions it must also be submitted on a separate flash drive. In both hard copy or electronic format, the confidentiality caption stated above must appear on each page of the Trade Secret or PII materials.

Availability of Proposals to City Staff and Contractors.

By submitting a Proposal, each Service Provider agrees that the City may reveal any Trade Secret materials and PII contained therein to all City staff and City officials involved in the selection process, and to any outside consultant or other third parties who serve on the Evaluation Committee or who are hired or appointed by the City to assist in the evaluation process.

Availability of Proposals via Public Records Requests.

Any person or entity (including competitors) may request Proposals submitted in response to an RFP. Only those portions of RFPs properly designated as Trade Secret or PII are not subject to disclosure. The public disclosure of the contents of a Proposal or other materials submitted by a Service Provider is governed by N.C. Gen. Stat. §§ 132 and 66-152, et seq.

When determining whether to mark materials as Trade Secret, please note the following:

- Entire Proposals may not be marked as Trade Secret

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- Pricing may not be marked as Trade Secret

The City may disqualify and Service Provider that designates its entire Proposal as a trade secret, or any portion thereof that clearly does not qualify under applicable law as a Trade Secret or PII. Each Service Provider agrees to indemnify, defend, and hold harmless the City and each of its officers, employees, and agents from all costs, damages, and expenses incurred in connection with refusing to disclose any material that the Service Provider has designated as a Trade Secret or PII. This includes an obligation on the part of the Service Provider to defend any litigation brought by a party that has requested Proposals or other information that the Service Provider has marked Trade Secret or PII.

1.6.4. 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 an Agreement that may result from this RFP, the Service Provider 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 Service Provider shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, age, marital status, familial status, sexual orientation, gender identity, gender expression, or disability 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 Service Provider retaliate against any person or entity for reporting instances of such discrimination. The Service Provider 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 an Agreement that may result from this RFP, the Service Provider 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 the Agreement; 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 Service Provider has used on City contracts in the past five (5) years, including the total dollar amount paid by Service Provider on each subcontract or supply contract. The Service Provider shall further agree 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 Service Provider agrees to provide to the City from time to time on the City's request, payment affidavits detailing the amounts paid by Service

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Provider to subcontractors and suppliers in connection with the Agreement within a certain period of time. Such affidavits shall be in the format specified by the City from time to time.

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

- 1.6.5. Statutory Requirements.
Any Agreement awarded as a result of this RFP shall be in full conformance with all statutory requirements of North Carolina and all statutory requirements of the Federal Government, to the extent applicable.
- 1.6.6. Reservation of Right to Change Schedule.
The City shall ultimately determine the timing and sequence of events resulting from this RFP. The City reserves the right to delay the closing date and time for any phase if City staff believe that an extension will be in the best interest of the City.
- 1.6.7. Reservation of Right to Amend RFP.
The City reserves the right to amend this RFP at any time during the process, if it believes that doing so is in the best interests of the City. Any addenda will be posted to the Internet at <http://charlottenc.gov/DoingBusiness/Pages/ContractOpportunities.aspx>, bid# FY18-RFP-11. Service Providers are required to acknowledge their receipt of each addenda by including the Addenda Receipt Confirmation Form set forth in Section 7, Form One with their Proposal.
- 1.6.8. Additional Evidence of Ability.
Service Providers shall be prepared to present additional evidence of experience, qualifications, abilities, equipment, facilities, and financial standing. The City reserves the right to request such information at any time during the Proposal evaluation period for this RFP.
- 1.6.9. No Collusion or Conflict of Interest.
By responding to this RFP, the Service Provider shall be deemed to have represented and warranted that the Proposal is not made in connection with any competing Service Provider submitting a separate response to this RFP, and is in all respects fair and without collusion or fraud.
- 1.6.10. Proposal Terms Firm and Irreversible.
The signed Proposal shall be considered a firm offer on the part of the Service Provider. The City reserves the right to negotiate price and Services. All Proposal responses (including all statements, claims, declarations, prices and specifications in the Proposals) shall be considered firm and irrevocable for purposes of future contract negotiations unless specifically waived in writing by the City. The Service Provider chosen for award should be prepared to have its Proposal and any relevant correspondence incorporated into the Agreement, either in part or in its entirety, at the City's election. Any false or misleading statements found in

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the Proposal or Agreement exceptions not included in the Proposal may be grounds for disqualification.

1.6.11. Proposal Binding for 180 Days.

Each Proposal shall contain a statement to the effect that the Proposal is a firm offer for one-hundred-eighty (180) calendar day period from the date of the opening. This statement must be signed by an individual authorized to bind the Service Provider and include their name, title, address, and telephone number. All prices quoted shall be firm and fixed for the full Agreement period. The City shall have the option to accept subject to exception by Agreement.

1.6.12. Charlotte Business INclusion Program.

On April 8, 2013 the City adopted a new program that is structured to maximize opportunities for City of Charlotte Certified Small Business Enterprises (SBEs) and Minority and Women Enterprises (MWBs) that have been certified by the State's Historically Underutilized Business Office. MWSBEs shall have the maximum opportunity to compete for and participate in the performance of contracts issued on behalf of the City of Charlotte. The City further requires that its contractors agree to take all the necessary and responsible steps to ensure that MWSBEs have the maximum opportunity to participate as subcontractors for contractors issued by City of Charlotte, Economic Development Division.

1.6.13. Equal Opportunity.

The City has an equal opportunity purchasing policy. The City seeks to ensure that all segments of the business community have access to supplying the goods and services needed by City programs. The City provides equal opportunity for all businesses and does not discriminate against any Service Providers regardless of race, color, religion, age, sex, and national origin or disability.

1.6.14. Use of City's Name.

No advertising, sales promotion or other materials of the Service Provider or its agents or representatives may identify or reference the City in any manner absent the prior written consent of the City.

1.6.15. Withdrawal for Modification of Proposals.

Service Providers may change or withdraw their Proposals at any time prior to the Proposal due date; however, no oral modifications will be allowed. Only telegrams, letters, or other formal written requests for modifications or corrections of a previously submitted Proposal, which is addressed in the same manner as the Proposal, and received by the City prior to the scheduled closing time for receipt of Proposals, will be accepted. The Proposal, when opened, will then be corrected in accordance with such written request(s), provided that the written request is contained in a sealed envelope, which is plainly marked "**Modifications to Proposal.**"

1.6.16. No Bribery.

In submitting a response to this RFP, each Service Provider certifies that neither it, any of its affiliates or subcontractors, nor any employees of any

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of the foregoing has bribed, or attempted to bribe, an officer or employee of the City in connection with the Agreement.

1.6.17. Fair Trade Certifications.

By submission of a Proposal, the Service Provider certifies that in connection with this procurement:

- The prices have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with anyone;
- Unless otherwise required by law, the prices which have been quoted in its Proposal have not been knowingly disclosed by the Service Provider and will not knowingly be disclosed by the Service Provider prior to opening; and
- No attempt has been made or will be made by the Service Provider to induce any other person or firm to submit or not to submit a Proposal for the purpose of restricting competition.

1.6.18. Clarification of Ambiguities.

Any Service Provider believing that there is any ambiguity, inconsistency or error in this RFP shall promptly notify the City in writing of such apparent discrepancy. Failure to notify will constitute a waiver of claim for ambiguity, inconsistency or error.

1.6.19. Service Provider's Obligation to Fully Inform Themselves.

Service Providers or their authorized representatives are expected to fully inform themselves as to all conditions, requirements and specifications of this RFP before submitting Proposals. Failure to do so will be at the Service Provider's own risk.

1.6.20. Disclaimer.

Each Service Provider must perform its own evaluation and due diligence verification of all information and data provided by the City. The City makes no representations or warranties regarding any information or data provided by the City.

1.6.21. E-Verify Certification

For any Proposal to be considered responsive, the successful Service Provider shall be required to provide a certification attesting that the Service Provider is in compliance with the E-Verify provisions of Article 2 of Chapter 64 of the North Carolina General Statutes and shall ensure that any subcontractors used by the Service Provider on this Project will also comply with the E-Verify provisions. The certification is attached to this RFP as Form 7.

Section 2

Procurement Process

2. PROCUREMENT PROCESS.

This Section 2 contains information about the procurement process for this Project.

2.1. Schedule and Process.

The following chart shows the schedule of events to prepare the Service Provider's Proposal. The key events and deadlines for this process are as follows, some of which are set forth in more detail in the Sections that follow:

DATE	EVENT
JUNE 29, 2018	<i>Issuance of RFP.</i> The City issues this RFP.
JULY 13, 2018	<i>Submission of Written Questions.</i> Service Providers are permitted to submit written questions, but only for purposes of clarifying this RFP. All submissions must be e-mailed to Lou Forrasi at louis.forrasi@charlottenc.gov. Questions are due by 9:00 AM EST on July 13, 2018.
JULY 31, 2018	<i>Proposal Submission.</i> Proposals are due by 2:00 PM EST on JULY 31, 2018, at Charlotte Water, 5100 Brookshire Blvd, Charlotte, NC. All Proposals will be time-stamped upon receipt and held in a secure place until this date.
AUGUST 6, 2018	<i>Initial Evaluation</i>
AUGUST 6, 2018	<i>Short Listed Vendor Notification</i>
AUGUST 13, 2018	<i>Demonstration Day.</i> Short-Listed Service Providers brought in to demonstrate their Fats Oils Grease Application.
AUGUST 14, 2018	<i>Final Selection Evaluation Meeting</i>
OCTOBER 1, 2018	<i>Fats Oils Grease Application.</i> Service Provider begins providing all Fats Oils Grease Application.

2.2. Interpretations and Addenda.

In order to ask questions about this RFP, submit a question in writing to the Procurement Officer at the e-mail address listed below. Other than these permitted questions, Service Providers should refrain from contacting City staff prior to the Proposal Due Date. **The City is not bound by any statements, representations or clarifications regarding this RFP other than those provided in writing by the Procurement Officer.**

Lou Forrasi
Charlotte Water
Procurement
5100 Brookshire Blvd
Charlotte, NC 28216
RFP # FY18-RFP-11
E-mail: louis.forrasi@charlottenc.gov

Section 2

Procurement Process

When submitting questions, please reference the RFP page and topic number.

In order for questions to be addressed, they must be submitted in writing by the deadline stated in Section 2.1. When responding to Service Provider questions or issuing addenda to the RFP, the City will post the answer or information to the Internet at <http://charlottenc.gov/DoingBusiness/Pages/ContractOpportunities.aspx>, solicitation# FY18-RFP-11. Service Providers are required to acknowledge their receipt of each addenda by including in the Proposal a completed Addenda Receipt Confirmation Form (Section 7, Form 1).

2.3. Submission of Proposals.

One electronic copy on a flash drive in a searchable format such as MS Word or Adobe Acrobat and one unbound original Proposal signed in ink by a Service Provider official authorized to make a legal and binding offer, plus Six (6) copies shall be submitted to the address listed in Section 2.2 above by **July 31, 2018 on or before but no later than 2:00 PM EST**. The "original" Proposal and each of the Six (6) copies shall be complete and unabridged, and shall not refer to any other copy of the signed/sealed original for any references, clarifications, or additional information.

When received, all Proposals and supporting materials, as well as correspondence relating to this RFP, shall become the property of the City. **Proposals sent by fax or email will not be accepted.**

Do not arrive at the Charlotte Water Procurement Unit on the Proposal due date for the purposes of reviewing your competitor's Proposals. The Proposals will not be read aloud or made available to inspect or copy until any trade secret issues have been resolved.

2.4. Correction of Errors.

The person signing the Proposal must initial erasures or other corrections in the Proposal. The Service Provider further agrees that in the event of any obvious errors, the City reserves the right to waive such errors in its sole discretion. The City, however, has no obligation under any circumstances to waive such errors.

2.5. Evaluations and Short-Listed Proposer Selection, Demonstration Days.

A selection committee will evaluate the initial Proposals received based on the criteria outlined in Section 5 and select one or more Providers ("Short-Listed Proposers") with which to continue the selection process. At any point during the evaluation process, the City has the right to contact individual Proposers to determine in greater detail the Proposer's Proposal, or request additional or clarifying information.

Short-Listed Proposers will be invited to Charlotte Water to make a presentation to the Selection Committee. In order to prepare for the Demonstration Day(s), Short-Listed Proposers will be sent questions to address during their presentation in addition to requirements and logistics of their demonstration.

During the evaluation periods, Proposers will not be compensated for any costs incurred or services or products provided in connection with this RFP prior to execution of the Contract, including without limitation the costs of attending meetings in Charlotte, revising their Proposal or participating in extended negotiations with the City.

Section 2

Procurement Process

The City reserves the right to terminate discussions with any Short-Listed Proposer at any time at the City's sole discretion. The City further reserves the right to short-list additional Proposers that were not initially selected as Short-List Proposers, and to evaluate and negotiate with such Proposers as though they had been designated Short-List Proposers at the outset.

Since the City may choose to award an Agreement without engaging in discussions or negotiations, the Proposals submitted shall define the Service Provider's best offer for performing the Services described in this RFP.

2.6. Contract Award by City Manager Office.

As soon as practical after opening the Proposals, the name of the apparent successful Service Provider will be submitted to the City Manager Office for final approval of award. If approved by the City Manager, the Procurement Officer will provide Agreement documents to the Service Provider. In the event the City Manager Office approval is not received within one hundred eighty (180) calendar days after opening of the Proposals, the Service Provider may request that it be released from the Proposal.

3. SCOPE OF FATS OILS GREASE APPLICATION.

3.1. General Scope.

Charlotte Water is interested acquiring software and services for the installation, configuration, maintenance and support of a Fats, Oil and Grease (FOG) Application solution. Proposals shall indicate an operationally proven, commercial off-the-shelf (COTS) application solution designed for the FOG industry that meets the functionality described below.

The following specifications define the minimum activities to be included for the FOG Management solution including, but not limited to:

- Project Management
- Project Initiation and Planning
- Preparation of Documentation
- Functionality
- Discovery and System Configuration
- Interface Development (if applicable)
- Data Conversion
- Installation and Deployment
- Development of Reports
- User Training of Charlotte Water FOG Inspectors
- Administrative Training of Charlotte Water IT Personnel
- Interface Development (if applicable)
- Testing
- Maintenance and technical support
- Post Go-Live Stabilization

3.2. City Responsibility

Charlotte Water will provide network connectivity, end user PCs or Tablets, servers and printers to the selected Service Provider. The Service Provider will be responsible for providing a test environment for employee training.

3.3. Selected Service Provider Responsibility

The Service Provider shall deliver and install the software solution, integrate and implement the functionality described in this document. All software and configuration will occur onsite on Charlotte Water servers. Offsite support and configurations to our environment will be allowed through VPN access. Minimal customization of the selected Service Provider COTS solution is preferred. The selected solution must be configurable to meet Charlotte Water's Environmental Compliance Team's scope outlined in this Section 3.

The Service Provider must include in the Proposed Solution, how the specific hardware environment and specifications required to run the FOG application based on the information in Section 3 will be addressed.

3.4. Equipment.

Technical Environment Proposed by the Service Provider

Based on 6,000 current inspections and 7 inspectors, assume an annual growth of 5% over the 6 year cost of ownership. Charlotte Water will provide hardware and the

network, but the Service Provider must address the specific technical environment and specifications required to run the FOG application.

3.5. Data Conversion

The Service Provider's shall provide the following services related to data conversion and data cleanup:

- A. Work directly with Charlotte Water staff by providing professional services to convert historical data to the format required by the proposed system, validate it to confirm the conversion was done correctly, and load the data into the new database. This work should be documented with summary information showing conversion goals, conversion degree of success and a plan to remediate unsuccessfully converted data. The converted data must be validated;
- B. Make recommendations with respect to the age and type of data that should be converted;
- C. Describe which data should not be converted and give reason for the time range;
- D. Prior to Go-Live provide to Charlotte Water documentation to confirm the data was converted properly. The Selected Service Provider and CLT Water Project Manager will develop an Implementation Schedule to outline key dates.

3.6. Pricing.

Service Providers shall provide pricing based on the requirements and terms set forth in this RFP. Pricing must be all-inclusive and cover every aspect of the Project. Cost must be in United States dollars rounded to the nearest quarter of a dollar. A pricing worksheet is provided in Section 8, Form 3 to assist you.

Pricing should be based on the following factors:

- Seven years of Charlotte Water FOG program data will be converted from Outlook calendar items, self-generated word document template letters and Excel spreadsheets, maintained by each of the Inspectors.
- Customer data will be independently retrieved from the City's Banner Billing System and Asset data will be independently retrieved from the City's Cityworks.

The Service Provider shall provide Services on a time and materials basis. The City agrees to pay the Service Provider for the Services at the rate(s) set forth in Section 8, Form 3, which shall remain fixed and firm for the duration of the Contract.

3.7. Functional Requirements.

The following table lists the Functional Requirements for the FOG Application Solution:

Functionality

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Scope of Services

Inspections
Software to handle individual inspections
Accessibility via desktop or mobile devices, <i>with emphasis on staff having the ability complete work in the field.</i>
Storage of multiple inspections at each location, thereby establishing history
Ability to store 6,000 total current inspection locations and accommodate increased inspections over time
Media storage (photo and video)
Ability to search database for past inspections within the user interface
Ability to track permit/environmental excellence system within the user interface
Provide automatic notification when inspections are due
Provide automatic notification of reoccurring inspections
Provide automatic notification of re-inspections due to violations
Ability to track and notify inspectors when Food Service Establishments (FSEs) are past due for pumping
Ability to notify FSEs online or through email when they are out of compliance
Ability for hauler/and Food Service Establishments to directly insert manifest and other data
Ability to conduct multi-family inspections Migration of historical data into COTS solution (i.e. Records of inspections, Notices of Deficiencies, etc.)
Ability to meet local, state and federal regulations
Minimum Requirements Per Inspection
FSE Name
FSE ID Number
FSE Type (i.e. Restaurant, Hospital, Large Public Venue, etc.)
NOD Number
Address (i.e. house number, street, city, state, zip code, parcel ID, premise ID)
State ID
Compliance Status
Inspection Date
Inspector Contact Information (Name, Title, Email, Phone)
Contact Information
Owner Information
Interceptor (i.e. Size, Brand, Type, Condition, FOG Levels, Number of

Section 3

Scope of Services

Tanks/Interceptors)
Cleaning Frequency
Hauling Service Provider
Three (3) Compartment Sink Size
Site Observation Details (BMPs followed, Floor drains screened, Rendering tank area clean)
Actions (i.e. Educational Materials, Notice of Deficiency, Notice of Violation)
Comments
GIS
Ability to meet Esri based Geographic Information Management (GIS) standards with data, features classes and REST services.
Ability to store and use Address name components (house #, street name, suffixes, and prefixes).
Ability to display inspections, aerials, land base and supplemental GIS feature classes
Ability to sample and store data based on location inspected. For example, a sample taken at a grease trap location will need to be attached to the area (geography) of the location through a parcel ID, premise ID or other land record.
Ability to integrate with GIS through REST services already in place on AGS Server within Charlotte Water.
FSE Address verifiable against a Geolocator (no free text entry)
Inspection history displayed
Reporting and Letters
Ability to generate a tiered list of FSEs that are overdue for inspectors
Standard canned reports
Configurable letter templates such as NOD (Notice of Deficiency) and FSE Manifest
Reports that can be modified
Ability to brand with Charlotte Water logos
Ability to collect signatures
Other System Information
Ability to integrate with Cityworks?
Is the Service Provider limited to a cloud-based solution?
External Portal available for Grease Haulers to Upload their manifests directly to the FOG Application?

3.8. City Hardware/Software Requirements.

Compatibility and standardization are key concerns in City technology procurements. This is important to optimize interoperability and achieve better overall performance, and to reduce the costs of maintenance, inventory, training and administration. To that end, the City has established certain standards and preferences regarding implementation of new hardware and software. Proposed solutions must adhere to these where noted in the first column of the following table. In the remaining cases, adherence is preferred, but not required. Standards documentation for any technology category can be provided upon request. Version references in the matrix below are as of the time of publication. Vendors are expected to adhere to the current city-supported versions and will need to request those version updates from the City.

The following table provides a summary of the City's current technology

Section 3

Scope of Services

environment. The Service Provider shall provide a Fats Oil Grease Application Solution that works within the current technology environment described in the table.

Standards Apply / Adherence Required	Technology Category	Current Architecture Summary	Target Architecture (where different)
	Telephony		
	Telephony	AT&T POTS analog lines / Cisco / / True Image Interactive (TII) IVR (Formerly GetAbby)	Cisco
	Call Recording System	Eventide / Verint / Cisco	Eventide / Verint
	Mobile Device Services	Apple iPhone 6s or higher Excluding iPhone 10/ iPad Samsung Android Devices (with approved exception) VMWare AirWatch Managed Devices	Apple iOS version 11.3 or higher
	Networking		
x	Network Cabling	CAT6e /Corning fiber optic	CAT6 Plenum rated Systimax or better
x	Network Hardware	Cisco Systems Hardware and Software including all portions of their Borderless Networking, Collaboration, Data Center and Virtualization product lines	
	Multiple Domains	Any technology the City adopts must work within a multiple domain environment, including the ability to distinguish between users with the same username in multiple domains.	Microsoft 2016 (Summer 2018) Active Directory or higher
	Network Communication Protocol (<i>standards apply</i>)	IP, current protocol is IPv4, but new equipment should support IPv6	New technologies should support both IPv4 and IPv6
	Wi-Fi	Wi-Fi enabled systems should support 802.11a,b,g,n and ac protocols , AES 256 bit encryption, PEAP and MS-CHAPv2 authentication New Access point equipment should support Cisco CAPWAP architecture, IEEE 802.11i	Wi-Fi enabled systems should support 802.11a,b,g,n, and ac protocols
	Load Balancing	F5	
	Data Center		
x	Server Hardware	HP Proliant series, Dell	HP Proliant Series

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Scope of Services

Standards Apply / Adherence Required	Technology Category	Current Architecture Summary	Target Architecture (where different)
x	Server Operating Systems	Windows Server 2008 and above, Red Hat 5 and above	Windows Server 2016, Red Hat 7.3 minimum, preferred last OS version 1+ years in production
x	Virtual Operating Environments	VMWare, Microsoft App-V, and Hyper-V , Nutanix ver. 5.1.3.2,	All servers will be VMWare Hyperconverged on Nutanix, where possible VDI/RDS: Microsoft Hyper-V, Microsoft App-V
	Storage	HP, Pillar, SolidFire & EMC Isilon SAN / NAS storage,	HP, NetApp, SolidFire
	Backup Software	Symantec Netbackup 7.5, EMC Avamar 6, EMC Data Domain	EMC Avamar 7.5
	Backup Hardware	Spectralogic T-50, HP ESL9326	EMC Avamar / Data Domain
	Data		
x	Database Systems	Oracle Database Server 12.1.0.1 and above, MS SQL Server 2012 and above	SQL 2016 Oracle 12.1.0.2 Postgres 9.6.x MariaDB 10.2.x Encourage open source DBs
	ETL/Data Mapping Services/Data Warehousing	SQL Server Integration Services, SQL Server Analysis Services, WhereScape (RED, 3D and Data Vault Express), R, Python	Preferred last version 1+ years in production
	Business Intelligence / Data Visualization	Tableau, Excel, Microsoft SQL Reporting Services (SSRS), Esri's Insights	
	Reporting Services	Third-party products such as Business Objects / Crystal, COGNOS, Oracle Reports, and Microsoft SQL Server Reporting Services (SSRS) are supported for application-specific reporting. Tableau Enterprise Server and SSRS are the products supported by I&T.	SQL Server Reporting Services 2016+ Tableau Enterprise Server

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Scope of Services

Standards Apply / Adherence Required	Technology Category	Current Architecture Summary	Target Architecture (where different)
	Application Servers	.NET Framework, Oracle WebLogic	.NET Framework 4.5.2
	Application		
	Web Servers	Microsoft Internet Information Services (IIS) v7.x and 8.x	IIS 8.x
	Application Languages	MS VB.NET, ASP.NET, MVC, C#.NET, PL/SQL, JSP, JavaScript, and Java J2EE are among the City's development toolsets in use.	, C#.NET Core, JavaScript, Swift (iOS), Java(Android)
	Enterprise Integration Platform	Microsoft BizTalk 2016, Apache Active MQ, .NET Framework	Apache Active MQ 5.14+, .NET Framework 4.5.2
x	Desktop Operating System	Windows 7, Windows 8, Windows 10	Windows 10 Enterprise
x	Application Client	Client operating systems may include Windows 7 and above. Browser clients should support Microsoft Internet Explorer Version 11 and above. If an actual client installation is required, it must be tested by the City to confirm that it does not conflict with other existing desktop components.	Windows 10 Enterprise. Browser-based implementation is preferred, and where applies, with both mobile friendly and responsive design delivery capability across all devices
	Portal Services	Microsoft Office SharePoint Services	SharePoint 2013
x	Geospatial Platform	The City's Geospatial Platform is based on ESRI's ArcGIS technology. All spatial databases should be compatible with the City's implementation of the ESRI Geodatabase. Web-based GIS tools, components or extended custom functionality should use ArcGIS API's. Google Maps API is used for Virtual Charlotte, Emerald Web. AutoCAD is also used by a number of departments.	ESRI ArcGIS 10.5.1 Google Maps for Android/iOS
x	E-mail Services	The City uses Microsoft Exchange 2016 on-premise with the Microsoft Outlook e-mail client.	Exchange Server
x	Business Productivity	MS Office 2010	MS Office 365 – local install
	Scanning software	Kofax 10, OnBase scanning module	OnBase scanning module

Section 3

Scope of Services

Standards Apply / Adherence Required	Technology Category	Current Architecture Summary	Target Architecture (where different)
	Cloud Storage & Sharing	Various shadow IT tools like Dropbox, box, Drive and OneDrive	Microsoft OneDrive
		Some language about Adobe needed here	
	Data Protection		
x	Security	Security Access to the Software must be restricted by assigning user credentials to authorized users. Enterprise authentication services are provided by Active Directory. All data should be encrypted during transmission and data defined as restricted in the City's Restricted Data Policy should be encrypted at rest.	SAML authentication via ADFS
	Endpoint Security	SentinelOne Agent, Windows Firewall, Cisco IronPort (Edge protection for in-bound email)	

In addition to the standards and preferences included in the above table, one of the factors that the City will consider in procuring new hardware or software is the number of changes that will be required to existing City systems. The fewer the changes the better. It is also preferred that new software use architectures (e.g. database and reporting solutions) building upon or compliant with those already implemented at the City. Similarly, where system integration is required, new software installation should include the implementation of these interfaces, and the Service Provider should identify means of minimizing any changes to the systems being interfaced with.

3.9. Service Oriented Architecture.

The City is implementing a Service Oriented Architecture and prefers new technologies that apply the following Service Oriented Architecture elements:

- The System groups functionality around business processes and provides access to this functionality via interoperable services;
- Supplied services are engineered to improve System agility and to be generic and reusable;
- Disparate System components share related data to ensure consistency;
- Web services delivered as part of a COTS application *should* adhere to City's SOA Standards and Development Guidelines (*available upon request*); and
- Web services *developed* for the City of Charlotte as part of any engagement *must* adhere to City's SOA Standards and Development Guidelines (*available upon request*).

3.10. Software Customizations.

The City generally differentiates customization and configuration of software as follows:

- *Customization*: requires software code changes, generally done by the vendor, must be re-addressed if the software is upgraded
- *Configuration*: implies no code changes, can be performed by the customer through a user interface

Where possible, the City prefers solutions that do not have to be customized to meet business requirements. Configuration changes to meet requirements are an acceptable alternative.

3.11. Security Requirements.

The City of Charlotte is committed to protecting its information resources from accidental or intentional intrusion. To accomplish this, the City will require Information Security features be included with software/hardware purchases, (e.g. access permissions, encryption for restricted data and data that passes from trusted to untrusted networks (FTP, RDP, telnet, etc.), common authentication (Active Directory)). Please describe the security capabilities of the proposed technology, and the Service Provider's security procedures to include handling of electronic data, hard copy information, and employee security. If the software/hardware will process credit cards, please include PCI and PA-DSS compliance letters. Specific Information Security procedures and standards can be supplied upon request.

3.12. Training.

Training to support the Proposed Solution is a critical element of the Project and shall be explained as outlined:

3.12.1 Training Plan.

- The Service Provider shall submit a preliminary Training Plan that shall outline the content, sequence and duration of each segment of each training session necessary to thoroughly and comprehensively train City personnel to fully utilize the System (the "Training Plan").
- The Training Plan will outline all subjects necessary to train City staff to fully understand and utilize all user functions of the System, and to train the designated "trainers" to effectively train other City personnel to fully understand and utilize the user functions of such software on the System.
- The Training Plan shall require the Service Provider to provide the operator training and comprehensive "train the trainer" training for the numbers of City designated personnel; the Service Provider will schedule the training classes and modules according to their appropriate phase of the Project.
- The Training Plan must take into account classroom resources and personnel scheduling.
- The Training Plan must include written description of the types of the precise training classes that will be conducted, the number of persons that can be trained in each session, and the total number of hours required for each person to be trained.
- All training will be conducted on-site in City facilities.

Section 3

Scope of Services

- The cost of all training referenced in this Section must be included in the Proposal Pricing.
- 3.12.2 Describe how the Service Provider manages the implementation and testing process, including the roles of key project personnel.
- 3.12.3 The Service Provider shall describe and list a detailed acceptance test plan. Describe the criteria for assuring full system performance and outline how tests will be conducted to demonstrate proper installation.
- 3.12.4 Describe the Service Provider's plan for system administrator training.

3.13. Representations and Warranties.

The Service Provider represents, warrants and covenants that:

- 3.13.1 The Services shall satisfy all requirements set forth in the Agreement, including but not limited to the attached Exhibits;
- 3.13.2 All work performed by the Service Provider pursuant to the Agreement shall meet highest industry standards, and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;
- 3.13.3 Neither the Services, nor any Software provided by the Service Provider under the Agreement will infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party;
- 3.13.4 The Service Provider has taken and will continue to take precautions sufficient to ensure that it will not be prevented from performing all or part of its obligations under the Agreement by virtue of interruptions in the computer systems used by the Service Provider; and
- 3.13.5 In accordance with the North Carolina electronic data-processing records law N.C.G.S. §132-6-1:

All software and documentation provided by the Service Provider will have sufficient information and capabilities to enable the City to permit the public inspection and examination and to provide electronic copies of public records stored, manipulated or retrieved by the System; and

All software and documentation provided by the Service Provider or its subcontractors will have sufficient information to enable the City to create an index containing the following information with respect to each database used by the System without extraordinary commitments of staff or resources: (i) annotated list of data fields: name, description, and restricted field indicator; (ii) description of the format or record layout; (iii) frequency with which the database is updated; (iv) list of any data fields to which public access is restricted; (v) description of each form in which the database can be copied or reproduced; (vi) title of the database; (vii) owner of the data; (viii) narrative description of the database; (ix) person creating the index; and (x) purpose of the database. The Service Provider agrees that the information set forth in the preceding sentence constitutes a public record and may be disclosed by the City without the Service Provider's consent.

3.14. Vendor Registration.

The City is pleased at your interest in doing business with the City of Charlotte and appreciates the opportunity to provide you with information regarding procurement protocols. The City's vendor management philosophy supports a fair, open, and inclusive process that offers the same access and information to all Service Providers.

In order to do business with the City of Charlotte, you will need to register as a vendor with the City. Your registration provides the City with baseline information for your Service Provider including location, contact and demographic information, as well as your areas of expertise with specific commodity and/or service descriptions. You will also have the opportunity to complete any applicable certifications if your Service Provider desires to establish itself as a Small Business Enterprise (SBE) or a Minority and Woman-Owned Business Enterprise (MWBE). The link below will provide you with the opportunity to complete your registration on-line with the City.

<http://charlottenc.gov/DoingBusiness/Pages/vendors.aspx>

3.15. Length of Relationship.

The City expects to establish a long-term relationship with its Fats Oils Grease Application Service Provider in order to permit costs and fees to be distributed properly over a sufficient time period. For purposes of this RFP and the Service Provider's Proposal, assume a term of five (5) years.

4. PROPOSAL FORMAT.

The City desires all Proposals to be identical in format in order to facilitate comparison. While the City's format may represent departure from the Service Provider's preference, the City requires strict adherence to the format. The Proposal will be in the format described below:

- a. Cover letter;
- b. Executive Summary;
- c. Proposed Solution;
- d. The "Addenda Receipt Confirmation" set forth in Section 6, Form 1;
- e. The "Proposal Submission" set forth in Section 6, Form 2;
- f. The "Pricing Worksheet" set forth in Section 6, Form 3;
- g. The "Proposal Certification" set forth in Section 6, Form 4;
- h. The "Background and Experience" set forth in Section 6, Form 5;
- i. The "References" set forth in Section 6, Form 6;
- j. The "E-Verify Certification" set forth in Section 6, Form 7;
- k. The "Key Personnel and Other Resources" set forth in Section 6, Form 8; and
- l. The "Data Conversion Responsibilities" set forth in Section 6, Form 9.

All Proposals shall be 8 1/2" x 11" format with all standard text no smaller than eleven (11) points.

Proposals must also include a flash drive including the entire Proposal in a searchable format such as MS Word or Adobe Acrobat.

Service Providers are required to organize the information requested in this RFP in accordance with the format outlined. Failure of the Service Provider to organize the information required by this RFP as outlined may result in the City, at its sole discretion, deeming the Proposal non-responsive to the requirements of this RFP. The Service Provider, however, may reduce the repetition of identical information within several sections of the Proposal by making the appropriate cross-references to other sections of the Proposal. Appendices for certain technical or financial information may be used to facilitate Proposal preparation.

4.1. Proposal Content.

4.1.1. Cover Letter.

The Proposal must include a letter of transmittal attesting to its accuracy, signed by an individual authorized to execute binding legal documents on behalf of the Service Provider as outlined in Section 1.7.3. The cover letter shall provide the name, address, telephone and facsimile numbers of the Service Provider along with the name, title, address, telephone and facsimile numbers of the executive that has the authority to contract with the City. The cover letter shall present the Service Provider's understanding of the Project, a summary of the approach to be undertaken to perform the Services, as well as a summary of the costs to provide the Services.

Each Service Provider shall make the following representations and warranty in its Proposal Cover Letter, the falsity of which might result in rejection of its Proposal: **"The information contained in this Proposal or any part thereof, including its Exhibits, Schedules, and other documents and instruments delivered or to be delivered to the City, is**

true, accurate, and complete. This Proposal includes all information necessary to ensure that the statements therein do not in whole or in part mislead the City as to any material facts.”

4.1.2. Executive Summary.

The Service Provider shall submit an executive summary, which outlines its Proposal, including the proposed general management philosophy. The executive summary shall, at a minimum, include an identification of the proposed project team, responsibilities of the project team, and a summary of the proposed Services. This section should highlight aspects of this Proposal, which make it superior or unique in addressing the needs of the City.

4.1.3. Proposed Solution.

Given the purpose of this project and the City's goals as stated in Section 3 of this RFP, provide a creative solution to meet such goals. Following is a framework and questions to guide your organization's suggested solution. Please address the following as completely as possible. **If you wish to add supplemental information, it shall be labeled “Supplemental Information.”**

4.1.3.1. Process.

What steps will your organization take to ensure that the implementation for the Project runs smoothly?

4.1.3.2. Project Plan.

Prepare and submit a Project Plan (preferably in MS Project format) to describe, to the best of your ability, all times, tasks and resources associated with the performance of Services. The Project Plan is subject to the terms set forth in Section 7 of this RFP.

Please describe the technical and hardware environment that will be needed to support proposed production, training and testing environments.

A. Servers:

- Describe the servers required: application, database and reporting
- Describe the proposed system effective operation within both a physical and virtual (VMware) environment.
- Describe the Operating System requirement for each server
- Describe the CPU and clock speed requirements for each server

B. Describe the data storage requirements

C. Describe the proposed systems operation within a virtual network (VLAN) network

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Proposal Format

D. Describe the communication protocol that supports your proposed system

E. Other considerations

F. Client Workstation Specifications

- Operating System
- Memory needed
- Hard disk storage required
- CD/DVD needed?
- Any additional Software required
- Other client workstation considerations

G. Describe Service Provider methodology and tools used for data cleanup that will assist Charlotte Water with identifying data errors and duplications for correction, including but not limited to Food Service Establishment (FSE) Name, Inspector Name, Address, Location, and Current Violations.

H. Describe Service Provider methodology for quality assurance of converted and cleaned up data.

Please provide a hardware/Infrastructure Diagram for each environment needed to support the implementation.

4.1.3.3. Client Relationship Management.

Describe the communications scheme that your organization will use to keep the City informed about the progress of the Project.

4.1.3.4. Risk Management.

Describe the risks associated with this contract. What contingencies have been built in to mitigate those risks?

4.1.4. Required Forms.

To be deemed responsive to this RFP, Service Providers must complete in detail, all Proposal Forms listed in this Section 4, items numbered d through l.

5. PROPOSAL EVALUATION CRITERIA.

Proposals will be evaluated based on the Service Provider's ability to meet the performance requirements of this RFP. This section provides a description of the evaluation criteria that will be used to evaluate the Proposals. To be deemed responsive, it is important for the Service Provider to provide appropriate detail to demonstrate satisfaction of each criterion and compliance with the performance provisions outlined in this RFP. The Service Provider's Proposal will be the primary source of information used in the evaluation process. Proposals must contain information specifically related to the proposed Services and requested herein. Failure of any Service Provider to submit information requested may result in the elimination of the Proposal from further evaluation.

Proposals will be assessed to determine the most comprehensive, competitive and best value solution for the City based on, but not limited to, the criteria below. The City reserves the right to modify the evaluation criteria or waive portions thereof. Proposals will be evaluated on the following major categories:

- a. Proposed Solution;
- b. Cost Effectiveness and Value;
- c. Interviews and Demonstrations; and
- d. Acceptance of the Terms of the Agreement.

5.1. Qualifications, Experience and Approach.

Service Providers will be evaluated based upon their understanding, experience and qualifications in performing the same or substantially similar Services, as reflected by its experience in performing such Services. The evaluation will include references regarding work for organizations with needs similar to the City's, and the feasibility of the Service Provider's approach for the provision of the Services.

- 5.1.1. The Service Provider's past experience, references and performance as related to implementation of the proposed FOG Management solution with similarly-sized water and wastewater utilities.
- 5.1.2. The quality and experience of the Service Provider's project manager and personnel to be assigned to the implementation.
- 5.1.4. Completeness of response to the scope of work for professional services (data conversion, discovery and configuration, reports, testing, interfaces (if applicable), training, documentation, ongoing support).
- 5.1.5. Overall approach and project management, planning and sequencing of the proposed work, and adequacy of proposed resource plan for various segments of the implementation.
- 5.1.6. Functional completeness of the proposed software solution.

5.2. Cost Effectiveness and Value.

Under this criterion, Proposals will be compared in terms of the most reasonable, and or most effective pricing options. The Evaluation Committee will also take into consideration any indirect costs associated with the Services and administration of the Agreement including:

- Total cost of the implementation, including professional services, licensing fees and five years' annual maintenance cost.

Section 5

Evaluation Criteria

5.3. Demonstrations.

Proposals will be evaluated based on the criteria outlined in this Section 5. A short-list of proposers will be requested to conduct demonstrations of their Proposed Solution. Charlotte Water will select a Service Provider's Proposed Solution that best meets the requirements described in Section 3.

5.4. Acceptance of the Terms of the Agreement.

The City will evaluate the Proposals for compliance with the terms, conditions, requirements, and specifications stated in this RFP including the contract language provided in Section 8. Service Providers shall provide pricing based on the requirements and terms set forth in this RFP.

Section 6
Required Forms – Form One

REQUIRED FORM 1 - ADDENDA RECEIPT CONFIRMATION

RFP # FY18-RFP-11

Fats Oils Grease Application

Please acknowledge receipt of all addenda by including this form with your Proposal. All addenda will be posted to <http://charlottenc.gov/DoingBusiness/Pages/ContractOpportunities.aspx>.

ADDENDUM #:

**DATE ADDENDUM
DOWNLOADED FROM CITY
WEBSITE:**

I certify that this proposal complies with the General and Specific Specifications and conditions issued by the City except as clearly marked in the attached copy.

(Please Print Name)

Date

Authorized Signature

Title

Service Provider Name

Section 6
Required Forms – Form Two

REQUIRED FORM 2 - PROPOSAL SUBMISSION FORM

RFP # FY18-RFP-11

Fats Oils Grease Application

This Proposal is submitted by:

Service Provider Name: _____

Representative (printed): _____

Representative (*signed*): _____

Address: _____

City/State/Zip: _____

Email address: _____

Telephone: _____

(Area Code) Telephone Number

Facsimile: _____

(Area Code) Fax Number

The representative signing above hereby certifies and agrees that the following information is correct:

1. In preparing its Proposal, the Service Provider has considered all proposals submitted from qualified, potential subcontractors and suppliers; and has not engaged in or condoned prohibited discrimination.

2. For purposes of this Section, discrimination means discrimination in the solicitation, selection, or treatment of any subcontractor, vendor or supplier on the basis of race, ethnicity, gender, age or disability or any otherwise unlawful form of discrimination. Without limiting the foregoing, discrimination also includes retaliating against any person or other entity for reporting any incident of discrimination.

3. Without limiting any other provision of the solicitation for proposals on this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the City to reject the Proposal submitted by the Service Provider on this Project and to terminate any contract awarded based on such Proposal.

4. As a condition of contracting with the City, the Service Provider agrees to maintain documentation sufficient to demonstrate that it has not discriminated in its solicitation or selection of subcontractors. The Service Provider further agrees to promptly provide to the City all information and documentation that may be requested by the City from time to time regarding

Section 6

Required Forms – Form Two

the solicitation and selection of subcontractors. Failure to maintain or failure to provide such information constitutes grounds for the City to reject the bid submitted by the Service Provider or terminate any contract awarded on such bid.

5. As part of its Proposal, the Service Provider shall provide to the City a list of all instances within the past ten years where a complaint was filed or pending against Service Provider in a legal or administrative proceeding alleging that Service Provider discriminated against its subcontractors, vendors or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.

6. The information contained in this Proposal or any part thereof, including its Exhibits, Schedules, and other documents and instruments delivered or to be delivered to the City, is true, accurate, and complete. This Proposal includes all information necessary to ensure that the statements therein do not in whole or in part mislead the City as to any material facts.

7. It is understood by the Service Provider that the City reserves the right to reject any and all Proposals, to make awards on all items or on any items according to the best interest of the City, to waive formalities, technicalities, to recover and re-bid this RFP.

8. This Proposal is valid for one hundred and eighty (180) calendar days from the Proposal due date.

I, the undersigned, hereby acknowledge that my Service Provider was given the opportunity to indicate any Trade Secret materials or Personally Identifiable Information (“PII”) as detailed in Section 1.6.3. I understand that the City is legally obligated to provide my Proposal documents, excluding any appropriately marked Trade Secret information and PII, upon request by any member of the public. As such, my Service Provider has elected as follows:

___ The following section(s) of the of the Proposal are marked as Trade Secret or PII: _____

___ No portion of the Proposal is marked as Trade Secret or PII.

Service Provider

Date

Authorized Signature

Please type or print name

Section 6

Required Forms – Form Three

REQUIRED FORM 3 - PRICING WORKSHEET

RFP # FY18-RFP-11

Fats Oils Grease Application

Service Providers shall provide pricing based on the requirements and terms set forth in this RFP. Pricing must be all-inclusive and cover every aspect of the Project. Cost must be in United States dollars rounded to the nearest quarter of a dollar. **If there are additional costs associated with the Services, please add to this chart. Your Price Proposal must reflect all costs that the City will be responsible for.**

Implementation & Ongoing Software Maintenance/Support Pricing

Tasks to be Included in Implementation		Explanation (if needed)
Initial Software Licenses		
Installation		
Data Conversion & Migration		
Professional Services		
Reports (SQL Reporting Services & Crystal))		
Initial Software Maintenance & Support		
Other Professional Services Not Listed Above		
Total Implementation Pricing	\$	
Ongoing Software Maintenance & Support		
Year 2	\$	
Year 3	\$	
Year 4	\$	
Year 5	\$	
Total Maintenance & Support Pricing	\$	
Annual Software License Fees (if applicable)		
\$		
Total Cost of Fats Oils Grease Application	\$	

The undersigned hereby certifies the Proposer has read the terms of this Proposal document including the Contract Terms and Conditions and is authorized to bind the firm to the information herein set forth.

NAME OF COMPANY: _____

NAME OF AUTHORIZED PERSONEL: (PRINT) _____

SIGNATURE OF AUTHORIZED PERSONEL: _____

TITLE OF AUTHORIZED PERSONEL: _____

DATE: _____

Section 6
Required Forms – Form Four

REQUIRED FORM 4 - PROPOSAL CERTIFICATION

RFP # FY18-RFP-11

AGREEMENT TITLE: **Fats Oils Grease Application**

SERVICE PROVIDER: _____

The undersigned Service Provider hereby certifies and agrees that the following information is correct:

1. In preparing its Proposal, the Service Provider has considered all proposals submitted from qualified, potential subcontractors and suppliers; and has not engaged in or condoned prohibited discrimination.
2. For purposes of this Section, discrimination means discrimination in the solicitation, selection, or treatment of any subcontractor, vendor or supplier on the basis of race, ethnicity, gender, age, religion, national origin, marital status, familial status, sexual orientation, gender identity, gender expression or disability or any otherwise unlawful form of discrimination. Without limiting the foregoing, discrimination also includes retaliating against any person or other entity for reporting any incident of discrimination.
3. Without limiting any other provision of the solicitation for proposals on this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the City to reject the Proposal submitted by the Service Provider on this Project and to terminate any contract awarded based on such Proposal.
4. As a condition of contracting with the City, the Service Provider agrees to maintain documentation sufficient to demonstrate that it has not discriminated in its solicitation or selection of subcontractors. The Service Provider further agrees to promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation and selection of subcontractors. Failure to maintain or failure to provide such information constitutes grounds for the City to reject the bid submitted by the Service Provider or terminate any contract awarded on such bid.
5. As part of its Proposal, the Service Provider shall provide to the City a list of all instances within the past ten years where a complaint was filed or pending against Service Provider in a legal or administrative proceeding alleging that Service Provider discriminated against its subcontractors, vendors or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.

NAME OF FIRM

BY: _____
SIGNATURE OF AUTHORIZED OFFICIAL

TITLE

Section 6

Required Forms – Form Five

REQUIRED FORM 5 – SERVICE PROVIDER’S BACKGROUND RESPONSE

RFP # FY18-RFP-11

Fats Oils Grease Application

Service Providers should complete and submit the form below as part of their response to this RFP.

Service Provider Background	
Question	Response
Service Provider Identification	
Service Provider Name (Official Name)	
Service Provider Location (corporate headquarters)	
Service Provider Experience	
Years of Experience:	
<i># of years in business:</i>	
<i># of years providing public sector Fats Oils Grease Application solution and services:</i>	
Customer Base:	
<i># of public sector clients</i>	
<i># of public sector clients using the solution and services being proposed.</i>	
<i># of clients that are utilities</i>	
<i>Identify by name some of the clients similar to Charlotte Water (e.g., similar in size, complexity, location, type of organization)</i>	
Market Focus:	
<i>Identify industries and public sector market segments served</i>	
Implementations:	
<i>How long has a jurisdiction used your FOG Solution?. Were any Implementations terminated prior to the contract end date? If so, please disclose the jurisdiction and explain the reason for the termination.</i>	
Litigation:	

Section 6

Required Forms – Form Five

<i>List any litigation that you have been involved with during the past two (2) years on Fats Oils Grease Application implementations.</i>	
Organization Size	
Number of Employees:	
<i>If Service Provider is a subsidiary, identify # of employees who will work on the project; # of employees who will travel to Charlotte Water; # of employees who will work on configurations</i>	
Corporate Notes	
Ownership:	
<i>Privately held? Publicly traded? Parent Service Provider?</i>	
Certified Partnerships:	
<i>Identify any certifications held by your firm if you are implementing or reselling another firm's products. Include how long the partnership or certification has been effect.</i>	
Additional Narrative Response	
Background and Experience:	
<i>Provide an overview and history of your Service Provider.</i>	
<i>Describe your total organization, including any parent companies, subsidiaries, affiliates and other related entities.</i>	
<i>Describe the ownership structure of your organization, including any significant or controlling equity holders.</i>	
<i>Provide a management organization chart related to this project, showing supervisor and staff and the reporting structure.</i>	

Section 6

Required Forms – Form Five

<p><i>Detail how long the Service Provider has been providing Fats Oils Grease Application Solution to local governments and/or water treatment and wastewater utilities and include information regarding experience with similar Fats Oils Grease Application solution projects as described in Section 3.</i></p>	
<p>Personnel Management:</p>	
<p><i>If the Service Provider's proposal submission will be from a team composed of more than one (1) Service Provider or if any subcontractor will provide more than fifteen percent (15%) of the Services, provide a description, which includes the teaming relationships, form of partnership, each team member's contribution, and the experience of each team member, which qualifies them to fulfill their responsibility. Provide descriptions and references for the projects on which team members have previously collaborated.</i></p>	
<p><i>Explain how your organization ensures that personnel performing technical support services are qualified and proficient.</i></p>	
<p><i>If your organization has been the subject of a dispute or strike by organized labor within the last five (5) years, please describe the circumstances and the resolution of the dispute.</i></p>	
<p><i>If your organization has been the subject of a dispute or strike by organized labor within the last five (5) years, please describe the circumstances and the resolution of the dispute.</i></p>	

Section 6
Required Forms – Form Six

REQUIRED FORM 6 – REFERENCES

RFP # FY18-RFP-11

Fats Oils Grease Application

REFERENCE 1:

Name of Client: _____ Phone: _____

Address: _____

Primary Contact: _____ Title: _____

Phone: _____ E-mail address: _____

Service Dates: _____ Software Program/Version: _____

Summary & Scope of Project and List of Modules/Functionality Implemented: _____

Operating Budget: \$ _____ Number of Employees: _____

REFERENCE 2:

Name of Client: _____ Phone: _____

Address: _____

Primary Contact: _____ Title: _____

Phone: _____ E-mail address: _____

Service Dates: _____ Software Program/Version: _____

Summary & Scope of Project and List of Modules/Functionality Implemented: _____

Operating Budget: \$ _____ Number of Employees: _____

Section 6
Required Forms – Form Six

REFERENCE 3:

Name of Client: _____ Phone: _____

Address: _____

Primary Contact: _____ Title: _____

Phone: _____ E-mail address: _____

Service Dates: _____ Software Program/Version: _____

Summary & Scope of Project and List of Modules/Functionality Implemented: _____

Operating Budget: \$ _____ Number of Employees: _____

REFERENCE 4:

Name of Client: _____ Phone: _____

Address: _____

Primary Contact: _____ Title: _____

Phone: _____ E-mail address: _____

Service Dates: _____ Software Program/Version: _____

Summary & Scope of Project and List of Modules/Functionality Implemented: _____

Operating Budget: \$ _____ Number of Employees: _____

Section 6
Required Forms – Form Six

REFERENCE 5:

Name of Client: _____ Phone: _____

Address: _____

Primary Contact: _____ Title: _____

Phone: _____ E-mail address: _____

Service Dates: _____ Software Program/Version: _____

Summary & Scope of Project and List of Modules/Functionality Implemented: _____

Operating Budget: \$ _____ Number of Employees: _____

Section 6
Required Forms – Form Seven

REQUIRED FORM 7 – E-VERIFY CERTIFICATION

RFP # FY18-RFP-11

Fats Oils Grease Application

This E-Verify Certification is provided to the City of Charlotte (the "City") by the Service Provider signing below ("Service Provider") as a prerequisite to the City considering Service Provider for award of a City contract (the "Contract").

- i. Service Provider understands that:
 - a) E-Verify is the federal program operated by the United States Department of Homeland Security and other federal agencies to enable employers to verify the work authorization of employees pursuant to federal law, as modified from time to time.
 - b) Article 2 of Chapter 64 of the North Carolina General Statutes requires employers that transact business in this state and employ 25 or more employees in this state to: (i) verify the work authorization of employees who will be performing work in North Carolina through E-Verify; and (ii) maintain records of such verification (the "E-Verify Requirements").
 - c) North Carolina General Statute 160A-20.1(b) prohibits the City from entering into contracts unless the contractor and all subcontractors comply with the E-Verify Requirements.
- ii. As a condition of being considered for the Contract, Service Provider certifies that:
 - a) If Service Provider has 25 or more employees working in North Carolina (whether now or at any time during the term of the Contract), Service Provider will comply with the E-Verify Requirements in verifying the work authorization of Service Provider employees working in North Carolina; and
 - b) Regardless of how many employees Service Provider has working in North Carolina, Service Provider will take appropriate steps to ensure that each subcontractor performing work on the Contract that has 25 or more employees working in North Carolina will comply with the E-Verify Requirements.
- iii. Service Provider acknowledges that the City will be relying on this Certification in entering into the Contract, and that the City may incur expenses and damages if the City enters into the Contract with Service Provider and Service Provider or any subcontractor fails to comply with the E-Verify Requirements. Service Provider agrees to indemnify and save the City harmless from and against all losses, damages, costs, expenses (including reasonable attorney's fees) obligations, duties, fines and penalties (collectively "Losses") arising directly or indirectly from violation of the E-Verify Requirements by Service Provider or any of its subcontractors, including without limitation any Losses incurred as a result of the Contract being deemed void.

Signature of Service Provider's Authorized Representative

Date

Print Name and Title: _____

Section 6
Required Forms – Form Eight

REQUIRED FORM 8 – KEY PERSONNEL AND OTHER RESOURCES

RFP # FY18-RFP-11

Fats Oils Grease Application

(make copies and attach additional sheets as necessary)

Project Name: Fats Oils Grease Application

Company's Name: _____

List the **Project Manager** who will be assigned to this Project. Provide the information required for each.

	Key Personnel
Name	
Professional Certifications/Licenses (include Certification/License #)	
Proposed Role/Function for Projects	Company Project Manager
Office Location (City, State)	
Number of Years with Company	
Number of Years of Relevant Experience	
Availability to provide Services for this Project	

Section 6
Required Forms – Form Eight

	Key Personnel
Describe Relevant Experience, include list of Projects where the Key Personnel was responsible for the same role/function.	

Section 6

Required Forms – Form Eight

Project Name: Fats Oils Grease Application

**Company's
Name:** _____

List the full names of all **employees** (except Project Manager) whom you intend to assign to this Project. Describe their specific role/responsibility and availability for this Project.

Employee Name & Title	Project Role/Responsibility	Availability	Relevant Experience / Qualifications	Education

Section 6
Required Forms – Form Eight

Project Name: Fats Oils Grease Application
Company's Name: _____

List the legal names of all **Subcontractors** whom you intend to use on this Project. Provide their specific role/responsibility and contact information.

Subcontractor Name	Project Role/Responsibility	Contact Person & Phone #	Address/city/State

REQUIRED FORM 9 – DATA CONVERSION RESPONSIBILITIES FORM
RFP # FY18-RFP-11
Fats Oils Grease Application

The Service Provider shall define the responsibilities of Charlotte Water versus the responsibilities of the Service Provider in regards to data conversion and migration of the existing inspection data in the following table:

Data Conversion		
Task	Charlotte Water Responsibility	Service Provider Responsibility

Section 6
Required Forms – Form Nine

Section 7

Contract Terms and Conditions

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

CONTRACT TO PROVIDE FATS OILS GREASE APPLICATION

This Contract for Fats Oils Grease Application (the "Contract") is entered into as of this _____ day of [MONTH], 2018 (the "Effective Date"), by and between [SERVICE PROVIDER NAME], a corporation doing business in North Carolina (the "Service Provider"), and the City of Charlotte, North Carolina (the "City").

Statement of Background and Intent

- A. The City sent out a "Request for Proposals for Fats Oils Grease Application, FY18-RFP-11 dated June 29, 2018 requesting proposals from qualified vendors to provide the City with Fats Oils Grease Application per City requirements. This Request for Proposals, together with all attachments and amendments, is referred to herein as the "RFP".
- B. In response to the RFP, the Service Provider submitted to the City a proposal dated **July 31, 2018**. This proposal, together with all attachments and separately sealed confidential trade secrets, is referred to herein as the "Proposal."
- C. The City and the Service Provider have negotiated and now desire to enter into an arrangement for the Service Provider to design, supply, install, customize, configure, test, commission and maintain a Fats Oils Grease Application System for the City, all in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and conditions contained in this Contract, the parties agree as follows:

A G R E E M E N T

- 1. EXHIBITS.** The following Exhibits and Appendices are attached to this Contract and incorporated into and made a part of this Contract by reference:

Exhibit A:	Price Schedule and List of System Components
Exhibit B:	Scope of Implementation Services
Exhibit C:	Project Schedule
Exhibit D:	Scope of Maintenance Services
Exhibit E:	License
Exhibit F:	Requirements
Exhibit G:	Mutual Confidentiality Agreement

Each reference to the Contract shall be deemed to include all Exhibits and Appendices, any conflict between language in an Exhibit or Appendix to this Contract and the main body of this Contract shall be resolved in favor of the main body of this Contract. Each reference to [SERVICE PROVIDER NAME] in the Exhibits and Appendices shall be deemed to mean the Service Provider.

- 2. DEFINITIONS.** The following terms shall have the following meanings for purposes of this Contract (including all Exhibits):

- 2.1. **"Affiliates"** means 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 System.

Section 7

Contract Terms and Conditions

- 2.2. **“Cloud Services”** means the services through which the Service Provider 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.
- 2.3. **“Service Provider Software”** and **“[SERVICE PROVIDER NAME] Software”** shall be used interchangeably to mean all the Fats Oils Grease Application software application provided by the which the Service Provider provides or is required to provide under this Contract (including but not limited to customizations, the platform software and any Third Party Software), and all modifications, updates, New Releases and New Versions of the foregoing, other than software that the Contract specifically requires the City to license on its own.
- 2.4. **“Contract Data”** means all data generated by, provided to or made available to Service Provider or the Software in connection with this Contract, and all report structures in which such data are reported.
- 2.5. **“Current Release”** means the latest version of the Software offered for general commercial distribution at a given point in time, including all New Releases.
- 2.6. **“Customizations”** means all newly-developed software created by the Service Provider and/or its subcontractors pursuant to this Contract, including but not limited to all interfaces between different components of the System and between the System and other systems. Customizations will not include New Releases and New Versions that become part of the Service Provider Software.
- 2.7. **“Defect”** means any failure of the System or any component thereof to fully conform to the Specifications and Requirements. A non-conformity is not a Defect if it results directly from the City’s improper use or damage, unless it is reasonably likely that such non-conformity would have occurred on that or another occasion even without the City’s improper use or damage.
- 2.8. **“Deliverables”** means all tasks, reports, information, designs, plans and other items that the Service Provider is required to complete and deliver to the City in connection with this Contract, other than the Products.
- 2.9. **“Documentation”** means all written, electronic, or recorded works, that describe the use, functions, features, or purpose of the System or any component thereof, and which are published or provided to the City by the Service Provider 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 System.
- 2.10. **“Effective Date”** means the date stated in the first sentence of this Contract.
- 2.11. **“Hardware”** means all hardware, equipment and materials that the Service Provider actually provides or is required to provide under the terms of this Contract (whether now or in the future).
- 2.12. **“Implementation Services”** means the Services described in **Exhibit B**.
- 2.13. **“License”** means the license agreement attached to this Contract as **Exhibit E**.
- 2.14. **“Maintenance Services”** means the Services described in **Exhibit D**.
- 2.15. **“New Version”** means any products, parts of products, improvements, additions or materials not included in the Products as of the Effective Date that significantly modify the Products to provide a function or feature not originally offered or an improvement in function. New Versions are typically identified by a new version number that changes the number left of the decimal point. For example, a change from Version 5.0 to Version 6.0 would likely represent a New Version.

Section 7

Contract Terms and Conditions

- 2.16. **"New Release"** means any change issued by the Service Provider or its subcontractors to the Products or the Documentation that is not a New Version. New Releases are typically identified by changing the number to the right of the decimal point (e.g., going from Version 5.1 to 5.2).
- 2.17. **"Project"** refers to the project for the Service Provider to design, supply, install, configure, test, commission and maintain the System for the City in accordance with the terms and conditions in this Contract.
- 2.18. **"Project Plan"** means the detailed plan for implementation of the System as described in **Exhibit C**, in the form accepted in writing by the City.
- 2.19. **"Products"** means all Software and all Hardware (both as herein defined).
- 2.20. **"Project Schedule"** means the Project Schedule attached to this Contract mean **Exhibit C**.
- 2.21. **"Related Entity"** means any person or entity that is directly or indirectly in control of, controlled by, or under common control with the Service Provider, including but not limited to any parent, subsidiary, and affiliate entities. The word, "control," as used in this context, shall mean ownership of a sufficient percentage (not necessarily a majority) of the outstanding voting interests in an entity so as to afford effective control of the management of the entity.
- 2.22. **"Services"** means all services that the Service Provider provides or is required to provide under this Contract, including all Implementation Services and all Maintenance Services now or in the future.
- 2.23. **"Software"** means: (i) all Service Provider Software; (ii) all Customizations; (iii) all Third Party Software; and (iv) all New Releases and New Versions of any of the foregoing.
- 2.24. **"Specifications and Requirements"** means all definitions, descriptions, requirements, criteria, warranties and performance standards relating to the Products or System which are set forth or referenced in: (i) this Contract, including the Appendix; (ii) the main body of this Contract; (iii) other Exhibits to this Contract; (iv) the Documentation; and (v) any functional and/or technical specifications which are published or provided by the Service Provider or its licensors or suppliers from time to time with respect to all or any part of the Products or the System. Any conflict between the requirements or specifications referenced in subparts (i), (ii) (iii) (iv) or (v) of this definition shall be resolved in the order of priority in which they are listed; provided, however, that the City may, at its option, disregard the order of listing to resolve any such conflicts in a manner that takes advantage of new or enhanced functionality or features.
- 2.25. **"System"** means a Fats Oils Grease Application System to be designed, supplied, installed, configured, tested, commissioned and maintained by the Service Provider under this Contract, including but not limited to all Products.
- 2.26. **"System Acceptance"** means acceptance by the City of the complete System as provided in **Exhibit B** of this Contract.
- 2.27. **"Third Party Software"** means all software included within the System or required for the System to function in full compliance with the Specifications and Requirements that is provided by the Service Provider under this Contract and was not manufactured, developed or otherwise created by the Service Provider, any Related Entity of the Service Provider, or any of the Service Provider's subcontractors.
- 2.28. **"Warranty Period"** means the twelve (12)-month period following System Acceptance by the City.
- 2.29. **"Work Product"** means the Deliverables and all other programs, algorithms, reports, information, designs, plans and other items developed by the Service Provider in connection

Section 7

Contract Terms and Conditions

with this Contract, and all partial, intermediate or preliminary versions of any of the foregoing.

3. GENERAL DESCRIPTION OF SERVICES. The Service Provider shall provide the Implementation Services described in **Exhibit B** and any other design, development, supply, installation, consulting, System integration, Software development, project management, training, technical and other Services necessary to deliver and implement the System so that it is in production at the City in full compliance with the Specifications and Requirements on or before **[PLANNED ACCEPTANCE DATE]**. The Service Provider shall also provide the Maintenance Services described in **Exhibit D**. The Service Provider shall perform the Implementation Services on site at the City's facilities in Charlotte, North Carolina, except as otherwise stated in this Contract or agreed in writing by the City.

4. COMPENSATION.

4.1. **PURCHASE PRICE.** The City shall pay the Service Provider at the rates set forth in **Exhibit A** (the "Purchase Price") as full and complete consideration for the satisfactory performance of all the requirements of this Contract other than Maintenance Services beyond the Warranty Period ("Extended Maintenance Services"). The Purchase Price is allocated to the Products and Services in accordance with **Exhibit A**. The amount of the Purchase Price referenced in this Section constitutes the total fees, charges and expenses payable to the Service Provider under this Contract for everything other than the Extended Maintenance Services, and shall not be increased except by a written instrument duly executed by the City, which expressly states that it amends this Section of this Contract.

4.2. **MAINTENANCE FEES FOR EXTENDED MAINTENANCE.** The Maintenance Services shall be provided to the City at no charge for a period of one (1) year after System Acceptance (the "Warranty Period"). After the Warranty Period, the City shall have four (4) years to purchase Extended Maintenance Services from the Service Provider at a prices set forth in **Exhibit A**. The City shall be entitled to exercise its option to buy Extended Maintenance Service for a given one (1)-year option period by: (a) providing written notice to the Service Provider at any time prior to or within sixty days following the beginning of such one-year option period; or (b) payment of the Service Provider's invoice for such one-year option period. The Service Provider shall invoice the City for Maintenance Fees on an annual basis, but not more than sixty (60) days before the one (1)-year extended maintenance term being billed for begins.

4.3. **INVOICES.**

4.3.1. Each invoice sent by the Service Provider shall detail all Services performed and delivered which are necessary to entitle the Service Provider to the requested payment under the terms of this Contract.

All invoices must include the City purchase order number for purchases made under the Contract. Purchase order numbers will be provided by the City.

4.3.2. The Service Provider shall email all invoices to cocap@ci.charlotte.nc.us.

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.

4.4. **DUE DATE OF INVOICES.** Payment of invoices shall be due within thirty (30) days after the later of: (a) receipt of an undisputed properly submitted invoice by the City. For Extended Maintenance Service fees, only subpart (a) of the preceding sentence shall apply.

4.5. **ADDITIONAL PURCHASES.** For a period of eighteen (18) months after the date of this Contract, the City shall have the right to purchase and the Service Provider shall sell to the City all Hardware and Software listed in **Exhibit A** as optional items at the prices set forth in **Exhibit A**.

- 4.6. *PRE-CONTRACT COSTS.* The City shall not be charged for any Services or other work performed by the Service Provider prior to the Effective Date.
- 4.7. *AUDIT.* During the term of this Contract and for a period of two years after termination of this Contract, the City shall have the right to audit, either itself or through an independent auditor, all books and records and facilities of the Service Provider necessary to evaluate Service Provider's compliance with the terms and conditions of this Contract or the City's payment obligations. The City shall pay its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs of the Service Provider. However, if non-compliance is found that would have cost the City in excess of \$10,000 but for the audit, then the Service Provider shall be required to reimburse the City for the cost of the audit.
5. **TIME IS OF THE ESSENCE.** Time is of the essence in having the Service Provider perform all Services and deliver all Products within the time frames provided by this Contract and the Project Plan, 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.
6. **PRODUCT PURCHASE AND DELIVERY.**
- 6.1. *SERVICE PROVIDER TO PROVIDE ALL HARDWARE AND SOFTWARE.* As part of the Purchase Price, the Service Provider shall provide all Hardware, Software, labor, equipment and materials required by the City in order for the Fats Oils Grease Application System to perform in accordance with the Specifications and Requirements, except for those items that are specifically listed in **Exhibit C** as a City responsibility.
- 6.2. *DELIVERY SCHEDULE.* The Service Provider shall deliver the Products by the delivery dates set forth in the Project Schedule, as may be modified by the parties' mutual consent in the Project Plan.
- 6.3. *TITLE / RISK OF LOSS.* Except for loss or damage occurring in connection with the Service Provider's performance of services under this Contract, title and risk of loss of all Hardware shall pass to the City upon delivery of the Hardware to the City's premises.
- 6.4. *DELIVERY AND INSTALLATION COSTS.* All delivery and installation costs associated with the Hardware and the Software shall be borne by the Service Provider.
- 6.5. *SOFTWARE LICENSE FOR EMBEDDED SOFTWARE.* The Service Provider grants to the City the right to use all software which is embedded in or included with the Hardware ("Embedded Software") to the full extent necessary for the City to use the Hardware in the manner contemplated by this Contract. The City agrees to be bound by the terms and limitations of any licenses for Embedded Software which have been: (i) provided to the City in writing preceding delivery of such Hardware; and (ii) accepted by the City in writing. Notwithstanding the foregoing, in no event shall any terms or conditions of such licenses restrict the City from using the Hardware in the manner contemplated by this Contract, nor shall such terms or conditions in any way modify the City's rights under the License.
- 6.6. *TRANSFER OF WARRANTIES.* Without limiting the Service Provider's obligations to provide warranty Services or the Maintenance Services, the Service Provider hereby assigns and transfers to the City all of the Service Provider's warranties from the Service Provider's suppliers covering the Hardware, the Embedded Software and Third Party Software. The Service Provider will provide copies of such warranties to the City with delivery of the applicable Hardware or Software. While the Service Provider shall be entitled to make arrangements to have such warranty work performed by the supplier, nothing herein shall relieve the Service Provider of its obligation to correct Defects in the Hardware or the Software or to meet the time deadlines provided in this Contract for the correction of such Defects.

6.7. **REPLACEMENT EQUIPMENT.** The Service Provider shall execute all documents necessary to evidence the City's title to the Hardware, including Hardware replaced pursuant to warranty provisions or pursuant to the Maintenance and Support Contract.

7. DUTY OF SERVICE PROVIDER TO IDENTIFY AND REQUEST INFORMATION, PERSONNEL AND FACILITIES.

Throughout the duration of this Contract, the Service Provider shall identify and request in writing from the City Project Manager all City resources that may reasonably be required by the Service Provider to perform the Services (the "City Resources"), including all information, City staff, equipment, facility or materials needed by the Service Provider. The Service Provider shall request City Resources far enough in advance to allow adequate planning and availability on the City's part and to avoid unnecessary expense or overtime. Notwithstanding the foregoing, the Service Provider shall not be entitled to request that the City provide City Resources other than those identified as a City responsibility in **Exhibit C** (with respect to the Implementation Services) or **Exhibit E** (with respect to the Maintenance Services) unless the City can do so at no significant cost. If the City Project Manager fails to provide within a reasonable time period a City Resource that this Contract requires the City to provide, the Service Provider will notify the responsible City Department Director of such failure. The Service Provider shall not be relieved of any failure to perform under this Contract by virtue of the City's failure to provide any City resource: (i) that the Service Provider failed to identify and request in writing from the City pursuant to this Section; or (ii) which the City is not required to provide pursuant to this Contract. To the extent the Service Provider is excused from performance under the terms of this Section, the Service Provider will only be excused for delays that occur after it has given notice to the City Department Director of the City's failure.

8. REMOVAL, REPLACEMENT AND PROMOTION OF SERVICE PROVIDER PERSONNEL. The City will have the right to require the removal and replacement of any personnel of the Service Provider or the Service Provider's subcontractors who are assigned to provide Services to the City. The City shall be entitled to exercise such right in its sole discretion by providing written notice to the Service Provider.

The City must approve in writing any hires or transfers of personnel to "Key Personnel" positions on the Project, and the City shall have the right to interview all personnel that the Service Provider proposes to hire or transfer to such positions. As used in this Contract, the term "Key Personnel" shall mean the Service Provider Project Manager, and any other personnel of the Service Provider or its subcontractors who are identified as Key Personnel in an Exhibit to the Contract, or whom the City from time to time designates in writing to the Service Provider as fulfilling a key role in the Project. Unless approved by the City in writing, the Service Provider will not: (i) remove the Service Provider's Key Personnel from the Project or permit its subcontractors to remove Key Personnel from the Project; or (ii) materially reduce the involvement of the Service Provider's Key Personnel in the Project or allow its subcontractors to materially reduce the involvement of Key Personnel in the Project.

The Service Provider will replace any personnel who leave the Project with equivalently qualified persons. The Service Provider will replace such personnel as soon as reasonably possible, and in any event within thirty days after the Service Provider first receives notice that the person will be leaving the Project.

If the Service Provider gets more than 7 days behind in completing any Deliverable required by this Contract or the Project Plan, the Service Provider will devote all personnel assigned to the Project to working on the Project on a first priority basis.

As used in this Contract, the term "personnel" includes all staff provided by the Service Provider or its subcontractors, including but not limited to Key Personnel.

9. REPRESENTATIONS AND WARRANTIES OF SERVICE PROVIDER.

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- 9.1. *SPECIFIC WARRANTIES.* Service Provider represents, warrants and covenants that:
- a. For a period of twelve (12) months after System Acceptance (the “Warranty Period”), the System will fully comply with the Specifications and Requirements, and all federal, state and local laws, regulations, codes and guidelines that apply to it (including any changes to such laws, etc.).
 - b. All Products and Services delivered after System Acceptance shall fully conform to the Specifications and Requirements for a period of one year after acceptance of such Product or Service by the City.
 - c. For as long as the City exercises its options to purchase Extended Maintenance Services, the System will fully comply with the Specifications and Requirements, and all federal, state and local laws, regulations, codes and guidelines that apply to it (including changes to such laws, etc.).
 - d. All Software provided by the Service Provider or its subcontractors is and will be free of viruses, worms and Trojan horses, and any code designed to disable the Software because of the passage of time, alleged failure to make payments due, or otherwise (except for documented security measures such as password expiration functions);
 - e. Cloud Technology Requirements. In providing the Services, the Service Provider shall comply with the City of Charlotte Cloud Technology Requirements set forth in Exhibit J which is attached and incorporated into this Contract by reference.
 - f. In accordance with the North Carolina electronic data-processing records law N.C.G.S. §132-6-1:
 - 9.1.f.1. All Software and Documentation provided by the Service Provider or its subcontractors will have sufficient information and capabilities to enable the City to permit the public inspection and examination and to provide electronic copies of public records stored, manipulated or retrieved by the System; and
 - 9.1.f.2. All Software and Documentation provided by the Service Provider or its subcontractors will have sufficient information to enable the City to create an index containing the following information with respect to each database used by the System without extraordinary commitments of staff or resources: (i) annotated list of data fields: name, description, and restricted field indicator; (ii) description of the format or record layout; (iii) frequency with which the database is updated; (iv) list of any data fields to which public access is restricted; (v) description of each form in which the database can be copied or reproduced; (vi) title of the database; (vii) owner of the data; (viii) narrative description of the database; (ix) person creating the index; and (x) purpose of the database. The Service Provider agrees that the City may copy and disclose the information listed above in response to requests for database information under the North Carolina General Statutes.
 - g. All Documentation for the Products and the System is and will be in all material respects complete and accurate, and will enable data processing professionals and other City employees with ordinary skills and experience to utilize the Products and the System for the expressed purpose for which they are being acquired by the City;
 - h. All work performed by the Service Provider 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;
 - i. Neither the Services, nor the Products nor any Deliverables provided by the Service Provider under this Contract will violate, infringe or misappropriate any patent,

copyright, trademark or trade secret rights of any third party, or any other third party rights (including without limitation non-compete agreements); and

- j. All Hardware shall be delivered and shall remain free and clear of all liens and encumbrances. The Service Provider shall not place or allow to be placed on the Software any third party lien or encumbrance of any kind at any time which could conceivably interfere with the City's use of the Software or the Service Provider's maintenance of the Software.

Prior to System Acceptance, the Service Provider will correct all Defects in the System and the components thereof within the time frames set forth in **Exhibit C** and the Project Plan. During the Warranty Period and at all times during which the City has purchased Extended Maintenance Services, the Service Provider will correct all Defects and provide Maintenance Services pursuant to the **Exhibit E**.

If the Service Provider breaches the warranty set forth in **Section 9.1(a)**, the City, without limiting any other remedies it may have under this Contract or at law, shall be entitled to an immediate refund of all amounts paid to the Service Provider or its subcontractors or licensors under this Contract.

9.2. **ADDITIONAL WARRANTIES.** Service Provider further represents and warrants that:

- a. It is a corporation duly incorporated, validly existing and in good standing under the laws of the state of **North Carolina**;
- b. It has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Contract;
- c. The execution, delivery, and performance of this Contract have been duly authorized by the Service Provider;
- d. 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;
- e. 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
- f. The Service Provider shall not violate any agreement with any third party by entering into or performing this Contract.

10. REMEDIES.

10.1. **RIGHT TO COVER.** If the Service Provider fails to meet any completion date or resolution time set forth in this Contract (including the Exhibits) or the Project Plan, 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 Service Provider 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 Service Provider and, should the City's cost of obtaining or performing the services exceed the amount due the Service Provider, collect the amount due from the Service Provider.

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

- 10.3. ***SPECIFIC PERFORMANCE AND INJUNCTIVE RELIEF.*** The Service Provider agrees that monetary damages are not an adequate remedy for the Service Provider's failure to provide the Products, Services or System as required by this Contract, nor could monetary damages be the equivalent of the performance of such obligation. Accordingly, the Service Provider hereby consents to an order granting specific performance of such obligations of the Service Provider in a court of competent jurisdiction within the State of North Carolina. The Service Provider further consents to the City obtaining injunctive relief (including a temporary restraining order) to assure performance in the event the Service Provider breaches the Contract.
- 10.4. ***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 as a result of the other party's breach of this Contract.
- 10.5. ***LIQUIDATED DAMAGES.*** The City and the Service Provider acknowledge and agree that the City will incur costs if the Service Provider fails to meet one or more of the time frames for delivering Services and Products under this Contract and the Project Plan, including all completion dates, response times and resolution times (the "Completion Dates"). The parties further acknowledge and agree that the costs that the City might reasonably be anticipated to accrue as a result of such failures are difficult to ascertain due to their indefiniteness and uncertainty.

Liquidated Damages shall be negotiated with Service Provider during contract award.

The liquidated damages referenced above are not intended to compensate the City for any costs other than inconvenience and delay in the implementation or loss of use of the System. The existence or recovery of such delay costs shall not preclude the City from recovering other amounts which the City can document as being attributable to a failure to meet such Completion Dates, including but not limited to the cost of internal staff hours or amounts paid to third parties (such as other vendors or independent contractors) as a result of such failure.

- 10.6. ***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.

11. REGENERATION OF LOST OR DAMAGED DATA. With respect to any data which has been lost or damaged due to an act or omission of the Service Provider or its subcontractors, the Service Provider shall, at its own expense: (a) promptly replace or regenerate such data from the City's machine-readable supporting material, or (b) obtain a new machine-readable copy of lost or damaged data from the City's data sources. The Service Provider shall further reload and restore such data at the Service Provider's expense. The Service Provider shall not be responsible for any expenses that are the result of the failure of the City to maintain backup data in accordance with the City's regular schedule.

12. TERMINATION.

- 12.1. ***TERM.*** Unless terminated in accordance with its terms, this Contract shall commence on the Effective Date, and shall continue until the end of the five (5) year term. If additional licenses, maintenance services, and/or services are needed after expiration, the City will negotiate new terms and conditions.
- 12.2. ***TERMINATION WITHOUT CAUSE.*** The City may terminate this Contract at any time without cause by giving thirty (30) days written notice to the Service Provider. As soon as practicable after receipt of a written notice of termination without cause, Service Provider shall submit a statement to the City showing in detail the Services performed under this Contract through the date of termination. In the event of termination without cause pursuant to this Section, the City agrees to: (i) pay the Service Provider a pro rata amount of the purchase price for Implementation Services rendered through the termination date based on

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percentage of completion of the applicable payment Milestones; and (ii) return all Hardware which the City elects not to keep, and (iii) pay the Service Provider for any Hardware received by the City which the City has elected to keep, or which has been damaged by the City so as to preclude return. The foregoing payment obligation is contingent upon: (i) the Service Provider having fully complied with **Section 12-7**; and (ii) the Service Provider having provided the City with written documentation reasonably adequate to verify the number of hours of Services rendered by each person through the termination date and the percentage of completion of each task.

12.3. *TERMINATION FOR DEFAULT BY EITHER PARTY.* By giving written notice to the other party, either party may terminate this 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 this Contract, provided that, unless otherwise stated in this 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 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 this 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 pursuant to this **Section 12.3** shall identify this Section of this Contract and shall state the party's intent to terminate this Contract if the default is not cured within the specified period.

12.4. *ADDITIONAL GROUNDS FOR DEFAULT TERMINATION BY THE CITY.* By giving written notice to the Service Provider, the City may also terminate this Contract upon the occurrence of one or more of the following events (which shall each constitute 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 Service Provider to complete and deliver a particular Product, Deliverable or Service by the completion date set forth in this Contract (including the Exhibits) or the Project Plan;
- b. Failure of the Service Provider to correct all Defects and deficiencies identified by the City with respect to a Deliverable within the time period set forth in **Exhibit B**;
- c. Failure of the Service Provider to correct all items identified in a Rejection Notice within the time period specified in **Exhibit B**;
- d. Failure of the Service Provider to resolve a problem within the time set forth in **Exhibit D** regarding Maintenance Services (whether during the Warranty Period or during Extended Maintenance Services);
- e. The Service Provider makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Contract, Service Provider's Proposal, or any covenant, agreement, obligation, term or condition contained in this Contract; or
- f. The Service Provider takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Contract, including but not limited to

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failure to obtain or maintain the insurance policies and endorsements as required by this Contract, or failure to provide the proof of insurance as required by this Contract.

- 12.5. **TERMINATION FOR FAILURE TO AGREE ON PROJECT PLAN.** If the parties have not finalized and agreed upon the Project Plan by the date set forth in the Project Schedule, the City shall be entitled to terminate this Contract and receive a refund of all amounts paid to the Service Provider.
- 12.6. **CROSS TERMINATION.** A default by the City under **Exhibit D** shall constitute grounds for terminating the Maintenance Services if not cured as provided above, but shall not constitute a basis for the Service Provider to terminate the License or any other obligations the Service Provider may have under this Contract. A default by the City under **Exhibit B** shall constitute grounds for terminating the Implementation Services if not cured as provided above, but shall not constitute a basis for the Service Provider to terminate the License, the Maintenance Services or any other obligations the Service Provider may have under this Contract. Otherwise, a default by either party under any Exhibit or Attachment of this Contract, or the main body of this Contract, shall be regarded as a default under the entire Contract
- 12.7. **OBLIGATIONS UPON EXPIRATION OR TERMINATION.** Upon expiration or termination of this Contract, the Service Provider shall promptly (a) return to the City all computer programs, files, documentation, data, media, related material and any other material and equipment that is owned by the City; (b) deliver to the City all Work Product; (c) allow the City or a new service provider access to the systems, software, infrastructure, or processes of the Service Provider that are necessary to mitigate the Services to a new service provider; and (d) refund to the City all pre-paid Maintenance Fees based on a pro-rata as determined by the City.
- 12.8. **TRANSITION OF CONTRACT DATA.** Upon expiration or termination of this Contract for any reason, The Service Provider 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.
- 12.9. **NO SUSPENSION.** In the event that the City disputes in good faith an allegation of default by the Service Provider, notwithstanding anything to the contrary in this Contract, the Service Provider agrees that it will not terminate this Contract or suspend or limit the delivery of Products or Services or any warranties or repossess, disable or render unusable any Software supplied by the Service Provider, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.
- 12.10. **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; (b) the Department Director of the City Department responsible for administering this Contract.

13. Transition Assistance Services. Upon termination or expiration of this Contract, the Service Provider shall, at no cost to the City, cooperate with the City to assist with the orderly transfer of the Services, including the Cloud Services, functions and operations provided by the Service Provider, 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 Service Provider shall perform if requested by the City include but are not limited to:

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

- 13.2. Notifying all affected service providers and subcontractors of the Service Provider of transition activities;
- 13.3. 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;
- 13.4. 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 Service Provider in connection with the Cloud Services;
- 13.5. 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 Service Provider in connection with the Cloud Services; and,
- 13.6. Performing the transition service plan activities;
- 13.7. Answering questions on an as-needed basis; and
- 13.8. 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 Contract.

- 14. CHANGES.** In the event changes to the Services (collectively “Change”), 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 which expressly references 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 Service Provider 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 a Department Director, the City Manager, or an Assistant City Manager; depending on the amount. Some increases may also require approval by City Council.

15. INTELLECTUAL PROPERTY.

- 15.1. *SERVICE PROVIDER OWNERSHIP.* The Service Provider shall have exclusive ownership of intellectual property rights in all Service Provider Software and related Documentation, including but not limited to all copyrights, patents and trade secrets (collectively “Service Provider Intellectual Property”). The Service Provider grants the City a perpetual, royalty-free, non-exclusive license to use and copy the Service Provider Intellectual Property for all purposes of the City and the Affiliates in accordance with the terms of the License.
- 15.2. *CITY OWNERSHIP.* The City shall have exclusive ownership of all intellectual property rights in all Customizations, Deliverables and other Work Product created by the Service Provider or its subcontractors in connection with this Contract, including all modifications, Updates, Enhancements and Documentation relating thereto, and including but not limited to all copyrights, patents and trade secrets (collectively “City Intellectual Property”). The Service Provider hereby assigns and transfers all rights in the City Intellectual Property to the City. The Service Provider 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 City Intellectual Property, including all rights under patent and copyright law. The Service Provider 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.

The City Intellectual Property shall not include Deliverables created by the Service Provider for other customers prior to the date of this Contract, provided that the Service Provider shall notify the City in writing of any Deliverables that are not City Intellectual Property at the time it submits such Deliverables. The City grants the Service Provider a royalty-free, non-exclusive license to use and copy the City Intellectual Property to the extent necessary to perform this Contract. The Service Provider shall not be entitled to use the City Intellectual Property for other purposes without the City's prior written consent, and shall treat the City Intellectual Property as "Confidential Information" under the Confidentiality Contract.

16. OTHER OBLIGATIONS OF SERVICE PROVIDER.

- 16.1. *WORK ON CITY'S PREMISES.* The Service Provider will ensure that its employees and agents shall, whenever on the City's premises, obey all instructions and directions issued by the City with respect to rules, regulations, policies and security procedures applicable to work on the City's premises. The Service Provider agrees that its personnel and the personnel of its subcontractors will comply with all such rules, regulations and security procedures when on the City's premises.
- 16.2. *DAMAGE TO EQUIPMENT OR FACILITIES.* The Service Provider shall be responsible for any damage to or loss of the City's equipment or facilities arising out of the negligent or willful act or omission of the Service Provider or its subcontractors.
- 16.3. *RESPECTFUL AND COURTEOUS BEHAVIOR.* The Service Provider shall assure that its employees interact with City employees and with the public in a courteous, helpful and impartial manner. All employees of the Service Provider 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 Service Provider.
- 16.4. *NC E-VERIFY REQUIREMENT.* The Service Provider shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and shall require each of its subcontractors to do so as well.
- 16.5. *NC PROHIBITION ON CONTRACTS WITH COMPANIES THAT INVEST IN IRAN OR BOYCOTT ISRAEL.* Service Provider certifies that: (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 147-86.58 (collectively, the "Treasurer's IDA List"); (ii) it has not been designated by the NC State Treasurer pursuant to N.C.G.S. 147-86.81 as a Service Provider engaged in the boycott of Israel (such designation being referred to as the "Treasurer's IB List"); and (iii) it will not take any action causing it to appear on the Treasurer's IDA List or the Treasurer's IB List during the term of this Contract. In signing this Contract Service Provider further agrees, as an independent obligation, separate and apart from this Contract, to reimburse the City for any and all damages, costs and attorneys' fees incurred by the City in connection with any claim that this Contract or any part thereof is void due to Service Provider appearing on the Treasurer's IDA List or the Treasurer's IB List at any time before or during the term of this Contract.

17. NEW TECHNOLOGY. The parties recognize that technology may change during the term of this Contract. Accordingly, the parties agree as follows:

- 17.1. The Service Provider shall provide the City with prompt written notice of all upgrades, enhancements and modifications to the Products or Services that become available during the term of this agreement (the "New Technology").

- 17.2. Unless specified in writing by the City in a specific instance, all Products provided by the Service Provider will be the latest, most recent version available as of the time of installation. The Service Provider will schedule installation of all Products as late in the process as is reasonably practicable to meet the Project Plan deadlines. Unless specified in writing by the City in a specific instance, the Service Provider will continually update the Software after installation at no additional cost and it shall be a condition of System Acceptance that all Software be the latest, most current version available as of the date of System Acceptance.
- 17.3. If the Service Provider causes a delay in the Project of six months or more, it shall be a condition of System Acceptance (at the City's option) that the Hardware is the latest, most recent version available as of six months prior to the date of System Acceptance.
- 17.4. Notwithstanding anything contained in this Contract to the contrary, the City shall have the option to reject proposed New Technology and to accept less than the most current version of the Products by providing written notice to the Service Provider.
- 17.5. The Service Provider shall make the New Technology available to the City at no additional cost if required by this Contract, or if New Technology is generally commercially available to the Service Provider's customers at no additional cost. Notwithstanding the foregoing, there shall be no additional charges for providing the most recent version of the Hardware as required by **Section 17.2** or **17.3**.
- 17.6. The Service Provider shall provide additional details and estimated prices to the City at the request of the City, if the City wants to consider further the possible addition of the New Technology.
- 17.7. Notwithstanding anything contained herein to the contrary, neither the acceptance of proposed New Technology by the City nor the amendment of this Contract to incorporate New Technology shall relieve the Service Provider from its obligations under this Contract to satisfy the Specifications and Requirements.

18. INDEMNIFICATION. To the fullest extent permitted by law, the Service Provider 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 any of them 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 Work 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 Service Provider or its subcontractors in connection with this Contract; or (iii) arising from the Service Provider's failure to perform its obligations under this Contract, or from any act of negligence or willful misconduct by the Service Provider 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; or (iv) arising from the Service Provider's violation of any law (including without limitation immigration laws); or (v) any claim that the Service Provider or an employee or subcontractor of the Service Provider is an employee of the City, including but not limited to claims relating to worker's compensation, failure to withhold taxes and the like; or (vi) arising from a violation of any federal, state or local law, regulation or ordinance by the Service Provider or any of its subcontractors, including without limitation E-Verify or other immigration laws. 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 Service Provider); 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 Service Provider 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

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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 Service Provider is unable to comply with the preceding sentence within thirty days after the City is directed to cease use of a Product or Service, the Service Provider shall promptly refund to the City all amounts paid under this Contract.

This **Section 18** shall remain in force despite termination of this Contract (whether by expiration of the term or otherwise).

19. INSURANCE. Throughout the term of this Contract, the Service Provider shall comply with the insurance requirements described in this Section. In the event the Service Provider fails to procure and maintain each type of insurance required by this Contract, or in the event the Service Provider fails to provide the City with the required certificates of insurance, the City shall be entitled to terminate this Contract immediately upon written notice to the Service Provider.

19.1. General Requirements.

- 19.1.1. The Service Provider shall not commence any work in connection with this Contract until it has obtained all of the types of insurance set forth in this **Section 19**, and the City has approved such insurance. The Service Provider shall not allow any subcontractor to commence work on its subcontract until all insurance required of the subcontractor has been obtained and approved.
- 19.1.2. All insurance policies required by **Section 19.1** shall be with insurers qualified and doing business in North Carolina recognized by the Secretary of State and the Insurance Commissioner's Office. The Service Provider shall name the City as an additional insured under the commercial general liability policy required by **Section 19.1**
- 19.1.3. The Service Provider's insurance, except for Automobile Liability, shall be primary of any self-funding and/or insurance otherwise carried by the City for all loss or damages arising from the Consultant's operations under this agreement. The Service Provider and each of its subcontractors shall and does waive all rights of subrogation against the City and each of the Indemnitees (as defined in **Section 18**).
- 19.1.4. The City shall be exempt from, and in no way liable for any sums of money that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Service Provider and/or subcontractor providing such insurance.
- 19.1.5. Within 3 days after execution of this Contract, the Service Provider shall provide the City with certificates of insurance documenting that the insurance requirements set forth in this **Section 19** have been met, and that the City be given thirty (30) days' written notice of any intent to amend coverage or make material changes to or terminate any policy by either the insured or the insurer. The Service Provider shall further provide such certificates of insurance to the City at any time requested by the City after execution of this Contract, and shall provide such certificates within five (5) days after the City's request. The City's failure to review a certificate of insurance sent by or on behalf of the Service Provider shall not relieve the Service Provider of its obligation to meet the insurance requirements set forth in this Contract.
- 19.1.6. Should any or all of the required insurance coverage be self-funded/self-insured, the Service Provider shall furnish to the City a copy of the Certificate of Self-Insurance or other documentation from the North Carolina Department of Insurance.

If any part of the work under this contract is sublet, the subcontractor shall be required to meet all insurance requirements set forth in this **Section 19**, provided that the amounts of the various types of insurance shall be such amounts as are approved by the City in writing. However, this will in no way relieve the Consultant from

meeting all insurance requirements or otherwise being responsible for the subcontractor

19.2. *Types of Insurance.* The Service Provider agrees to purchase and maintain during the life of this Contract with an insurance Service Provider, acceptable to the City, authorized to do business in the State of North Carolina the following insurance:

- 19.2.1. **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.
- 19.2.2. **Commercial General Liability.** Bodily injury and property damage liability as shall protect the Service Provider and any subcontractor performing work under this Contract, from claims of bodily injury or property damage which arise from operation of this Contract, whether such operations are performed by the Service Provider, 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 and advertising injury, and contractual liability, assumed under the indemnity provision of this Contract.
- 19.2.3. **Errors and Omissions Liability Insurance** as shall protect the Service Provider and his employees from claims alleging the failure to provide the services required by this Contract. This policy shall be specific to the performance of this Contract and shall provide limits of \$1,000,000 each occurrence/aggregate. Proof of this policy of insurance shall be submitted to the City's Risk Management Division before acceptance.
- 19.2.4. **Electronic Errors and Omissions.** If the risks typically covered by Electronic Errors and Omissions Insurance are not covered by the Service Provider's Errors and Omissions Insurance, the Service Provider shall purchase an electronic errors and omissions insurance policy having aggregate limits of \$1,000,000 and occurrence limits of \$750,000, respectively.
- 19.2.5. **Workers' Compensation Insurance.** The Service Provider shall meet the statutory requirements of the State of North Carolina, \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit.

The City shall be named as additional insured under the commercial general liability insurance for operations or services rendered under this Contract. Certificates of all required insurance shall be furnished to the City and shall contain the provision that the City will be given thirty (30) day written notice of any intent to amend or terminate by either the insured or the insuring Service Provider.

20. SECURITY

20.1. DATA SECURITY AND PRIVACY

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

20.1.2. **General Requirements.** With respect to Contract Data, the Service Provider shall:

- 20.1.2.1. Establish and maintain safeguards against the destruction, loss, unauthorized alteration of, or unauthorized access to the Contract Data;
 - 20.1.2.2. Comply with all laws and regulations that may apply to the Contract Data, including without limitation all laws relating to identity theft;
 - 20.1.2.3. Store all Contract Data in accordance with Peripheral Component Interconnect (or successor) standards then in effect (“PCI Standards”);
 - 20.1.2.4. Encrypt all personally identifiable information, credit card data that is transmitted to or from the Service Provider’s systems in connection with this Contract;
 - 20.1.2.5. 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
 - 20.1.2.6. Ensure that transmission of Contract Data to and from the Service Provider’s system is secure.
- 20.1.3. **Authentication.** The Service Provider 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.
- 20.1.4. **Preventing Unauthorized Access.** The Service Provider shall identify in writing a security administrator to coordinate with the City. The Service Provider 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 Service Provider employees. The Service Provider will take appropriate measures to address any such misuse or unauthorized access.
- 20.1.5. **If Unauthorized Access is suspected.** The Service Provider shall promptly investigate any suspicion or allegation of misuse or unauthorized access to Contract Data. If the Service Provider learns or has reason to believe that Contract Data has been disclosed or accessed by an unauthorized party, the Service Provider shall notify the City immediately and shall take at the Service Provider’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 Service Provider are the responsibility of the third party to provide. This in no way limits the Service Provider’s responsibility for notifying the City of the identified vulnerability.
- 20.1.6. **City’s Right to Obtain Contract Data.** The Service Provider 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 Service Provider shall retain all Contract Data through the duration of this Contract. When requested by the City from time to time, the Service Provider 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 Service Provider 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 Service Provider’s

possession, except to the extent the Service Provider is required to maintain copies of such Contract Data by state or federal law or regulation. If requested by the City, the Service Provider shall allow the City access to the Service Provider's systems if reasonably needed to use, search, and copy or access the Contract Data. The Service Provider shall comply with its obligations under this Section at no cost to the City.

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

20.1.8. **Right of Audit by City.** The City shall have the right to review the Service Provider'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 Service Provider's information security program. In lieu of an on-site audit, upon request by the City, the Service Provider agrees to complete, within 45 days of receipt, an audit questionnaire provided by Customer regarding Service Provider's information security program.

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

20.2.1. **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 must be several levels of security that must be passed where each entry point provides state of the art card readers, scanners, and other access devices.

20.2.2. **Network Security.** Service Provider's network must be protected by redundant firewalls and monitored for unauthorized access. City access will be configured through a dedicated VLAN. Firewall logs must be constantly monitored, and the logs reviewed on a regular basis. Leading-edge firewall equipment must be provided by the Service Provider to protect the network. The network must be architected to be highly reliable and redundant. If a router, load balancer, or firewall should fail, there must be redundancy built in that would allow failover to take place, without causing a loss of service to our customers. Service Provider shall use ssh encryption via RSA (ssh1) and DSA (ssh2) public keys for communication between servers.

20.2.2.1. Firewall Management within the Service Provider data centers. The Service Provider shall complete the following activities:

20.2.2.1.1. Monitoring and management of firewall appliances, and VPN connectivity to the Service Provider data centers;

20.2.2.1.2. VPN City connectivity to the City's on-premise firewall;

20.2.2.1.3. Management of firewall firmware upgrades;

20.2.2.1.4. Get approval from the City before making any Changes to the firewall configuration;

20.2.2.1.5. Logging for the firewall and servers shall be sent to the City SIEM solution at the City discretion;

20.2.2.1.6. In the event Service Provider identifies a suspected security breach, Service Provider will notify the City of the breach immediately; and

20.2.2.1.7. Provide Check Point Firewall, IPS, and Web Security logs via an OPSEC integration with the hosted Check Point SmartCenter.

20.2.2.1.8. Restrict database users to a controlled list; individual activities to be restricted, logged and monitored.

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

20.2.3.1. **Anti-Virus.** The Service Provider shall complete the following activities:

20.2.3.1.1. Install anti-virus software on Service Provider managed servers;

20.2.3.1.2. Maintain all anti-virus and anti-spam systems with the latest patches, engines and heuristics; and

20.2.3.1.3. Scan, quarantine, and clean all in-bound and out-bound files (including email attachments) for viruses.

20.2.4. **Cloud Services Security.** Service Provider shall provide that Customers that access the Cloud Services must use password authentication. The design of the application must be robust so as to prevent one of the Service Provider's customers from accessing another customer's data. There must be several layers of protected servers that stand between the web page where the customer logs in and the actual data.

20.2.5. **Security Patches.** Where it does not impact application supportability, security patches to Platform Software will be applied within 6 months of being released.

20.2.6. **Passwords.** Service Provider must use tightly controlled passwords on its servers and network equipment. Passwords must be changed on a regular basis. Service Provider's Platform Software shall not share the same passwords.

21. LICENSING. The Service Provider 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 Service Provider 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 Service Provider.

22. 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 activities of the other; (ii) constitute such parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking; (iii) make either party an agent of the other for any purpose whatsoever, or (iv) give either party the authority to act for, bind, or otherwise create or assume any obligation on behalf of

the other. Nothing herein shall be deemed to eliminate any fiduciary duty on the part of the Service Provider to the City that may arise under law or under the terms of this Contract.

- 23. CONFIDENTIALITY AGREEMENT.** The parties acknowledge that they have executed and entered into a Confidentiality Agreement prior to the execution of this Contract (the “Confidentiality Agreement”), and that they are bound by all terms contained in the Confidentiality Agreement with respect to any Confidential Information which either of them obtains access to in connection with this Contract.

24. COMMERCIAL NON-DISCRIMINATION.

As a condition of entering into this Contract, the Service Provider represents and warrants that it will fully comply with the City's Commercial Non-Discrimination Policy, as described in Section 2, Article V of the Charlotte City Code, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the Service Provider shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, age or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors or suppliers in connection with a City contract or contract solicitation process, nor shall the Service Provider retaliate against any person or entity for reporting instances of such discrimination. The Service Provider 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. The Service Provider understands and agrees that a violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of the Service Provider from participating in City contracts or other sanctions.

As a condition of entering into this Contract, the Service Provider agrees to: (a) promptly provide to the City in a format specified by 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 days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the Service Provider has used on City contracts in the past five years, including the total dollar amount paid by the Service Provider on each subcontract or supply contract. The Service Provider 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 Service Provider agrees to provide to the City from time to time on the City's request, payment affidavits detailing the amounts paid by the Service Provider 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 Service Provider 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, disqualification of the Service Provider from participating in City contracts and other sanctions.

- 25. NOTICES.** 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. Notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by telefax or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier. Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.

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- 25.1. Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment, or waiver of any provision of this Contract shall be sent to:

For the Service Provider:

PHONE: _____

FAX: _____

E-MAIL: _____

With Copy To (Service Provider):

PHONE: _____

EMAIL: _____

For the City:

Lou Forrasi
Charlotte Water
Procurement
5100 Brookshire Blvd.
Charlotte, NC 28216
PHONE: 704-998-9651
FAX: 704-632-8588
louis.forrasi@charlottenc.gov

With Copy To:

Thomas Powers
City of Charlotte
City Attorney's Office
600 East Fourth Street
CMGC 15th Floor
Charlotte, NC 28202
PHONE: 704-336-5877
tpowers@ci.charlotte.nc.us

All other notices shall be sent to the other party's Project Manager at the most recent address provided in writing by the other party.

26. MISCELLANEOUS.

- 26.1. *ENTIRE AGREEMENT.* This Contract, (including all Exhibits and Attachments), and the Confidentiality Agreement constitute the entire agreement between the parties with respect to the subject matter herein. 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.
- 26.2. *AMENDMENT.* No amendment or change to this Contract shall be valid unless in writing and signed by the party against whom enforcement is sought.
- 26.3. *GOVERNING LAW AND VENUE.* North Carolina law shall govern the interpretation and enforcement of this Contract, and any other matters relating to this Contract (all without regard to North Carolina conflicts of law principles). All legal actions or other proceedings relating to this Contract shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By execution of this Contract, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections they may have with respect to venue in any court sitting in Mecklenburg County, North Carolina.
- 26.4. *BINDING NATURE AND ASSIGNMENT.* This Contract shall bind the parties and their successors and permitted assigns. Neither party may assign this Contract without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void. For purposes of this Section, a Change in Control, as defined in **Section 29.12** shall constitute an assignment.
- 26.5. *NO DELAY DAMAGES.* Under no circumstances shall the City be liable to the Service Provider for any damages arising from delay, whether caused by the City or not.
- 26.6. *FORCE MAJEURE PRIOR TO SYSTEM ACCEPTANCE.* The following force majeure provisions shall apply to the Service Provider prior to System Acceptance and to the City at all times. Neither party shall 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:

- (a) if such failure or delay:
 - 1. could not have been prevented by reasonable precaution;
 - 2. cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and
 - 3. 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.
- (b) An event which satisfies all of the conditions set forth above shall be referred to as a "Force Majeure Event." Upon the occurrence of a Force Majeure Event, the affected party shall be excused from any further performance of those of its obligations which are affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) the affected party continues to use reasonable efforts to recommence performance whenever and to whatever extent possible without delay.
- (c) Upon the occurrence of a Force Majeure Event, the affected party shall promptly notify the other by telephone (to be confirmed by written notice within five (5) 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 Service Provider from performing its obligations for more than fifteen (15) days, the City shall have the right to terminate this Contract by written notice to the Service Provider.
- (d) Notwithstanding anything contained herein to the contrary, strikes, slow-downs, walkouts, lockouts, and industrial disputes of the Service Provider or its subcontractors shall not constitute "Force Majeure Events" and are not excused under this provision. The parties expressly acknowledge that Year 2000-related interruptions in operations or in the supply of the products or services of the Service Provider or its not excused under this provision. Nothing in the preceding Force Majeure provisions shall relieve the Service Provider of any obligation it may have regarding disaster recovery, whether under this Contract or at law.

26.7. *FORCE MAJEURE AFTER SYSTEM ACCEPTANCE.* The following force majeure provisions shall apply to the Service Provider after System Acceptance. After System Acceptance, the Service Provider shall not be excused from performance under this Contract by virtue of force Majeure events. The Service Provider shall take precautions sufficient to ensure that force Majeure events (including but not limited to fire, flood, earthquake, hurricane, elements of nature, strikes, labor disputes, terrorism and acts of God) do not result in any failure or delay in the performance of the Service Provider's obligations pursuant to this Contract. Failure to comply with this provision will constitute a default under this Contract, and grounds for immediate termination.

26.8. *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 this Contract so long as the material purposes of this 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.

26.9. *NO PUBLICITY.* No advertising, sales promotion or other materials of the Service Provider or its agents or representations may identify or reference this Contract or the City in any

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- manner without the prior written consent of the City. Notwithstanding the foregoing, the parties agree that the Service Provider may list the City as a reference in responses to requests for proposals, and may identify the City as a customer in presentations to potential customers.
- 26.10. *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 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.
- 26.11. *SURVIVAL OF PROVISIONS*. Those Sections of this Contract and the Exhibits which by their nature would reasonably be expected to continue after the termination of this Contract shall survive the termination of this Contract, including but not limited all definitions and each of the following:
- Definitions
 - Additional Purchases
 - Audit
 - Software License for Embedded Software
 - Transfer of Warranties
 - Replacement Equipment
 - Representations and Warranties
 - Termination
 - Intellectual Property
 - Indemnification
 - Commercial Non-Discrimination
 - Notices
 - Miscellaneous
- 26.12. *CHANGE IN CONTROL*. In the event of a change in “Control” of the Service Provider (as defined below), the City shall have the option of terminating this Contract by written notice to the Service Provider. The Service Provider shall notify the City within ten 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 Service Provider or (ii) the power to direct or cause the direction of the management and policies of the Service Provider whether through the ownership of voting securities, by contract or otherwise.
- 26.13. *NO BRIBERY*. The Service Provider certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the foregoing has bribed or attempted to bribe an officer or employee of the City in connection with this Contract.
- 26.14. *FAMILIARITY AND COMPLIANCE WITH LAWS AND ORDINANCES*. The Service Provider 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 Service Provider 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 work.
- 26.15. *TAXES*. Except as specifically stated elsewhere in this Contract, the Service Provider shall pay all applicable federal, state and local taxes which may be chargeable against the performance of the Services. The Service Provider consents to and authorizes the City to collect any and all delinquent taxes and related interest, fines, or penalties of the Service Provider by reducing any payment, whether monthly, quarterly, semi-annually, annually, or

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otherwise, made by the City to the Service Provider pursuant to this Contract for an amount equal to any and all taxes and related interest, fines, or penalties owed by the Service Provider to the City. The Service Provider 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 Service Provider from filing an appeal of the assessment of the delinquent tax if such appeal is within the time prescribed by law.

- 26.16. *TITLES OF SECTIONS.* The section headings inserted herein are for convenience only, and are not intended to be used as aids to interpretation and are not binding on the parties.
- 26.17. *CONSTRUCTION OF TERMS.* 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.

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Contract Terms and Conditions Exhibit A

PRICE SCHEDULE AND COMPONENTS KNOWN AS OF THE EFFECTIVE DATE

This Exhibit is incorporated into and made a part of the Contract for Fats Oils Grease Application between the City of Charlotte (the “City”) and [INSERT SERVICE PROVIDER NAME] (the “Service Provider”). Unless otherwise defined herein, capitalized terms in this Exhibit shall have the same meanings as are assigned to such terms in the main body of the Contract.

Nothing in this Exhibit shall be deemed to eliminate the Service Provider’s obligation to provide alternative or updated Products to the extent required by **Exhibit B** or other provisions of the MCSI.

Contract Terms and Conditions Exhibit B
SCOPE OF IMPLEMENTATION SERVICES

Contract Terms and Conditions Exhibit C

PROJECT SCHEDULE

This Exhibit is incorporated into and made a part of the Contract Fats Oils Grease Application between the City of Charlotte (the “City”) and [INSERT SERVICE PROVIDER NAME] (the “Service Provider”). Unless otherwise defined herein, capitalized terms in this Exhibit shall have the same meanings as are assigned to such terms in the main body of the Contract.

The Service Provider shall deliver all Products and perform all Services in accordance with the attached Project Schedule (which is incorporated herein by reference). The dates on the attached Project Schedule shall be incorporated into the Project Plan, unless revised by the mutual written agreement of the parties.

Contract Terms and Conditions Exhibit D

MAINTENANCE SERVICES

This Exhibit is incorporated into and made a part of the Contract for Fats Oils Grease Application between the City of Charlotte (the “City”) and [INSERT SERVICE PROVIDER NAME] (the “Service Provider”). Unless otherwise defined herein, capitalized terms in this Exhibit shall have the same meanings as are assigned to such terms in the main body of the Contract.

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Contract Terms and Conditions Exhibit E

LICENSE

This Exhibit is incorporated into and made a part of the Contract for Fats Oils Grease Application between the City of Charlotte (the “City”) and [INSERT SERVICE PROVIDER NAME] (the “Service Provider”). Unless otherwise defined herein, capitalized terms in this Exhibit shall have the same meanings as are assigned to such terms in the main body of the Contract. For purposes of this Exhibit only, the term “Software” shall not be deemed to include Customizations, given that the Customizations are owned by the City and require no license.

Contract Terms and Conditions Exhibit F

REQUIREMENTS

These Requirements are incorporated into and made a part of the Contract for Fats Oils Grease Application between the City of Charlotte (the “City”) and **[INSERT SERVICE PROVIDER NAME]** (the “Service Provider”). Unless otherwise defined herein, capitalized terms in this Exhibit shall have the same meanings as are assigned to such terms in the main body of the Contract.

Note To Drafter: Include each of the following in this Exhibit:

- *General description of the System from the Service Provider’s Proposal.*
- *All requirements and specifications included in the RFP, and the Service Provider’s response to each. Make sure to resolve all conflicts and clarify all responses that are anything other than an acknowledgement of full compliance.*
- *All other information from the Service Provider’s Proposal that describes the System*
- *Any brochures or other marketing materials provided by the Service Provider about the System.*
- *All other standards that the System must meet. (published specifications, user manuals, etc.)*
- *Include a standard that the converted data will be successfully processed by the new System*
- *Include response times for the System to perform certain tasks (online processing of data, retrieving of data from databases, moving from screen to screen, printing reports, and overnight batch processing times for large data volumes). Example: The System will allow users to move from screen within 2 seconds after hitting the appropriate key 98% of the measurable time period when the System is in use. Do not use average response times – they are very difficult to measure.*
- *Include a requirement for System availability or “uptime.”*

***WHEN INCLUDING SECTIONS OF THE SERVICE PROVIDER’S PROPOSAL AND MARKETING MATERIALS, BE CAREFUL NOT TO INCLUDE, DISCLAIMERS OR LEGAL TERMS AND CONDITIONS. ALSO, BE CAREFUL NOT TO INCLUDE ANY QUALIFICATIONS, ‘WIGGLE WORDS’ OR GENERAL STATEMENTS THAT CONFLICT WITH THE REQUIREMENTS OF THE RFP THAT THE SERVICE PROVIDER AGREED TO MEET.**

Contract Terms and Conditions Exhibit G

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the "Agreement") is made and entered into as of this ____ day of _____, 201_ (the "Effective Date"), by and between the City of Charlotte, a North Carolina municipal corporation (the "City"), and [INSERT SERVICE PROVIDER NAME], a [INSERT STATE OF INCORPORATION OR STATE "A SERVICE PROVIDER DOING BUSINESS IN NORTH CAROLINA"] corporation (the "Service Provider").

WHEREAS, the City and Service Provider are contemplating or have entered into certain business relationships and have exchanged and/or may need to exchange confidential information in connection with discussions of such relationships; and

WHEREAS, the City and Service Provider desire to stipulate and agree that any disclosure of confidential information in connection with such relationships has occurred or will occur under circumstances and conditions that will protect and preserve the confidentiality of the information.

NOW, THEREFORE, in consideration of the pursuit of current discussions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and representations contained herein, the parties agree as follows:

1. CONFIDENTIAL INFORMATION. "Confidential Information" means any information, in any medium (whether written, oral or electronic), obtained from the City or the Service Provider or any of their respective suppliers, contractors or licensors which falls within any of the following general categories:

- 1.1. *Trade secrets.* For purposes of this Agreement, trade secrets consist of information of the City or the Service Provider or any of their respective 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.
- 1.2. *Information marked "Confidential" or "Proprietary."*
- 1.3. *Information relating to criminal investigations conducted by the City, and records of criminal intelligence information compiled by the City.*
- 1.4. *Any attorney / client privileged information disclosed by either party.*
- 1.5. *Information contained in the City's personnel files, as defined by N.C. Gen. Stat. 160A-168. This consists of all information gathered by the City about employees, except for that information which is a matter of public record under North Carolina law.*
- 1.6. *Personal identifying information about individuals that the City is prohibited from disclosing by law, including:*
 - (a) Social security or employer taxpayer identification numbers.
 - (b) Drivers license (drivers license numbers are not included if the number appears on law enforcement records), State identification card, or passport numbers.
 - (c) Checking account numbers.
 - (d) Savings account numbers.
 - (e) Credit card numbers.

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- (f) Debit card numbers.
 - (g) Personal Identification (PIN) Code as defined in G.S. 14-113.8(6).
 - (h) Digital signatures.
 - (i) Any other numbers or information that can be used to access a person's financial resources.
 - (j) Biometric data.
 - (k) Fingerprints.
 - (l) Passwords.
- 1.7. *The security features of the City's electronic data processing systems, information technology systems, telecommunications networks, and electronic security systems, including passwords, security standards, security logs, procedures, processes, configurations, software and codes.*
- 1.8. *Local tax records of the City that contain information about a taxpayer's income or receipts.*
- 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.*
- 1.10. *Building plans of City-owned buildings or structures, as well as specific details of public security plans.*
- 1.11. *Billing information of customers compiled and maintained in connection with the City providing utility services.*
- 1.12. *Plans to prevent or respond to terrorist activity, including vulnerability and risk assessments, potential targets, specific tactics or specific security or emergency procedures, the disclosure of which would jeopardize the safety of government personnel or the general public or the security of any governmental facility, structure or information storage system(s).*
- 1.13. *Other information that is exempt from disclosure under the North Carolina public records laws.*

The information described in Sections 1.5 through 1.13 is a subcategory of Confidential Information called "Highly Restricted Information." Highly Restricted Information is subject to all requirements applicable to Confidential Information, but is also subject to additional restrictions as set forth in this Agreement.

The parties acknowledge that Confidential Information includes information disclosed prior to execution of this

Agreement as well as information disclosed after execution.

Notwithstanding the above, contracts between the Service Provider and the City are not Confidential Information and will be considered public records, except for attached exhibits that: (a) meet the legal requirements for trade secrets; and (b) are clearly identified as such.

2. RESTRICTIONS AND REQUIREMENTS. Each party shall comply with the following restrictions and requirements regarding Confidential Information:

- 2.1. Neither party shall copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information, except as authorized by written agreement of the parties or by the written consent of the other party.
- 2.2. Neither party shall, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information of the other to any third party, other than an agent, subcontractor or vendor of the City or the Service Provider who: (a) has a need to know such Confidential

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- Information for purposes contemplated by this Agreement, and (b) has executed a confidentiality agreement incorporating substantially the form of this Agreement. Notwithstanding the foregoing, Service Provider shall not directly or indirectly, disclose, divulge, reveal, report or transfer Highly Restricted of the other to any third party without the City's prior written consent.
- 2.3. Neither party shall use any Confidential Information of the other for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Agreement or other written agreements between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.
 - 2.4. Neither party shall remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information of the other.
 - 2.5. Each party shall use reasonable efforts to prohibit its employees, vendors, agents and subcontractors from using or disclosing the Confidential Information in a manner not permitted by this Agreement.
 - 2.6. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, the party upon which the demand is made shall notify the other party of the demand, and shall cooperate with and reasonably assist the other party in seeking a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.
 - 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.
 - 2.8. Each party shall restrict employee access to the Confidential Information of the other party to those employees having a need to know for purposes of carrying out the business relationships contemplated by this Agreement.
 - 2.9. The Service Provider shall comply with the City's Restricted Data Policy, a copy of which is posted on the City's website, and with any instructions or procedures issued by City key business units from time to time with respect to protecting specific types of Confidential Information.
 - 2.10. Each party shall take reasonable measures to prevent the use or disclosure of Confidential Information by its employees in a manner not permitted by this Agreement. The Service Provider shall have each of its employees who will have access to the Confidential Information sign a confidentiality agreement which provides the City and its vendors, licensors, subcontractors, employees and taxpayers the same level of protection as provided by this Agreement, including compliance with the City's Restricted Data Policy.
 - 2.11. The Service Provider shall further ensure that each person who obtains access to Confidential Information through the Service Provider (including but not limited to Service Provider's employees and subcontractors) has undergone training sufficient to understand his or her responsibilities with respect to this Agreement and the City's Restricted Data Policy.
- 3. EXCEPTIONS.** The disclosing party to this Agreement agrees that the receiving party ("Recipient") shall have no obligation with respect to any Confidential Information that the Recipient can establish:
- 3.1. Was already known to Recipient prior to being disclosed by the disclosing party;
 - 3.2. Was or becomes publicly known through no wrongful act of Recipient;

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- 3.3. Was rightfully obtained by Recipient from a third party without similar restriction and without breach hereof;
 - 3.4. Was used or disclosed by Recipient with the prior written authorization of the other party;
 - 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, Recipient shall first give to the other party notice of such requirement or request;
 - 3.6. Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the Recipient shall take reasonable steps to obtain an agreement or protective order providing that this Agreement will be applicable to all disclosures under the court order or subpoena.
- 4. DATA.** The Service Provider will treat as Confidential Information all data provided by the City or processed for the City or for citizens under this Agreement (including metadata). Such data shall remain the exclusive property of the City. The Service Provider will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the City in any manner except that contemplated by this Contract.
- 5. PUBLIC RECORDS.** Notwithstanding anything contained herein to the contrary, the parties recognize and acknowledge that the City is a subdivision of the State of North Carolina and is, therefore, subject to the North Carolina Public Records Act (the "Act") at N.C. Gen. Stat. 132-1 et seq. The parties further acknowledge that any Confidential Information that is a public record under North Carolina law may be released and disclosed by the City pursuant to the Act, and that any such release or disclosure shall not in any way constitute a breach of this Agreement, nor shall the City be liable to the Service Provider for such release or disclosure.
- In the event the City receives a request for disclosure of Confidential Information which the Service Provider has specifically marked "Confidential" or "Proprietary" the City shall give the Service Provider written notice of such request (the "Notice of Request for Disclosure"). In the event the Service Provider has a reasonable basis for contending that the disclosure of such Confidential Information is not required by the Act, the Service Provider shall within ten days after receipt of the Notice of Request for Disclosure notify the City in writing of its objection to disclosure and the basis therefor. The Service Provider shall indemnify, defend and hold harmless the City from and against all losses, damages, liabilities, costs, obligations and expenses (including reasonable attorneys' fees) incurred by the City in connection with any refusal by the City to disclose Confidential Information after receiving an objection to disclosure from the Service Provider. If the City receives no written objection from the Service Provider within ten days after the Service Provider's receipt of a Notice of Request for Disclosure, the City shall disclose the Confidential Information referenced in the Notice of Request for Disclosure.
- Notwithstanding the foregoing, the parties agree that the computer database information that the City is required to disclose under N.C. Gen. Stat. §132-6.1 shall not be deemed Confidential Information, and that the City shall be entitled to disclose such information without notice to the Service Provider.
- 6. REMEDIES.** Each party acknowledges that the unauthorized disclosure of the Confidential Information of the other will diminish the value of the proprietary interests therein. Accordingly, it is agreed that if a party breaches its obligations hereunder, the other party shall be entitled to equitable relief to protect its interests, including but not limited to injunctive relief, as well as monetary damages.

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- 7. NOTICES.** Any notice, consent or other communication required or contemplated by this Agreement 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:

For the Service Provider:

PHONE: _____

FAX: _____

E-MAIL: _____

For the City of Charlotte:

Lou Forrissi
Procurement Officer
City of Charlotte – Charlotte Water
5100 Brookshire Blvd
Charlotte, NC 282163
PHONE: 704-336-1034
FAX: 704-632-8588
E-MAIL: louis.forrissi@charlottenc.gov

Notice shall be effective upon the date of receipt by the intended recipient; provided that any notice of breach or default which is sent by telefax or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier. Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.

Any notice of a breach or default under this Agreement shall also be sent to:

For the Service Provider:

PHONE: _____

E-MAIL: _____

For the City of Charlotte:

Thomas Powers
Office of the City Attorney
600 East Fourth Street, 15th Floor
Charlotte, NC 28203-2841
PHONE: 704-336-5877
E-MAIL: tpowers@charlottenc.gov

8. MISCELLANEOUS.

- 8.1. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties with respect to protection and disclosure of the Confidential Information. There are no other representations, understandings of agreements between the parties with respect to such subject matter. On the subject matter of this Agreement, it supersedes all prior agreements, negotiations, representations and proposals, written or oral.
- 8.2. **AMENDMENT.** No amendment or change to this Agreement shall be valid unless in writing and signed by both Parties to this Agreement.
- 8.3. **GOVERNING LAW AND JURISDICTION.** North Carolina law shall govern the interpretation and enforcement of this Agreement, and all other matters relating to this Agreement (all without regard North Carolina conflicts of laws principles). Any and all legal actions or proceedings relating to this Agreement shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By execution of this Agreement, 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 of the above courts.
- 8.4. **BINDING NATURE AND ASSIGNMENT.** This Agreement shall bind the parties and their successors and permitted assigns. Neither party may assign this Agreement without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void.

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- 8.5. **SEVERABILITY.** The invalidity of one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of the Agreement can be determined and effectuated. If any provision of this Agreement 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 Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.
- 8.6. **WAIVER.** No delay or omission by either party to exercise any right or power it has under this Agreement 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 Agreement shall not 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 Agreement shall be effective unless in writing and signed by the party waiving the rights.
- 8.7. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one single agreement between the parties.
- 8.8. **TITLES OF SECTIONS.** The section headings inserted herein are for convenience only and are not intended to be used as aids to interpretation and are not binding on the parties.

Nothing in this Agreement shall be deemed to eliminate or lessen any obligation either party may have at law with respect to protecting the confidentiality of Confidential Information, except as the provisions of this Agreement expressly authorize the release of Confidential Information.