

**REQUEST FOR PROPOSALS**

**CITY OF CHARLOTTE WORK AND ASSET  
MANAGEMENT SOFTWARE SOLUTION**

**RFP # 2008-113**



**CITY OF CHARLOTTE**

**NORTH CAROLINA**

**SEPTEMBER 01, 2007**

**REQUEST FOR PROPOSALS**  
**RFP # 2008-113**  
**City of Charlotte Work and Asset Management Software Solution**

September 01, 2007

Dear Service Provider:

The City of Charlotte, located in the State of North Carolina, is now accepting Proposals for a City of Charlotte Work and Asset Management Software Solution. The requirements for submitting a Proposal are stated in the attached Request for Proposals (the "RFP"). Please review them carefully.

A Non-Mandatory Pre-Proposal Conference for the purpose of reviewing the RFP and answering questions regarding the Services will be held on **SEPTEMBER 20, 2007 at 4 p.m.**, at the Charlotte-Mecklenburg Government Center (CMGC), 600 East Fourth Street, Charlotte, NC 28202, CH-14 Conference Room (CMGC Basement Level). Please bring a copy of the RFP with you at that time. All Service Providers should return a completed Request For Proposals Acknowledgement Form (see Section 7, Form One) by the date stated in the schedule in Section 2.1 of this RFP.

An electronic copy of the RFP in Microsoft Word format and electronic copies of the Requirements Matrices in Microsoft Excel format may be obtained by contacting Marcy Mars at mmars@ci.charlotte.nc.us.

All Proposals are due to the Business Support Services, Procurement Services Division, 9th Floor, CMGC 600 East Fourth Street, Charlotte, North Carolina 28202, no later than **NOVEMBER 1, 2007 at 2:00 p.m.**

One electronic copy of the Proposal on a Compact Disc in Microsoft Word and one unbound original Proposal signed in ink by a company official authorized to make a legal and binding offer along with the corporate seal, plus ten (10) professionally bound 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: Marcy Mars**

**Name of Company Submitting Proposal**

**City of Charlotte Work and Asset Management Software Solution**

**RFP # 2008-113**

RFP questions must be directed to Marcy Mars, Business Support Services, Procurement Services Division, per the enclosed instructions in Section 2.3. The City is an equal opportunity purchaser.

Sincerely,

Marcy Mars  
Services & Technology Procurement Supervisor

cc: Shawn Coffman, Work and Asset Management Program Manager  
RFP file

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## Introduction and General Information

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### 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:

<i>Affiliates:</i>	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.
<i>City:</i>	Refers to the City of Charlotte, North Carolina.
<i>City Project Manager:</i>	Refers to a specified City employee representing the best interests of the City for this Project.
<i>Company:</i>	Refers to a Service Provider that has been selected by the City to provide the Services required by this RFP.
<i>Company Project Manager:</i>	Refers to a specified Company employee representing the best interests of the Company for this Project.
<i>Company Software:</i>	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.
<i>Contract:</i>	Refers to an agreement executed by the City and Service Provider for all or part of the Services covered by this RFP.
<i>Current Release:</i>	Refers to the latest version of the Software offered for general commercial distribution at a given point in time, including all Updates.
<i>Customizations:</i>	Refers to all newly-developed software created by the Service Provider and/or its subcontractors pursuant to 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

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	Enhancements that become part of the company 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 Company is required to complete and deliver to the City in connection with this Contract.
<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 Company or its subcontractors, including without limitation all end user manuals, training manuals, guides, program listings, data models, flow charts, logic diagrams, and other materials related to or for use with the 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 Contract or that are subsequently developed, which modify the Products to provide a function or feature not originally offered or an improvement in function.
<i>Environmentally Preferable Products:</i>	Refers to products that have a lesser or reduced effect on human health and the environment when compared with competing products that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.
<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 Company 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.

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<i>Maintenance Services:</i>	Refers to the maintenance services described in Section 3.
<i>Milestones:</i>	Refers to the benchmarks of performance (consisting of an identified deadline for the completion of specific services and/or the acceptance of identified Deliverables), as specified in this RFP.
<i>Post-Consumer Recycled Material:</i>	Refers to material and by-products which have served their intended end-use by a consumer and have been recovered or diverted from solid waste. It does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.
<i>Project:</i>	Refers to the procurement process to choose a Service Provider to supply Work and Asset Management software and associated services 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 Contract.
<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>Recyclability:</i>	Refers to products or materials that can be collected, separated or otherwise recovered from the solid waste stream for reuse, or used in the manufacture or assembly of another package or product, through an established recycling program. For products that are made of both recyclable and non-recyclable components, the recyclable claim should be adequately qualified to avoid consumer deception about which portions or components are recyclable.
<i>Recycled Material:</i>	Refers to material and by-products which have been recovered or diverted from solid waste for the purpose of recycling. It does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.
<i>Services:</i>	Refers to the City of Charlotte Work and Asset Management Software Solution and associated services as requested in this RFP.
<i>Service Provider:</i>	Refers to a company that has interest in providing the Software and Services required by this RFP.



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<i>Software:</i>	Refers to (i) all Company Software; (ii) all Customizations; (iii) all Third Party Software; and (iv) all Updates and Enhancements of any of the foregoing.
<i>Source Code:</i>	Refers to the human readable form of a computer program and all algorithms, flow charts, logic diagrams, structure descriptions or diagrams, data format or layout descriptions, pseudo-code, code listings (including comments), and other technical documentation relating to such program.
<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 Company 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 the City of Charlotte Work and Asset Management software solution (Work Management, Asset Management, Citizen Relationship Management, Procurement and other functional components listed in the attached specifications and requirements) to be supplied, installed, configured, tested and commissioned 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 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.

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<i>Updates:</i>	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.
<i>Warranty Period:</i>	Refers to the twelve-month period following System Acceptance.
<i>Workaround:</i>	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.
<i>Work Product:</i>	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.

### 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;

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- 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 with 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, or any other obligation shall be created on the part of the City unless the City and the Service Provider execute a Contract. No recommendations or conclusions from this RFP process concerning the 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 a Contract or to continue discussions. The City can terminate discussions at any time and for any reason.
- 1.6.3. Requirement for Representation as to Accuracy and Completeness of Proposal.  
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**

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**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.”**

1.6.4. Trade Secrets/Confidentiality.

Upon receipt at the Procurement Services Division, your Proposal is considered a public record except for material which qualifies as “trade secret” information under N.C. Gen. Stat. 66-152 et. seq. After the Proposal opening, the City’s Evaluation Committee, as well as other City staff and members of the general public who submit public records requests will review the Proposal.

The public disclosure of the contents of each Service Provider Proposal submitted in response to this RFP is governed by Chapter 132 and 66-152 et. seq. of the General Statutes of North Carolina. If any Proposal contains trade secret information as defined by Chapter 66-152 et. seq. of the General Statutes of North Carolina, such trade secret information should be specifically and clearly identified in accordance with this Section 1.6.4.

To properly designate material as trade secret under these circumstances, each Service Provider must take the following precautions: (a) any trade secrets submitted by a Service Provider should be submitted in a separate, sealed envelope and on separate CD for electronic files, marked **“Trade Secret—Confidential and Proprietary Information—Do Not Disclose Except for the Purpose of Evaluating this Proposal,”** and (b) the same trade secret/confidentiality designation should be stamped on each page of the trade secret materials contained in the envelope and on each page of the electronic file.

In submitting a Proposal, each Service Provider agrees that the City may reveal any trade secret materials contained in such response 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.

Furthermore, each Service Provider agrees to indemnify 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, which the Service Provider has designated as a trade secret. **Any Service Provider that designates its entire Proposal as a trade secret may be disqualified.**

1.6.5. Prohibited Discrimination.

The City is committed to promoting equal opportunities for all and to eliminating prohibited discrimination in all forms. For purposes of this section, Prohibited Discrimination means discrimination in the solicitation, selection, and/or treatment of any subcontractor, vendor, supplier or commercial customer on the basis of race, ethnicity, gender, age, religion, national origin, disability or other unlawful form of discrimination. Without limiting the foregoing, Prohibited Discrimination also includes retaliating against any person, business or other entity for reporting any incident of Prohibited Discrimination. It is understood and agreed that not

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only is Prohibited Discrimination improper for legal and moral reasons, Prohibited Discrimination is also an anti-competitive practice that tends to increase the cost of goods and services to the City and others. As a condition of entering into any Contract, the Service Provider shall represent, warrant and agree that it does not and will not engage in or condone Prohibited Discrimination. Without limiting any rights the City may have at law or under any other provision of any Contract, it is understood and agreed that a violation of this provision constitutes grounds for the City to terminate any such Contract.

- 1.6.6. Statutory Requirements.  
Any Contract 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.
- 1.6.7. 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.
- 1.6.8. 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 [www.ips.state.nc.us](http://www.ips.state.nc.us), bid# 269-2008-113. Service Providers are required to acknowledge their receipt of each addendum by including the Addenda Receipt Confirmation Form set forth in Section 7, Form Two with their Proposal.
- 1.6.9. 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.
- 1.6.10. 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.
- 1.6.11. 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 Contract, either in part or in its entirety, at the City's election. Any false or misleading statements found in

# Section 1

## **Introduction and General Information**

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

1.6.12. 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 Contract period. The City shall have the option to accept subject to exception by Contract.

1.6.13. SBO Program.

It is the policy of the City of Charlotte in accordance with SB 1336 as approved by the NC General Assembly on August 27, 2002, that Small Business Enterprises 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 Small Business Enterprises have the maximum opportunity to participate as subcontractors for contractors issued by City of Charlotte, Economic Development Division.

1.6.14. Subcontracting.

The Service Provider given contract award shall be the prime contractor and shall be solely responsible for contractual performance. In the event of a subcontracting relationship, the Service Provider shall remain the prime contractor and will assume all responsibility for the performance of the Services that are supplied by the subcontractor. Additionally, the City must be named as a third party beneficiary in all subcontracts.

1.6.15. 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.

1.6.16. 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.

1.6.17. Withdrawal for Modification of Proposals.

Service Providers may change or withdraw their Proposals at any time prior to Proposal opening; 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

# Section 1

## Introduction and General Information

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written request(s), provided that the written request is contained in a sealed envelope, which is plainly marked “**Modifications to Proposal.**”

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

1.6.19. Exceptions to the RFP.

Other than exceptions that are stated in compliance with this Section, each Proposal shall be deemed to agree to comply with all terms, conditions, specifications, and requirements of this RFP including the Sample Contract language included as Exhibit A. An “exception” is defined as the Service Provider’s inability or unwillingness to meet a term, condition, specification, or requirement in the manner specified in the RFP including the Sample Contract language included as Exhibit A. All exceptions taken must be identified and explained in writing in your Proposal and must specifically reference the relevant section(s) of this RFP. If the Service Provider provides an alternate solution when taking an exception to a requirement, the benefits of this alternative solution and impact, if any, on any part of the remainder of the Service Provider’s solution, must be described in detail.

1.6.20. 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.

1.6.21. 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.

1.6.22. 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’ own risk.

**Introduction and General Information**

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1.6.23. 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.



## 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
September 1, 2007	<i>Issuance of RFP.</i> The City issues this RFP.
September 10, 2007	<i>Request for Proposals Acknowledgement.</i> Service Providers who intend to submit a Proposal shall submit the RFP Acknowledgement Form on this date to the fax number listed in Section 2.2.
September 14, 2007	<i>Submission of Written Questions Prior to Pre-Proposal Conference.</i> Service Providers are permitted to submit written questions, but only for purposes of clarifying this RFP. All submissions must be faxed or preferably e-mailed to Marcy Mars at the address and number listed in Section 2.3. Questions are due by 3 p.m. on September 14, 2007.
September 20, 2007	<i>Non-Mandatory Pre-Proposal Conference.</i>
October 19, 2007	<i>Submission of Written Questions After the Pre-Proposal Conference.</i>
November 1, 2007	<i>Proposal Submission.</i> Proposals are due by 2:00 p.m. on NOVEMBER 1, 2007, at the Procurement Services Division, CMGC 9 <sup>th</sup> Floor. All Proposals will be time-stamped upon receipt and held in a secure place until this date.
November 2, 2007 – January 31, 2008	<i>Evaluation.</i>
March/April 2008	<i>Contract Award by Council</i>
July 7, 2008	<i>City of Charlotte Work and Asset Management Software Solution.</i> Service Provider begins providing City of Charlotte Work and Asset Management Software Solution and associated services.

##### 2.2. Intent to Propose.

Please acknowledge receipt of this RFP via facsimile by **SEPTEMBER 10, 2007** using the Request for Proposals Acknowledgement Form located in Required Forms Section - Form One. Complete the form in its entirety advising the City of your

## Section 2

### Procurement Process

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firm's intention to submit or not submit a Proposal. Fax the completed and signed form to 704-632-8247, Attention: Marcy Mars.

#### 2.3. Interpretations and Addenda.

No interpretation or clarification of the meaning of any part of this RFP will be made orally to any Service Provider with the exception of questions answered at the Pre-Proposal Conference. Otherwise, Service Providers must request such interpretations or clarifications in writing from the City. Address requests for information or clarification of this RFP to Marcy Mars at the e-mail address listed below. When submitting questions, please reference the RFP page and topic number. In order for questions to be addressed at the Pre-Proposal Conference, they must be submitted by **3 p.m. on SEPTEMBER 14, 2007.**

After the Pre-Proposal Conference, questions must be submitted in writing in a timely manner. In the case of questions not submitted in a timely manner, the Procurement Officer will, based on the availability of time to research and communicate an answer, decide whether an answer can be given before the Proposal Due Date. When responding to Service Provider questions or issuing addenda to the RFP, the City will post the answer or information to the Internet at [www.ips.state.nc.us](http://www.ips.state.nc.us), solicitation# 269-2008-113.

Marcy Mars  
Procurement Services Division  
RFP # 2008-113  
Fax: 704-632-8247  
E-mail: [mmars@ci.charlotte.nc.us](mailto:mmars@ci.charlotte.nc.us)

The City reserves the right to disqualify any Service Provider who contacts a City official, employee, or agent concerning this RFP other than in accordance with this Section. Nothing in this Section shall prohibit the City from conducting discussions with Service Providers after the Proposal opening.

#### 2.4. Pre-Proposal Conference.

A Non-Mandatory Pre-Proposal Conference will be conducted on **SEPTEMBER 20, 2007 at 4 p.m.** The meeting will be held at the Charlotte-Mecklenburg Government Center, 600 East Fourth Street, Charlotte, NC 28202, Conference Room CH-14 (basement level of the Charlotte-Mecklenburg Government Center).

While attendance at the Pre-Proposal Conference is not mandatory, all interested Service Providers are encouraged to attend. If special accommodations are required for attendance, please notify Marcy Mars in advance of the conference date and time identifying the special accommodations required.

#### 2.5. Submission of Proposals.

One electronic copy on a compact disc in Microsoft Word and one unbound original Proposal signed in ink by a company official authorized to make a legal and binding offer along with the corporate seal, plus ten (10) professionally bound copies shall be submitted to the address listed in Section 2.3 above by **NOVEMBER 1, 2007 at 2:00 p.m.** The "original" Proposal and each of the ten (10) 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 will not be accepted.**

## Section 2

### Procurement Process

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**Due to increased security concerns at the Charlotte-Mecklenburg Government Center (CMGC), your sealed boxed may be searched and thoroughly inspected prior to admittance. Please allow time for this search to take place if delivering your Proposal in person to the CMGC.**

Do not arrive at the Procurement Services Division 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.

**2.6. 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.

**2.7. Evaluation.**

As part of the evaluation process, the Evaluation Committee may engage in discussions with any Service Provider. Discussions might be held with individual Service Providers to determine in greater detail the Service Provider's qualifications, to explore with the Service Provider the scope and nature of the required contractual Services, to learn the Service Provider's proposed method of performance and the relative utility of alternative methods, and to facilitate arriving at a Contract that will be satisfactory to the City.

The City may in its discretion require one or more Service Providers to make presentations to the Evaluation Committee or appear before the City and/or its representatives for an interview. During such interview, the Service Provider may be required to orally and otherwise present its Proposal and to respond in detail to any questions posed. Additional meetings may be held to clarify issues or to address comments, as the City deems appropriate. Service Providers will be notified in advance of the time and format of such meetings.

Since the City may choose to award a Contract 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.

**2.8. Contract Award by Council.**

As soon as practical after opening the Proposals, the name of the apparent successful Service Provider will be submitted to the Council for final approval of award. If approved by the Council, the Procurement Services Division will provide Contract documents to the Service Provider. In the event the Council 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 SERVICES - WORK AND ASSET MANAGEMENT SOLUTION.**

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

**3.1. About The City of Charlotte.**

The City of Charlotte (Mecklenburg County) is located in the Central Piedmont physiographic region on the boundary of North and South Carolina. The City of Charlotte is the largest municipality in the State of North Carolina and is the center of manufacturing, health care, education, transportation, culture and entertainment and finance for a metropolitan area of approximately 1.35 million people. To provide a frame of reference for scope definition, the following statistics are presented:

City population: **658,848**

Square Miles: **280.5**

Operating Budget– Fiscal Year 2007: **\$906.0 million**

Capital Budget– Fiscal Year 2007: **\$463.3 million**

Total Budget– Fiscal Year 2007: **\$1.37 billion**

Total Number of City Employees– Fiscal Year 2007: **6,491.00**

The City organization is managed using a Council-Manager form of government. There are fourteen business units that comprise the City organization. “Business Units,” typically known as departments in other municipalities, can be either “Key” or “Support” business units. Key Business Units (such as Police, Transit and Utilities) provide more direct services to the citizens of Charlotte, while Support Business Units (such as Human Resources) typically provide indirect services to the citizens and direct services to the organization.

From an asset management perspective, the Stakeholders, as identified in Section 3.2, procure, maintain, and replace/retire assets in four broad classes:

1. Linear – ex. roads, pipelines, railway lines, fiber optic lines;
2. Plant/Facility – ex. Water and/or Wastewater Treatment Plants, government office buildings, rail/bus stations;
3. Fleet – ex. City-owned cars, fire trucks, sanitation trucks; and
4. Distributed – ex. IT Assets (computers, switches, phones), issued equipment (Police, Fire).

From a work management perspective, the identified stakeholders manage internal and external customer service requests, emergency operations, general plant/facility maintenance, inspections and many other classes of work.

From a customer service perspective, the City has created and implemented a 311/Customer Service Call Center. This call center is the primary source of citizen request/response actions for City/County agencies.

## Section 3

### Scope of Services

#### 3.2. In-Scope Stakeholders.

Identified Stakeholders for the Work and Asset Management Program include:

Business Unit or Agency	Managed Asset Classes
Aviation Department	1, 2, 3, 4
Budget & Evaluation	4
Business Support Services	1, 2, 3, 4
Charlotte Area Transit System	1, 2, 3, 4
Charlotte Department of Transportation	1, 2, 3, 4
Mecklenburg County Storm Water	1, 2, 4
Engineering and Property Management	1, 2, 4
Finance Department	4
Charlotte Fire Department	2, 3, 4
Human Resources	4
Neighborhood Development	4
Planning Department	4
Charlotte-Mecklenburg Police Department	2, 3, 4
Solid Waste Services	2, 3, 4
Charlotte-Mecklenburg Utilities	1, 2, 3, 4
City Manager's Office	4
311 – Customer Service	4
Economic Development	4

Managed Asset Classes (1=linear; 2=plant/facilities; 3=fleet; 4=distributed/issued)

#### 3.3. Project Background.

In 2005, through the City Technology Strategic Planning process and the performance of Business Unit interviews, the project team identified more than 20 work management systems currently in use throughout the City. These findings pointed to the need to investigate alternatives for a more unified approach to work and asset management throughout the City. In 2006, the City retained the services of GHD, Inc. to conduct a Work and Asset Management Study. For in-scope elements, the WAM study service provider performed gap analyses across all business units; interviewed management and staff relative to high-level processes and business unit interactions; documented as-is conditions for each business unit and the enterprise; and formulated a set of organizational recommendations. This study resulted in development of a roadmap to achieve continued and sustained improvement of the City's Work and Asset Management (WAM) practices aimed at achieving a corporate paradigm shift from an operations-centric focus to an asset-centric focus

and the adoption of improved work management business processes. The roadmap is leading toward the implementation of advanced asset management practices throughout the City; as well as the improvement of work management functions, citizen relationship management functions and procurement functions.

A cornerstone of the City's program will be an enterprise Software Solution that will serve as an asset data repository, maintenance management system, citizen relationship management (CRM) system, and procurement management system. The objective of this RFP is to evaluate and select the City's WAM Software Solution.

**3.4. Current Practice.**

Numerous work and asset management software systems are currently in use throughout the City. These include COTS CMMS products; commercial work and asset management software products for specific niches, such as fleet, radios, or public safety departments; and a variety of custom applications and Excel or Access-based systems developed in-house for tracking elements of work and asset management. Some of the existing systems are relatively new, while others are at (or well beyond) the end of their useful lives.

Existing customer request/response software has been effectively customized to deal with specific internal needs but the environment requires a number of applications, thirteen (13), that 311/Customer Service representatives have to reference to provide service/response to citizens. Existing systems also provide minimal, or no, work-in-progress information to relay to citizens.

There is currently no City-wide approach to work and asset management. Process and practices have been developed within each Business Unit, and there are few instances of shared WAM systems or practices that are shared between Business Units.

Please note the following tables that provide a summary of the work and asset management systems and tools currently in place across the City of Charlotte Business Units. Items highlighted in yellow are tools that are currently used to manage asset registries and/or maintenance histories.

# Section 3

## Scope of Services

Figure 3-1, Page 1, Current Software Systems

Software Application/System Tool	Key Business Units															Supporting Business Units																
	Charlotte 311 – Customer Service	Aviation Department	Charlotte Area Transit System (CATS)	Charlotte Department of Transportation	Mecklenburg County Storm Water	Engineering & Property Management						Charlotte Fire Department	Neighborhood Development	Charlotte-Mecklenburg Planning Commission	Charlotte-Mecklenburg Police Department	Charlotte-Mecklenburg Utilities				Business Support Services (BSS)												
						Building Maintenance	CMGC Maintenance	Landscape Management	Land Development	City Stormwater	Real Estate Services					Engineering	Administration Division	Customer Service Division	Engineering Division	Field Operations Division	Environmental Management Division	Water Treatment Division	City Manager's Office	Administrative Offices	Communication Services	Equipment Management	Information Technology	Procurement Services	Budget & Evaluation	Finance Department	Human Resources	
1	Acentra	X																														
2	Accela (formerly Kiva)	X								X				X	X																	
3	Airport Security Systems			X																												
4	AMMS Airport Management System		X																													
5	ARM		X																													
6	Asset Center																											X				
7	AutoCAD / Land Development Desktop / Civil 3D / Civil Design									X					X				X													
8	Automated Address Verification															X																
9	Automated Record Management System		X																													
10	Automated Vehicle Locator (AVL)															X																
11	Automatic Vehicle Locator/Automatic Passenger Count (AVL/APC)			X																												
12	Avaya	X																														
13	Back Flow 2000																			X												
14	Banner/Advantage Customer information system (Ventyx Customer Suite)	X									X						X	X		X											X	
15	BECAP				X																											
16	BRASS				X																											
17	Business Retention System																			X												
18	CAMS Pro Computer Aided Maintenance System					X	X																									
19	Cash and Debt Management Systems																															X
20	CATS Document Control and Records Management			X																												
21	CATS Surveillance Systems			X																												
22	CECAP			X						X	X					X			X	X												
23	CFDWeb (CFD's Intranet Site)												X																			
24	Chameleon	X													X																	X
25	CIP/GIS Collaborative System																															
26	CityView													X																		
27	Cityworks				X					X																						
28	CLAS (County Parks and Rec Scheduling)	X																														
29	CMS (311 Phone Tracking)	X																														
30	Cognos			X																												
31	COMPASS																			X												
32	CompassLDE Automatic Vehicle Locator/Global Positioning System (AVL/GPS)											X																				
33	Crime Laboratory Information Management System														X																	
34	Crystal Enterprise				X																						X					
35	Crystal Reports				X																X						X					
36	CtoB																															
37	CYA Company														X						X											
38	Data Warehouse																															
39	Datastream MP2																															
40	Digital Crime Scene																															
41	DILOG Airport Cost Accounting System		X												X																	
42	Dolphin (HHP)																				X											
43	E&PM Contract System																															
44	EAGLS																															X
45	ETEM												X																			
46	EMERALD	X			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
47	Engineering & Property Management 'Map Room'												X																			
48	Environmental Data Management System (EDMS)				X					X																						
49	EPLAN												X																			
50	ESRI - GIS				X	X			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
51	FASTER CS System												X														X			X		
52	FDM Records Management System (RMS)												X																			
53	Fuelman												X																X			
54	GangNet																															
55	Gasboy		X													X																
56	GEAC		X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
57	GPS Pathfinder Office Software				X																											
58	Hansen				X																											
59	HASTUS Fixed Route Scheduling System			X																												
60	Help Desk																															
61	HiperPM																															
62	HiperWeb																															
63	Housing Development												X																			
64	Housing Referral												X																			
65	Housing Rehabilitation												X																			

# Section 3 Scope of Services

Figure 3-1, Page 2, Current Software Systems

Software Application/System Tool	Key Business Units																		Supporting Business Units													
	Engineering & Property Management														Charlotte-Mecklenburg Utilities				Business Support Services (BSS)				Finance Department		Human Resources							
																			Budget & Evaluation													
																			Procurement Services													



#### 3.5. City Software Standards and Preferences.

- File and Print Services The City's server platform is Windows 2003 R2.
- Application Client Browser-based implementation. Client operating systems may include Windows 2000 and XP. The City would strongly prefer clients that do not require the loading of database access software on each individual PC. Browser clients should support Microsoft Internet Explorer Version 6, Service Pack 2. The City will be transitioning to Microsoft Internet Explorer Version 7 over the next year. If an actual client installation is required, it must be tested by BSS/IT to confirm that it does not conflict with other existing desktop components.
- Databases Supported Microsoft SQL Server 2005 and Oracle 10g. The City has a strong preference for the use of Microsoft SQL Server 2005.
- Application Server Windows Server 2003. The City has a strong preference to avoid introducing Unix into our environment as an application server platform.
- Electronic Mail The City uses Microsoft Exchange with the Microsoft Outlook e-mail client.
- Internet Server Microsoft's Internet Information Server 6.0 (at a minimum).
- Report Writing Tool Third-party products such as Business Objects / Crystal; COGNOS and Microsoft SQL Reporting Services are supported for application-specific reporting. The City has a preference to utilize Microsoft SQL Reporting Services toolsets.
- Application Development Language MS Visual Studio and CSharp.Net are among the City's development toolsets in use. ESRI's ArcObjects is the City's chosen development platform for spatial components of the system.
- GIS Platform The City uses ESRI's software for its GIS platform (transitioning to version 9.2). Any spatial databases shall be compatible with the City's implementation of the ESRI Geodatabase using ArcSDE. Web-based GIS tools/components shall use ArcGIS Server.
- Security Access to the System must be restricted by assigning user credentials to authorized users.

#### 3.6. General Scope.

The general scope for the provision of software and services under this RFP include the following:

- Provision of a total software solution that includes the management capabilities outlined in the specifications attached in Appendix B. The functional areas as defined in the specifications include, but are not limited to, Work Management, Asset Management, Citizen Relationship Management, Procurement, Materials Management, and Permitting. The evaluation committee will review each submittal for adherence to the total solution philosophy that the program team has defined. **If the Service Provider's proposed software does not include an identified functional component, the Service Provider shall propose fully integrated third party software that enables the Service Provider to meet the requirement of a total software solution.**

- Provision of solution installation, configuration, testing, commissioning, integration support, and core training services necessary to support the City's WAM solution implementation plan.

**3.7. Software Solution Implementation Plans and Goals.**

The primary goal of this Project is to implement an enterprise WAM software solution that can be utilized by all KBUs in the City. The unified WAM solution will provide:

- A repository for a common City-wide asset register;
- The ability to track and roll up cost of maintenance, repair and overhaul across divisions, Business Units, and the entire City;
- A mechanism to share best practices in maintenance management across all Business Units;
- A single lens through which citizen/customer interactions may be more effectively viewed and requests/responses handled;
- Facilitation of enterprise-wide procurement processes;
- Standardization of asset classes, inventory naming, failure codes, and other asset management data standards;
- Sharing of templates for preventive maintenance tasks between Business Units; and
- Building of interfaces with other City information systems, such as financials, human resources, GIS, and others.

Technical and functional requirements of the WAM solution are specified in the Appendices of this RFP. The technical and functional requirements are listed in a series of tables which must be completed and submitted along with the proposal.

The selected WAM Solution Provider will furnish the City with software and implementation services as outlined in this document. The Solution Provider will work closely with members of the City's Work and Asset Management program team and the City's Implementation Consultants throughout the project.

**3.8. Phased Approach.**

Figure 1 shows a proposed implementation schedule for the City of Charlotte Work and Asset Management Program. During implementation the service provider's professional services team will work with staff from the City and the City's program implementation consultant in a combined implementation effort. The implementation will occur in three overlapping phases.

Immediate need considers the approaching end of life of existing software, inability of the current tool set/approach to provide required information, missing required functionality, significant barriers to usability, and lack of support for corporate reporting requirements. The intent of the following phased approach is to achieve equilibrium between implementation priorities and resource availability/capability, as well as balanced change and risk management tolerances.

**Figure 1 Work and Asset Management Program Implementation Schedule**

**3.8.1. Phase 1.**

**Business Process Implementation Track- City- Wide**

The business process implementation track is inclusive of all Business Units.

#### **Tool Implementation**

- Charlotte Department of Transportation (CDOT);
- Charlotte-Mecklenburg Utilities;
- Engineering and Property Management – Building Maintenance, Landscape Management;
- Aviation;
- 311/Customer Service; and
- Business Support Services – Procurement.

#### **Data Interface**

- Finance – GEAC - will require interfaces for encumbrance/funds availability, purchase orders/purchase requests and for financial reporting relative to asset registration and depreciation;
- Finance - Banner/Advantage - will require interface for utility management and billing; meter assignment and issue resolution;
- HR- PeopleSoft - will require interface for personnel rate inclusion in total cost of ownership analysis and job costing; and
- GIS interface – Interface for inclusion of geospatial information from the City's Enterprise GIS server, which is based on ESRI's ArcSDE geodatabase.

#### 3.8.2. Phase 2.

##### **Business Process Implementation Track- City- Wide**

The business process implementation track is inclusive of all Business Units.

#### **Tool Implementation**

- Business Support Services – Fleet and Information Technology;
- Solid Waste Services;
- Charlotte Area Transit System - Fleet and Rail; and
- 311/Customer Service.

#### **Data Interface**

- Budget and Evaluation – business process interface relative to CIP validation and budget development

#### 3.8.3. Phase 3.

- Neighborhood Development;
- Planning;
- Police;
- Fire;
- Engineering and Property Management – City Stormwater;
- Mecklenburg County Land Use and Environmental Services Agency – County Stormwater; and
- 311/Customer Service.

**3.9. Implementation Services.**

The Service Provider will provide the WAM Solution-related services specified below.

Task 1 – WAM Solution Software Installation

Task 2 – Core Team Training

Task 3 – Business Process Workshops

Task 4 – WAM Solution Configuration

Task 5 – Data Conversion

Task 6 – Interface Specifications

Task 7 – Train-the-Trainer

**3.9.1. Task 1 – WAM Solution Software Installation.**

**Description:** Perform initial setup of the WAM Solution software on City of Charlotte's servers.

1. Perform configuration of the Oracle or MS SQL database on the database server(s). Establish separate database schemas for training, development, and production environments.
2. Deploy WAM Solution software for each environment.
3. Perform initial database setup, including creation of database objects for each environment.
4. Install a demo data set on the training environment's database schema to provide a data set for core team training. Following system configuration, the training environment's data set will be reloaded to reflect production data for end-user training.
5. Install empty data sets for development and production environments.
6. Create initial administrative and core team user(s) for each environment up to 20 core team users.
7. Perform initial testing of each component for all three environments.
8. With the WAM core team technical representatives, coordinate backup and restore procedures and processes for City of Charlotte WAM Solution data .
9. Establish procedures for migrating data from the production to the test environment.

**Assumptions:**

1. Three application environments will be implemented: development, training, and production. The production application will reside on a dedicated server and will have a separate database schema. The development and training applications may share servers and database schemas.
2. City of Charlotte will provide server hardware in accordance with hardware requirements and recommendations provided by the Service Provider. The City will install hardware and check for proper network connectivity prior to the WAM Solution software installation described above.
3. In accordance with its established Security Policies, City of Charlotte will provide the Service Provider with appropriate network logins for each server.

**Deliverables by WAM Solution Service Provider:**

1. Installation summary document detailing the settings, administrative users, passwords, and parameters used during installation. A separate document will be provided for each environment.
2. Documented backup and restore procedures.
3. Documented procedure for transferring production data to the test environment.

**3.9.2. Task 2 – Core Team Training.**

**Description:** Provide training for a “core team” of City of Charlotte personnel who will be involved in WAM Solution planning and implementation. The core team will include representatives from all City business units expected to use the WAM Solution. The purpose of this task is to provide sufficient familiarity with the software product to give the core team a basis for providing input on configuration and implementation decisions.

Following software installation, the City of Charlotte WAM Solution core team will receive introductory training on the WAM Solution software.

The Service Provider will provide WAM Solution user guide documentation to twenty (20) class attendees to conduct the core team training sessions. The documentation should cover topics including: system overview, basic navigation, work orders, preventive maintenance, inventory, equipment, purchasing, reporting, customer service interaction, and system administration.

**Assumptions:**

1. City of Charlotte will select and define a “WAM Solution core team” which consists of representatives of business units that will participate in the WAM Solution development and implementation.
2. City of Charlotte will provide a training room with computer workstations connected to the WAM Solution software to complete the core team training sessions.

**Deliverables by WAM Solution Service Provider:**

1. A WAM Solution user manual for each core team member.

**3.9.3. Task 3 - Business Process Workshops.**

**Description:** The City’s Implementation Consultant will conduct a series of Business Process Workshops to define how the WAM Solution will be utilized by the City of Charlotte, defining necessary software configurations, and detailing work processes for using the solution. The City and its Implementation Consultant will prepare documentation of the outcomes of the Business Process Workshops summarizing the business process requirements. The Service Provider will provide a representative to participate in the Business Process Workshops and provide input on use of the Service Provider’s WAM Solution software to accomplish the City’s business process requirements.

The WAM Solution Service Provider shall provide a representative on-site to participate in business process workshops for the following minimum times:

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1. Chartering/kickoff meeting – 1 day.
2. Assets – Utilities, 5 days; Engineering & Property Management, 3 days; Charlotte Department of Transportation, 4 days; Aviation, 2 days; 311/Customer Service Call Center, 1 day; Business Support Services - Procurement Services Division, 1 day.
3. Work Orders and Preventive Maintenance – Utilities, 2 days; Engineering & Property Management, 2 days; Charlotte Department of Transportation, 2 days; Aviation, 2 days; 311/Customer Service Call Center, 1 days.
4. Customer Service - 311/Customer Service Call Center and Business Unit Customer Service designees, 5 days;
5. Vendors and Materials – Utilities, 2 days; Engineering & Property Management, 2 days; Charlotte Department of Transportation, 2 days; Aviation, 2 days; Business Support Services - Procurement Services Division, 2 days.
6. Labor – Utilities, 1 day; Engineering & Property Management, 1 day; Charlotte Department of Transportation, 1 day; Aviation, 1 day.
7. Reporting – Utilities, 1 day; Engineering & Property Management, 1 day; Charlotte Department of Transportation, 1 day; Aviation, 1 day; 311/Customer Service Call Center, 1 day; Business Support Services - Procurement Services Division, 1 day.
8. Administration and Security – WAM Core Team, 3 days.
9. TOTAL WORKSHOP DAYS, 53 days at 5 hours/day (265 hours)

The WAM Solution Service Provider's representative will provide documentation of configuration recommendations based on their observations and discussion during the workshops.

#### **Assumptions:**

1. City of Charlotte will provide meeting rooms for the planning workshops with wide-area network connections capable of connecting to the WAM Solution server(s).
2. City of Charlotte will make necessary staff available to attend and participate in workshops.
3. These workshops will be conducted by three separate implementation consulting groups in parallel. The Phase I workshops will occur within the first 6-8 weeks of the implementation contract.

#### **Deliverables by WAM Solution Service Provider:**

Service Provider will provide an electronic copy in Microsoft Word format of a WAM Solution Software Configuration Recommendation Document resulting from the planning workshops. The Configuration Document will summarize the software configuration requirements necessary to meet the WAM Solution business processes and workflows developed during the business process workshops.

#### 3.9.4. Task 4 – WAM Solution Configuration.

**Description:** The WAM Solution Service Provider will provide a technical consultant on-site to perform configuration services to meet the business process requirements identified under Task 3. While configuring the system, the Service Provider will work together with the City's WAM

Solution staff to teach City staff how to perform all standard configuration tasks. The Service Provider's consultant will perform WAM Solution configurations described in the Software Configuration Document delivered under Task 2. Configuration tasks will include, but not be limited to:

1. Configure application and database to accommodate business rules and process flows documented in the Software Configuration Document.
2. Modify screens to accommodate changes in field length, position, or size.
3. Modify screens to use City of Charlotte terminology and facilitate use of the system by City of Charlotte.
4. Configure WAM Solution to utilize spare fields as necessary.
5. Configure mobile device software to accommodate process flows for mobile devices detailed in the Software Configuration Document.
6. Develop a start center (home page) for each user type.
7. Develop application security for each user group.
8. Enter basic value lists, dropdowns, pick lists, and data structures discussed in the planning phase.
9. Develop basic filters or queries for end-user or report use.
10. Test and verify configurations and modifications.
11. Document configuration changes.

**Assumptions:**

1. City of Charlotte will make the system and database available.
2. City of Charlotte will provide review and comments for verification of configurations.

**Deliverables by WAM Solution Service Provider**

1. WAM Solution Service Provider shall allow for the provision of 130 business days on site for configuration services.
2. Written documentation will be provided of configuration settings at the time of system turnover to City of Charlotte, including value lists, administrative and security settings, and screen configurations.

3.9.5. Task 5 – Data Conversion.

**Description:** The WAM Solution Service Provider will meet with City staff in a series of data planning meetings to specify and define data collection formats and procedures. The WAM Solution Service Provider will prepare data collection procedures that the City will utilize to collect data including data for import from existing electronic sources and new data to be manually collected. Following development of data collection procedures, the City will perform manual data collection and export from existing systems to prepare for data import by the WAM Solution Service Provider.

1. Meet with City of Charlotte staff to develop data collection and preparation procedures. Initial data planning meetings will include as a minimum:
  - Utilities– 4 days
  - Engineering and Property Management Building Maintenance – 2 days

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- Engineering and Property Management Landscape Maintenance – 2 days
  - Charlotte Department of Transportation – 4 Days
  - Aviation – 2 days
  - 311/Customer Service Call Center – 3 days
  - Business Support Services - Procurement Services Division – 2 days
  - Total = Nineteen (19) data planning sessions at five (5) hours per session (95 hours)
2. Develop data collection and development procedures for use by the City.
  3. Review sample data early in collection process to confirm proper formatting for import. Provide review comments to City as necessary to confirm proper data formatting for import.
  4. Work with City-designated resources to facilitate import/conversion of data into new WAM Solution.

#### **Assumptions:**

1. City of Charlotte will make data samples available for review.
2. City of Charlotte will provide staffing to perform required field data collection as determined necessary.

**Note:** It is not the intention to collect all asset data for inclusion into the solution during this implementation phase. As the initial processes, asset data will be collected prospectively as new assets are purchased and retrospectively as work orders are generated. As available and/or as determined valid, other asset information will be gleaned from existing systems.

#### **Deliverables by WAM Solution Service Provider**

1. Data collection and export format specifications.
2. Verified data import.

#### **3.9.6. Task 6 – Interface Specifications.**

**Description:** The WAM Solution Service Provider will provide expertise necessary to facilitate the specification development and implementation of custom interfaces between the WAM Solution software and the following existing City of Charlotte systems:

1. Ventyx Customer Suite (formerly Indus Banner/Advantage) utility billing system
2. PeopleSoft human resources system
3. GEAC – Finance system
4. Fire RMS (Hydrant Data)
5. ESRI ArcSDE Geodatabase (Version 9.x) – Enterprise geographic information system (GIS) database solution for the City.

The required functionality of the interfaces is described in the preliminary interface specifications at the end of this section. Services of the WAM Solution Service Provider will include the following:

1. Meet with City staff to refine each preliminary interface specification;



2. Support City-designated resources in the development and deployment of each custom interface;
3. Test, troubleshoot, and demonstrate proper functioning of each interface.

#### **Ventyx Customer Suite Interface Requirements**

Direct integration to Ventyx Customer Suite will be required to effectively handle Utility Management System interactions with the WAM Solution. Projected interface points would include short-duration work (leak investigations, locates, meter testing) as well as small and large meter asset integration.

#### **PeopleSoft Human Resources Interface Requirements**

The City uses PeopleSoft for its Human Resources system. The initial interface between PeopleSoft and the new WAM application will serve the primary purpose of transferring personnel information from PeopleSoft to WAM through a one-way interface. A weekly data export from PeopleSoft will create a data file ready for import to WAM. The HR data to be imported will include employee name, ID number, labor rate, and other selected employee data.

**Finance – GEAC** - will require interfaces for available funds verification, encumbrances, purchase orders/purchase requests, and to support financial reporting relative to asset registration and depreciation.

**Fire RMS** – Will require the updating of hydrant/service availability between the WAM solution and the Fire RMS system.

#### **ESRI ArcSDE GeoDatabase -**

The City uses ESRI software for its GIS application and database platform. GIS data is maintained by the KBUs in the City's Enterprise GIS ArcSDE geodatabase environment, individual KBU ArcSDE geodatabase environment or as shapefiles, coverages or personal geodatabases within individual KBU environments. KBUs share data by providing access to others via the City's Enterprise GIS ArcSDE server environment.

The City is enhancing its current Enterprise GIS geodatabase with improvements to the existing data model and migration to Version ArcSDE 9.2. As part of this project, the City's GIS data investments will be optimized and standardized to eliminate redundancy, improve performance, and leverage functionality and capabilities available in Version 9.2 of the software.

The WAM application will need to be able to interface with the geospatial data stored in the City's new Enterprise GIS server environment and the CMU GIS server environment. The interface between the Enterprise GIS database and the new WAM solution will provide a solution for leveraging the City's investment in spatial by linking assets in WAM to features in the Enterprise and CMU GIS databases and by accessing GIS features or layers for display, analysis and query within the WAM environment (see Appendix A for more information on GIS functional requirements). The GIS interface will utilize the WAS Solution Provider's off-the-shelf GIS

integration module and should not require “custom” interface development work.

**Assumptions:**

1. City of Charlotte will make appropriate staff available to meet with the Service Provider for interface development planning.
2. City of Charlotte will utilize internal (employee or contract) or implementation consultant resources for the direct interface development.

3.9.7. Task 7 – Train-the-Trainer.

**Description:** WAM Solution Service Provider will provide train-the-trainer sessions on the implemented WAM Solution system to selected City of Charlotte staff.

1. Provide the following minimum training sessions as a minimum. Rearrange training days as appropriate to fit your system modules. If additional software modules or 3rd party applications are provided to meet the functional requirements of this RFP, provide additional training on those modules and specify recommended number of days:
  - a. System administration – One 2-day session
  - b. Location & equipment – One 1-day session
  - c. Tool, labor, and companies – One 1-day session
  - d. Maintenance procedures and preventive maintenance – One 2-day session
  - e. Inventory – One 2-day session
  - f. Purchasing – One 2-day session
  - g. Work orders – One 1-day session
  - h. Call Center – One 2-day session
  - i. Custom Report Development – One 2-day session

**Assumptions:**

1. City of Charlotte will provide a suitable training environment to complete all of the classroom train-the-trainer sessions.
2. City of Charlotte will ensure that the appropriate City of Charlotte team members are available to attend the applicable and necessary training sessions.

**Deliverables by WAM Solution Service Provider**

1. On-site training sessions at City of Charlotte facilities.
2. Training materials will be provided in PDF format so they can be made available electronically to users via City of Charlotte’s intranet.

**3.10. Mobile Computing**

There has been growing recognition within our municipality that the power of computing and information technology must be, and can be, leveraged beyond its traditional professional user base to extend to employees who, until now, may not have had access to such technology. The state of being digitally connected has become ever more critical to the customer service model that our City espouses, specifically in the areas of seamlessness and responsiveness. It is the intent of the WAM program team that mobile computing technologies be advanced during the

implementation of this program. As such, the team requests that the vendor address field-deployed mobile computing relative to their proposed solution.

1. What are the mobile technology components of the proposed solution and how might they be deployed to support our service model?
2. What infrastructure requirements exist to most effectively deploy the mobile technology components?
3. Please provide solution-specific examples of how these deployed mobile components have been effective for serving municipal concerns, such as customer service, employee productivity, environmental issues, disaster mitigation?
4. New mobile users may have had little exposure or may be completely new to computing devices. Relative to the proposed solution, what are the most effective user interfaces for these communities and what form factors, such as laptop/tablet PCs, mobile phones, and PDAs, have been most effectively deployed?

Mobile computing licensing and training must be included in the overall pricing structure for this solution.

#### **3.11. Equipment.**

The City of Charlotte will procure all server, training lab, development lab, and mobile component hardware for this program. The Service Provider must, however, fill out the technical requirements specification worksheet provided as Appendix C of this RFP in order for the City to specify and procure appropriate hardware.

#### **3.12. Customer Service.**

The City is very focused on Customer Service with a philosophy to provide all customers with quality services in a manner that is courteous, accessible, responsive, and seamless. The selected Service Provider will be expected to use these guidelines in developing the Proposed Solution:

- Courteous, accessible, responsive and seamless customer service is of highest priority for the City.
- Courteous service means that the services will be delivered with patience, understanding, good will, and without regard to our own convenience.
- Accessible service means that citizens have easy access to the organization.
- Responsive customer service means that our employees know what they are doing; that information they give is accurate; that they have a good understanding of how to get problems and decisions made; that they are trained and evaluated for the jobs they are doing.
- Seamless customer service means that a customer gets good service no matter who in the organization is responsible.
- Customer Service goals must be measurable and regularly evaluated.
- Continuous improvements in customer service must be made in order to make City services accessible, responsive and as seamless as possible.

**3.13. Reporting Requirements.**

**3.13.1. Progress Reports.**

Throughout the development and implementation period, the Service Provider will be required to prepare and submit weekly written reports to the City Project Manager. The weekly reports shall: Update the Project Plan indicating progress for each task; Identify and report the status of all tasks that have fallen behind schedule and the reason and cure period; Identify and summarize all risks and problems identified by the Service Provider which may affect the Project; For each risk and problem, identify the action and person(s) responsible for mitigating the risk and resolving the problem; For each risk and problem identified, state the impact on the Project Plan; and Identify all changes in the Project Plan that affect personnel, equipment, facilities and resources of the City which will be required for the Service Provider to perform the Services two (2) weeks in advance of the need.

**3.14. Functional / Technical Requirements.**

Refer to Appendix A for Functional / Technical Requirements. Use the format and answering model when responding to the questions from this RFP. **Failure to do so may result in exclusion from the Evaluation and Selection process.**

**3.15. Training.**

The City views training as a critical element of the Project. Explain the training curriculum available to support the Service Provider's Proposed Solution.

**3.15.1. 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.

- The cost of all training referenced in this Section must be included in the Proposal Pricing.

**3.15.2. Training Implementation and Testing Process.**

Describe how your company manages the training implementation and testing process, including the roles of key project personnel.

**3.15.3. Training Environment Requirements.**

Describe what requirements the City must provide in order to house the proposed training solution.

**3.15.4. Training Environment Acceptance.**

The Service Provider shall describe and list a detailed training environment acceptance plan. Describe the criteria for assuring full system performance and outline how tests will be conducted to demonstrate proper installation prior to delivery of initial and subsequent training.

**3.15.5. System Administrator Training.**

Describe the Service Provider's plan for system administrator training.

**3.16. Security Requirements.**

The Service Provider must define and demonstrate security procedures that are in place. The City requires that security measures be taken – both physical security and network security, in that the City's information and other documents are made available only to the Service Provider and parties that the City approves. Describe your security procedures to include electronic data, hard copy information, and employee security. Explain your point of accountability for all components of the security process. Describe the results of any third party security audits in the last five (5) years.

**3.17. Support and Maintenance.**

Beginning on the Date of System Acceptance and continuing throughout the term of the Contract the Service Provider shall provide to the City the following Maintenance Services, subject to the terms outlined in Exhibit A:

- Prevention and Correction of System Defects;
- Prevention and Correction of Software Defects;
- Prevention and Correction of Hardware Defects;
- Software Updates and Enhancements;
- Hardware Updates and Enhancements;
- Compliance with relevant Federal, State or Local laws;
- Training and Documentation for Major Updates and Enhancements;
- Reporting of Defects;
- Telephone Support;
- Remote Support;
- Onsite Support;
- Change Control Procedures;
- Severity Levels, Response Times, and Resolution Times;
- Disaster Recovery;
- Phone Logs; and
- Technical Records.

**3.18. Source Code Escrow.**

Service Provide will be required to deliver all Source Code to the source code escrow agent identified in the Source Code Escrow Agreement attached as Exhibit B, at the times set forth therein. The City shall be given such Source Code under the conditions stated in the Source Code Escrow Agreement. The Service Provider will be required to deliver the Source Code for all Customizations to the City prior to System Acceptance. The Service Provider will be required to deliver the Source Code for all Updates and Enhancements to Customizations to the City within ten (10) days after delivery of each Update and Enhancement. The City shall have the right to validate source code placed in escrow.

**3.19. Disaster Recovery.**

Disaster Recovery involves two specific components: the ability for the service provider to recover from disasters impacting its own business and the ability for the service provider to respond to disasters impacting the service providers solution implemented in the City of Charlotte. The Service Provider must have the capability to recover from natural, human-caused, and electronic disasters (including security compromises) that could interrupt service to the City and the City's customers. The Service Provider will detail their solution to include:

- Mechanisms in place to ensure high availability of the solution to City of Charlotte employees and its citizens;
- Procedures for off-site storage of information;
- Capabilities and availability of alternate processing, communications, and operations facilities;
- Plans for maintaining business processes, including communications with the City, the City's customers, and suppliers of goods and services.
- Estimated time to recover from disaster events, and service level expectations for business continuity following a disaster;
- Cost to the City, if any, for disaster recovery services; and
- Documented disaster recovery and business continuity plans, including dates of disaster recovery tests and schedule for future tests.

**3.20. 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. To assist you in familiarizing yourself with procurement at the City, please follow the link below to the "How to Business with the City of Charlotte" booklet:

<http://www.charmeck.org/NR/rdonlyres/ek33m4cyfumkuevj4jdodelp646mx5x2ja2vydhpyrosfoo2ntxbrp2cxd7n5tt2oxiz7okexkmfe6dhivwtybxrqog/How+to+do+business+booklet.pdf>

Once you have had an opportunity to review the information above, you will need to register as a vendor with the City of Charlotte-Mecklenburg County. Your registration provides the City with baseline information for your company 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 company 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.

<https://cityvendors.charmeck.org>

**3.21. Length of Relationship.**

The City expects to establish a long-term relationship with its Work and Asset Management Software Solution 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 an initial term of three (3) years, with the City having an option to renew for two (2) additional consecutive two- (2) year terms thereafter.

**3.22. Out of Scope.**

An implementation consultant dedicated to the improvement and integration of business processes with the implemented WAM software solution will be retained for this program. The scope-of-services for this consulting partner is separate from the installation, configuration, testing, commissioning, integration support, and core training services covered in this RFP. As such, the business process development and integration work is out of scope relative to this RFP.

**3.23. Performance Bond.**

Within ten business days after execution of this Contract, the Company shall provide the City with a performance bond for the full amount of the Purchase Price (the "Performance Bond"). The Performance Bond shall be from a U.S. federally registered surety or bonding agency that is registered to conduct business in the State of North Carolina.

The Performance Bond shall be conditioned upon the full and faithful performance of each and every term, condition and provision of this Contract, and shall be subject to City approval as to form and content. The Company shall keep the Performance Bond for two years after System Acceptance, provided that on the one-year anniversary date of System Acceptance the Company may reduce the amount of Performance Bond by forty percent. The Company shall pay all premiums chargeable for the bond, and the bond shall contain a provision that it shall not terminate prior to thirty (30) days after written notice to that effect is given to the City.

In the event the Company fails to maintain the Performance Bond as required by this Contract, the City may terminate this Contract for default and, without limiting any other remedies it may have, obtain a refund of all amounts paid to the Company under this Contract.

**3.24. City Contracting Requirements.**

The City will enter into a Contract written by the City with the successful Service Provider that contains the terms and conditions set forth in Exhibit A. Each Service Provider must state specifically in its Proposal any exceptions to the terms and conditions included in this Exhibit, and any proposed additional terms or conditions deemed important by the Service Provider. The City will take any such exceptions and proposed additions into account during the evaluation process. Any terms and conditions that the Service Provider does not specifically object to will be incorporated into the resultant Contract. Notwithstanding the foregoing, the City

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reserves the right to change the proposed contractual terms and conditions prior to or during contract negotiations if it is in the City's best interest to do so.

The terms and conditions set forth in the Exhibit are not all inclusive. The City will propose additional terms and conditions based on the responses to this RFP and the City's analysis of the successful Service Provider's Proposal.

As used in the Exhibit of the RFP, the term "Contract" shall refer to the contract entered into between the City and the successful Service Provider, and the term "Company" shall refer to the successful Service Provider.



**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. Background and Experience as requested in Section 5;
- d. Proposed Solution as requested in Sections 3 and 4;
- e. Financial Information as requested in Section 5;
- f. The "Addenda Receipt Confirmation" set forth in Section 7, Form Two;
- g. The "Proposal Submission" set forth in Section 7, Form Three;
- h. The "Services Pricing Worksheet" set forth in Section 7, Form Four;
- i. Solution Licensing Pricing in vendor format;
- j. The "Proposal Certification" set forth in Section 7, Form Five; and
- k. Exceptions to the Remainder of the RFP.

All Proposals shall be 8 1/2" x 11" format with all standard text no smaller than eleven (11) points. All submissions should use one-sided copying and be bound in a three-ring binder with tab dividers corresponding to the content requirements specified below. Proposals must also include a compact disc including the entire Proposal in a searchable format such as 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.**

The following sections detail the various aspects of the RFP's format.

**4.1. 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."**

**4.2. Executive Summary.**

The Service Provider shall submit an executive summary, which outlines its Proposal, including the proposed system (or systems) that comprise the Service Provider's WAM Software Solution. 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 those aspects of this Proposal which make it superior or unique in addressing the current and future needs of the City.

**4.3. Background and Experience.**

The Service Provider shall provide a concise description of the company, including origin, state of incorporation, background, and current size as requested in Section 5. Include information concerning general organization and staffing as well as experience with similar Work and Asset Management Software Solution projects as described in Section 3.

**4.4. Proposed Solution.**

Given the purpose of this Project and the City's goals and objectives as stated in this RFP, provide a creative solution to meet such goals. Describe how the Service Provider shall fulfill the City's requirements for a WAM Software Solution designed to meet the City's current and future needs. **If the Service Provider wishes to add supplemental information, it shall be labeled "Supplemental Information."**

**4.4.1. Overall Approach to Delivering Total Solution.**

In accordance with Section 3.6 of this RFP, the Service Provider shall:

- Propose the delivery and installation of a total software solution that includes the management capabilities outlined in the specifications attached in Appendix B. The functional areas as defined in the specifications include, but are not limited to, Work Management, Asset Management, Citizen Relationship Management, Procurement, Materials Management, and Permitting. The evaluation committee will review each submittal for adherence to the total solution philosophy that the program team has defined. Should company software not include an identified functional component, the potential service provider should propose third party software that enables the service provider to meet the requirement of a total software solution.
- Provide for WAM Software Solution installation, configuration, testing, commissioning, integration support, and core training services necessary to support the City's WAM solution implementation plan.

The Service Provider shall specify how it intends to incorporate, deliver and/or comply with information and scope elements detailed in Sections 3.1 through 3.20 of this RFP.

**4.4.2. Transition Plan.**

The Company shall prepare and submit to the City for approval a comprehensive and detailed Transition Plan, which describes in detail the mechanisms that the Service Provider intends to use to communicate with the Implementation Consultant and the City's Program Team to ensure best-case transition from the various City of Charlotte Work and Asset Management systems to the Service Provider's proposed WAM Software

Solution (the "Transition Plan"). The new product/system/application solution cutover must ensure a continuity of service for our internal and external customers. The Transition Plan is subject to the terms set forth in Exhibit A of this RFP.

4.4.3. **Project Plan.**

The Company shall develop a detailed Project Plan (preferably in MS Project format) that describes, to the best of your ability, all tasks, activities, and resources associated with the performance of the Services (the "Project Plan"). The Project Plan will further contain a time line and completion dates for all such tasks and activities providing for completion of each item. The Company shall seek the City's input in developing the Project Plan, and the Project Plan shall not be deemed final until the City has accepted it in writing. The Project Plan is subject to the terms set forth in Exhibit A of this RFP.

In developing the Project Plan, and on a weekly basis throughout the Project, the Company shall identify and request from the City: (i) all information reasonably required by the Company to effectively implement the Project; (ii) the City's personnel whose presence or assistance reasonably may be required by the Company to perform each task required for the implementation effort; and (iii) any other equipment, facility or resource reasonably required by the Company for the development effort. The Company shall not be relieved of any failure to perform by virtue of the City's failure to provide any information, personnel, equipment, facilities or resources: (i) that the Company failed to identify and request in writing from the City pursuant to this Section; or (ii) which the City is not required to provide pursuant to the Contract.

The Project Plan shall be maintained by the Company, and shall be updated and submitted to the City on a weekly basis throughout the Project to reflect the current status of all work. Aside from updates to show tasks accomplished, no changes to the Project Plan shall be made without the prior written approval of the City.

4.4.4. **Client Relationship Management.**

Client relationship management and communication plans identify people with an interest in the project (stakeholders), the respective communication needs of those stakeholders, and the project-specific methods of communication. In a Project of this size and scope, communication planning will help to ensure that everyone who needs to be informed about project tasks and outcomes gets the needed information. In the Proposal the Service Provider shall respond to the following:

- Describe the communications approach that your company will use to keep the City informed about the status and progress of the Project.
- Describe the City resources that will be required to effectively support the above communications approach.

4.4.5. **Risk Management.**

For the purposes of this project, risk management may be defined as an organized, systematic decision-making process that efficiently identifies,

evaluates, and reduces or eliminates the possibility of an unfavorable deviation from the expected outcome of the project or the achievement of the program goals. Effective risk management is critical to the success of this project and to the success of the resulting solution implementation projects.

- Identify major risks that will be faced by the City in implementing a multi-business unit Work and Asset Management Software Solution and how those risks should be mitigated.
- Identify any contingencies that have been built into the risk mitigation approach.

4.4.6. **Requirements Matrix.**

Each Proposal must provide complete responses to the Functional and Technical Requirements Matrices included as Appendices B and C.

4.4.7. **Pricing.**

The City is currently exploring options relative to the pricing strategy for this Project and will follow up with an Addendum to this RFP, which will include details regarding the pricing approach for Service Providers to follow.

Regardless of the pricing approach, pricing shall be comprehensive and complete, and shall include all costs associated with the Project described in this RFP regardless of exceptions taken.

Cost must be in United States dollars rounded to the nearest quarter of a dollar. A pricing worksheet will be provided in the Addendum to assist you.

The Addendum will be posted to [www.ips.state.nc.us](http://www.ips.state.nc.us). It is the Service Provider's responsibility to monitor this site for additional information regarding this RFP.

4.5. **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 f through j.

4.6. **Exceptions to the RFP.**

An "exception" is defined as the Service Provider's inability or unwillingness to meet a term, condition, specification, or requirement in the manner specified in the RFP. All exceptions taken must be identified and explained in writing in your Proposal and must specifically reference the relevant section(s) of this RFP including the Sample Contract language. Other than exceptions that are stated in compliance with this Section, each Proposal shall be deemed to agree to comply with all terms, conditions, specifications, and requirements of this RFP. If the Service Provider provides an alternate solution when taking an exception to a requirement, the benefits of this alternative solution and impact, if any, on any part of the remainder of the Service Provider's solution, must be described in detail.

If exceptions are not identified in your Proposal they may not be considered during Contract negotiation and could result in Proposal being rejected from further consideration. If legal council needs to review the Contract before your Company can sign, reviews must be completed before your Proposal is submitted.

## Section 5

### Background and Experience

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#### 5. SERVICE PROVIDER'S BACKGROUND AND EXPERIENCE.

Please answer the following questions as completely as possible, placing your answer immediately after the question to which it applies. **If you wish to add supplemental information, it shall be labeled "Supplemental Information."**

##### 5.1. Official Name.

Provide the legal name and address of the company and state of incorporation submitting the proposal. Also identify all subcontractors or joint venture partners.

##### 5.2. Service Provider Background.

Provide an overview and history of your company. How long has the company been providing Services to local governments? Describe the organization and ownership. Include an organization chart.

##### 5.3. Proposing Organization's Structure.

- a. Describe your total organization, including any parent companies, subsidiaries, affiliates, and other related entities;
- b. Describe the ownership structure of your organization, including any significant or controlling equity holders;
- c. Provide a management organization chart of your overall organization, showing director and officer positions and names and the reporting structure. Provide detailed information for the Work and Asset Management Software Solution business segments of your organization, showing the reporting structures within these segments and among these segments and the overall organization; and
- d. Describe any organizational changes such as divestitures, acquisitions, or spin-offs involving your Work and Asset Management Software Solution business segments that have occurred in the latest two (2) years or are anticipated in the future.

##### 5.4. Analytical Approach.

The evaluation of financial viability of the Service Providers was developed with one primary goal in mind: to protect the City from risk of default by a selected Service Provider due to financial instability. Various analytical techniques will be used to assess the financial strength and stability of each Service Provider, focusing on profitability, solvency, and efficiency. The analysis will include an evaluation of specific financial indices and ratios in an effort to maximize objectivity and provide measures that are more directly comparable among Service Providers.

Other factors which may impact the financial position of a Service Provider, or which provide additional evidence of the financial strength of a Service Provider, will also be assessed. These factors include years of experience in providing similar Services, and demonstration of the ability to obtain sufficient levels of liability and property damage insurance.

Relevant information regarding recent litigation and bankruptcy filings, which may materially affect a Service Provider's financial position, will be examined. In addition to credit ratings and credit reports, bank and vendor references will be used to evaluate the credit worthiness of each Service Provider.

## Section 5

### Background and Experience

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#### 5.5. Guarantor.

The nature of the relationship between the Service Provider and its guarantor is crucial to protect the City in the event that the contracting Service Provider defaults on its obligations. If the parent company of a proposing Service Provider is serving as the guarantor, then the parent company **must indicate in a letter its willingness to guarantee all contractual obligations of the Service Provider**. If the Company that is serving as guarantor has a relationship with the Service Provider other than a parent/subsidiary relationship, then a detailed explanation of all past and present relationships between the Service Provider and its guarantor must be provided, in addition to a letter from the guarantor indicating its willingness to guarantee all contractual obligations of the Service Provider.

Any financial information requested of the Service Provider in the following section must similarly be provided for the guarantor. In the event of a joint submission or Proposal, all proposing entities must provide statements specifying the extent to which each entity will act as guarantor and provide all relevant financial documents for all entities involved in the joint venture. Additionally, if there is more than one (1) guarantor, then the guarantors must be jointly and separately obligated.

#### 5.6. Requests for Financial Information.

The Service Provider must have the financial information requested in this Section 5.6 readily available and have the ability to provide it to the City, **without exception**, within twenty-four (24) hours upon the City's request during the Proposal evaluation process.

#### **DO NOT INCLUDE THE FINANCIAL INFORMATION REQUESTED IN THIS SECTION WITH YOUR PROPOSAL SUBMISSION.**

If your Company does not have the audited financial statements requested, it is the responsibility of the Company to provide the City with information of sufficient quantity and with verifiable sources to ascertain that the Company is financially capable of performing the Services described in this RFP. Failure to provide adequate financial information may result in the exclusion of your Proposal from the procurement process.

Upon request, please furnish the following financial information for the proposing Service Provider(s), guarantor(s), and any sub-contractor included as having a significant role (defined as providing more than fifteen percent (15%) of the services) in providing Services to the City:

- a. Include in the statement of guarantor(s), as described in Section 5.5. Guarantor, evidence of the ability of the guarantor to meet the short-term funding needs of this project;
- b. Evidence that demonstrates the ability to obtain the insurance as required in the Contract Example – Exhibit A. Such insurance should provide coverage in the stated amount for each occurrence of bodily injury and for each occurrence of property damage with coverage for products/completed operations, personal injury liability, and contractual liability;
- c. Annual audited financial reports for each of the past five (5) fiscal years, prepared in accordance with Generally Accepted Accounting Principles (GAAP), and all relevant notes;

## Section 5

### Background and Experience

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- d. The most recent Form 10-K and Form 10-Q filed with the Securities and Exchange Commission (SEC); or, if the contractor is not regulated by the SEC, then the most recent quarterly financial report.
- e. Description of any material adverse changes in financial position within the past five (5) years; any material changes in the mode of conducting business; any bankruptcy proceedings, mergers, acquisitions, takeovers, joint ventures, and/or divestitures within the past five (5) years. In addition, provide a clear and definitive statement of the following:
  - Years of providing similar Services by the Service Provider and/or predecessor organization;
  - Whether or not the Service Provider (and/or predecessor, guarantor or subcontractor) has declared bankruptcy within the last five (5) years;
  - Description of the financial impact of any past or pending legal proceedings and judgments, as identified in Section 5.8 that could materially affect the Service Provider's financial position or ability to provide Services to the City. This information will be reviewed and assessed in accordance with the information provided by the Service Provider, in the above referenced Section;
  - All credit reports, credit bulletins, and any other published statements by the most recognized agencies (Standard & Poors Rating Group, Moody, Investor Services, Dun & Bradstreet, and Value Line) that have been issued or published about the entity within the past five (5) years;
  - The prospectus or offering statement for the entity's latest security or equity offering;
  - The company name, contact person, telephone number, and fax number of at least two (2) references from bank or institutional lenders which have extended credit to the entity in the past five (5) years; or if the entity has not applied for credit in the past five (5) years, the contact person's name, telephone number, and fax number of at least two (2) references from banks with which the entity conducts business;
  - The company name, contact person, telephone number, and fax number of at least two (2) credit references from suppliers/vendors; and
  - Any additional information, which the Service Provider believes, is appropriate to fully reflect the financial strength of the entity.

Failure to provide such information is cause for rejection of the Service Provider Proposal at the sole discretion of the City. For any subcontractor providing more than fifteen percent (15%) of the Services, the City reserves the right, at its sole discretion, to reject the subcontractor if it fails to meet minimum financial requirements. In the event the City's Evaluation Committee rejects the subcontractor, the Contractor must assume the responsibilities of the subcontractor or find a replacement satisfactory to the Evaluation Committee.

#### **5.7. Proposed Project Team.**

If the Service Provider's proposal submission will be from a team composed of more than one (1) company or if any subcontractor will provide more than fifteen percent

## Section 5

### Background and Experience

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(15%) of the Services, all participating companies must be identified. 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. Identify the extent, if any, of Small Business Enterprise participation in this Project.

#### 5.8. Past or Pending Judgments.

For purposes of this Section, the term "Related Entity" means any parent, subsidiary, affiliate or guarantor of the Service Provider. For all matters involving the Service Provider providing products or services to local, state or federal government, submit declarations of the current status of any past or pending criminal, civil, or administrative litigation against the Service Provider or any Related Entity. For all matters involving the Service Provider providing products or services to local, state or federal government, in addition, submit declarations of the current status of all pending criminal, civil or administrative litigation that commenced within the past five (5) years in North America, whether or not it involves local governments, against the Service Provider or Related Entity. (For the purpose of the declarations, current officer, shall be defined to include those individuals who are presently serving or who have served within the past two (2) years as an officer of the company.) Please state whether there are any cases pending against the Service Provider, a Related Entity, officer of either, that, if adversely resolved, would pose a material risk of insolvency to either the Service Provider or Guarantor or materially affect the Service Provider's or Guarantor's ability to perform their obligations.

The respondent may choose not to submit records for matters that were resolved prior to the time that the subsidiary or affiliate became associated with the parent company, as long as that subsidiary or affiliate will not be involved in the provision of Services to the City. All records for subsidiaries or affiliates of the parent company that may be involved in the provision of Services to the City must be included.

The City reserves the right to request additional information to explain any of the above citations/violations.

#### 5.9. Financial and Legal Considerations.

The Service Provider must have the financial information requested in this Section 5.9 readily available and have the ability to provide it to the City, **without exception**, within twenty-four (24) hours upon the City's request during the Proposal evaluation process.

**DO NOT INCLUDE THE FINANCIAL INFORMATION REQUESTED IN THIS SECTION WITH YOUR PROPOSAL SUBMISSION.**

If the audited financial statements requested in this section are not available, it is the responsibility of the Company to provide the City with information of sufficient quantity and with verifiable sources to ascertain that each entity identified is financially capable of performing the Services required by the Company in performance of the Services described in this RFP. Failure to provide adequate financial information may result in the exclusion of your Proposal from the procurement process.



## Section 5

### Background and Experience

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- a. For each entity identified in Section 5.3a, specify the entity's total revenue, number of employees, products and services, affiliated companies, and other descriptive information;
- b. For each entity identified in Section 5.3a, provide relevant documents that describe the entity's financial status, such as audited financial statements, annual reports, or 10-K reports, and the DUNS number; and
- c. If your Company does not have the audited financial statements requested above, it is the responsibility of the Company to provide the City with information of sufficient quantity and with verifiable sources to ascertain that the Company is financially capable of performing the Services described in this RFP. Failure to provide adequate financial information may result in the exclusion of your Proposal from the procurement process.

#### **5.10. Business Partners.**

- a. Describe your organization's customer service philosophy and describe how it is communicated and reinforced throughout the organization;
- b. Describe your organization's approach to total quality management, and describe your organization's total quality plan;
- c. Describe your organization's continuous improvement program and how your current customers benefit from your service improvements; and
- d. Describe your organization's experiences in adapting to changing technologies.

#### **5.11. Personnel Management.**

- a. Describe the key individuals, along with their qualifications, professional certifications and experience that would comprise your organization's team for providing Services to the City;
- b. Explain how your organization ensures that personnel performing technical support services are qualified and proficient;
- c. Describe your organization's approach, policies, and experience with respect to deployment of your personnel; and
- d. Has your organization been the subject of a dispute or strike by organized labor within the last five (5) years? Describe the circumstances and the resolution of the dispute.

#### **5.12. References.**

Provide contact information and project descriptions for three (3) customers of comparable size and scope of service that your Company has been under contract with to provide software and installation, configuration, testing, commissioning, integration support, and core training services for the implementation of a Work and Asset Management Software Solution during the past two (2) years. Include the following details:

- Client Name:
- Address:
- City, State, Zip Code:
- Project Manager:
- Telephone Number:

## Section 5

### Background and Experience

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- E-mail address:
- Total Number of Employees:
- Number of Purchasing Employees:
- Total Annual Purchases:
- Number of Purchase Transactions:
- Number of Purchase Orders:
- Project Scope/Description:
- Contract Award Date:
- Cutover Date:
- Initial Contract Amount:
- Final Contract Amount:
- Percentage of Customization:
- Financial System Interfaced:
- Other Systems Interfaced:
- Operating System:
- Database:
- Required Hardware:
- Discuss significant obstacles to implementation and how those obstacles were overcome:

#### 6. 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 WAM 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. Delivery of the Total Solution Framework;
- b. Qualifications, Experience and Approach;
- c. Financial Qualifications;
- d. Cost Effectiveness and Value;
- e. Acceptance of the Terms of the Contract; and
- f. For the selected final  $n$  number of Service Providers, a comprehensive demonstration of City-defined key processes within the framework of the proposed WAM Software Solution.

##### 6.1. Delivery of the Total Solution Framework.

The delivery of an integrated solution (system or systems) that meets or exceeds the requirements outlined in the attached appendices.

**Note: If the Service Provider's software does not include an identified functional component, the Service Provider is encouraged to propose fully integrated Third Party Software that enables the Service Provider to meet the requirement of a total software solution.**

##### 6.2. 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 the provision of solution installation, configuration, testing, commissioning, integration support, and core training services necessary to support the City's WAM solution implementation plan. 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.

##### 6.3. Financial Qualifications.

This criterion includes an evaluation of the financial qualifications of the Service Provider. The evaluation will take into account the financial strength of the Service Provider and its ability to meet the long-term financial requirements of the Contract.

The Internal Audit Division of the City will evaluate the Proposal responses and give an opinion to the evaluation team as to the financial strength of each Service Provider based on the financial information submitted in accordance with Section 5.

## Section 6

### Evaluation Criteria

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**6.4. 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.

**6.5. Acceptance of the Terms of the Contract.**

The City will evaluate the Proposals for compliance with the terms, conditions, requirements, and specifications stated in this RFP. Regardless of exceptions taken, Service Providers shall provide pricing based on the requirements and terms set forth in this RFP. Exceptions shall be identified in accordance with Section 1.6.19 of this RFP.

**6.6. Comprehensive Demonstration.**

By early December 2007, the City will provide process scripts to the selected final *n* number of Service Providers. These scripts will be representative of work management, asset management, citizen relationship management, procurement, materials management, reporting, permitting, and system administration processes that are either in place or will be in place within the City's business units. It is expected that these demonstrations will be conducted in mid-January 2008 as a final evaluation mechanism prior to selection.

**Section 7**  
**Required Forms – Form One**

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**7. REQUIRED FORMS.**

**REQUIRED FORM 1 - RFP ACKNOWLEDGEMENT**

The Service Provider hereby certifies receipt of the Request for Proposals for the City of Charlotte, North Carolina RFP #2008-113, City of Charlotte Work and Asset Management Software Solution. This form should be completed upon receipt of the City's Request for Proposals and faxed in time for the City to receive it by or before **SEPTEMBER 10, 2007**. Please fax the completed Request for Proposals Acknowledgement Form to the attention of:

Marcy Mars  
Procurement Services Division  
Fax: 704-336-2258

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Date: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Contact E-mail address: \_\_\_\_\_

Please check the appropriate space below and provide the requested information:

\_\_\_\_\_ **We plan to attend the Pre-Proposal Conference and plan on submitting a Proposal**

Indicate number of attendees: \_\_\_\_\_

\_\_\_\_\_ **We do not plan to attend the Pre-Proposal Conference but plan on submitting a Proposal**

Reason: \_\_\_\_\_

\_\_\_\_\_ **We do not plan to attend the Pre-Proposal Conference and do not plan on submitting a Proposal**

Reason: \_\_\_\_\_

\_\_\_\_\_

**Section 7**  
**Required Forms – Form Two**

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**REQUIRED FORM 2 - ADDENDA RECEIPT CONFIRMATION**

**RFP # 2008-113**

**City of Charlotte Work and Asset Management Software Solution**

Please acknowledge receipt of each addendum posted to [www.ips.state.nc.us](http://www.ips.state.nc.us) by faxing this form to Marcy Mars at 704-336-2258. This form, acknowledging all addenda, must also be included with your Proposal.

**ADDENDUM #:**

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**DATE ADDENDUM POSTED:**

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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

\_\_\_\_\_  
Company Name

**Section 7**  
**Required Forms – Form Three**

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**REQUIRED FORM 3 - PROPOSAL SUBMISSION FORM**

**RFP # 2008-113**

**City of Charlotte Work and Asset Management Software Solution**

This Proposal is submitted by:

Service Provider Name: \_\_\_\_\_

Representative (printed): \_\_\_\_\_

Representative (*signed*): \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

(Area Code) Telephone Number

Facsimile: \_\_\_\_\_

(Area Code) Fax Number

**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. Proposal is valid for one hundred and eighty (180) calendar days from Proposal Opening.**

\_\_\_\_\_  
**Service Provider**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Authorized Signature**

\_\_\_\_\_  
**Please type or print name**

**Section 7**  
**Required Forms – Form Four A**

**REQUIRED FORM 4 – SERVICES PRICING WORKSHEET**

<b>HOURLY RATES FOR PERSONNEL</b>				
Number	Level of Proposed Personnel	Personnel Title	Company Assigned Resource Name	Hourly Rate throughout Contract
1	Key - Required	Program Manager		
2	Key - Required	Project Manager		
3	Key - Required	Senior Business Analyst		
4	Key - Required	Business Analyst		
5	Key - Required	Systems Analyst		
6	Key - Additional	Technical Writer		
7	Key - Additional			
8	Additional Personnel			
9	Additional Personnel			
10	Additional Personnel			
11	Additional Personnel			
12	Additional Personnel			
13	Additional Personnel			
14	Additional Personnel			

Regardless of exceptions taken, 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.**

This form may be modified or amended as necessary to reflect the Service Provider's resource assignment and pricing strategies.





**Section 7**  
**Required Forms – Form Five**

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**REQUIRED FORM 5 - PROPOSAL CERTIFICATION**

AGREEMENT TITLE: City of Charlotte Work and Asset Management Software Solution

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, *prohibited discrimination* means discrimination against any person, business or other entity in contracting or purchasing practices on the basis of race, color, sex, or national origin. Without limiting the foregoing, *prohibited discrimination* also includes retaliating against any person, business or other entity for reporting any incident of prohibited 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 bid submitted by the Bidder on this project and to terminate any contract awarded based on such bid.
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.

\_\_\_\_\_  
NAME OF FIRM

BY: \_\_\_\_\_  
SIGNATURE OF AUTHORIZED OFFICIAL

\_\_\_\_\_  
TITLE

ATTEST/WITNESS:

\_\_\_\_\_  
Secretary/Name of Witness

Sworn to and subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Notary Public Commission expires: \_\_\_\_\_

**EXHIBIT A - SAMPLE CITY CONTRACT**

**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:	Milestone Plan (if applicable)
Exhibit C:	Scope of Implementation Services
Exhibit D:	Project Schedule
Exhibit E:	Scope of Maintenance Services
Exhibit F:	License
Exhibit G:	Requirements
Appendix 1 to Exhibit G	Confidential / Trade Secret Section of Specifications and Requirements

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 [COMPANY NICKNAME] in the Exhibits and Appendices shall be deemed to mean the Company.

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.
  - 2.2. **“Company Software”** and **“[COMPANY NICKNAME] Software”** shall be used interchangeably to mean all pre-existing software owned by the Company or any of its Related Entities which the Company provides or is required to provide under this Contract, and all New Releases and New Versions of the foregoing.
  - 2.3. **“Current Release”** means the latest version of the Software offered for general commercial distribution at a given point in time, including all New Releases.
  - 2.4. **“Customizations”** means all newly-developed software created by the Company 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 company Software.
  - 2.5. **“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.
  - 2.6. **“Deliverables”** means all tasks, reports, information, designs, plans and other items that the Company is required to complete and deliver to the City in connection with this Contract, other than the Products.

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**Exhibit A – Sample City Contract**

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- 2.7. **“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 Company or its subcontractors, including without limitation all end user manuals, training manuals, guides, program listings, data models, flow charts, logic diagrams, and other materials related to or for use with the System.
- 2.8. **“Effective Date”** means the date stated in the first sentence of this Contract.
- 2.9. **“Hardware”** means all hardware, equipment and materials that the Company actually provides or is required to provide under the terms of this Contract (whether now or in the future).
- 2.10. **“Implementation Services”** means the Services described in Exhibit C.
- 2.11. **“License”** means the license agreement attached to this Contract as Exhibit F.
- 2.12. **“Maintenance Services”** means the Services described in Exhibit E.
- 2.13. **“Milestones”** means the benchmarks of performance (consisting of an identified deadline for the completion of specific services and/or the acceptance of identified Deliverables), as specified in Exhibit B and the Project Plan.
- 2.14. **“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.
- 2.15. **“New Release”** means any change issued by the Company 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).
- 2.16. **“Project”** refers to the project for the Company to design, supply, install, configure, test and commission the System for the City in accordance with the terms and conditions in this Contract.
- 2.17. **“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.
- 2.18. **“Products”** means all Software and all Hardware (both as herein defined).
- 2.19. **“Project Schedule”** means the Project Schedule attached to this Contract mean Exhibit D.
- 2.20. **“Related Entity”** means any person or entity that is directly or indirectly in control of, controlled by, or under common control with the Company, 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.

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### Exhibit A – Sample City Contract

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- 2.21. **"Services"** means all services that the Company provides or is required to provide under this Contract, including all Implementation Services and all Maintenance Services.
- 2.22. **"Software"** means: (i) all Company Software; (ii) all Customizations; (iii) all Third Party Software; and (iv) all New Releases and New Versions of any of the foregoing.
- 2.23. **"Source Code"** means the human readable form of a computer program and all algorithms, flow charts, logic diagrams, structure descriptions or diagrams, data format or layout descriptions, pseudo-code, code listings (including comments), and other technical documentation relating to such program.
- 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) Exhibit G of this Contract, including the Appendix; (ii) the main body of this Contract; (iii) other Exhibits to this Contract aside from Exhibit G; (iv) the Documentation; and (v) any functional and/or technical specifications which are published or provided by the Company or its licensors or suppliers from time to time with respect to all or any part of the 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 [DESCRIBE SYSTEM] to be [designed, supplied, installed, configured, tested and commissioned] by the Company 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 C 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 Company under this Contract and was not manufactured, developed or otherwise created by the Company, any Related Entity of the Company, or any of the Company's subcontractors.
- 2.28. **"Warranty Period"** means the twelve-month period following System Acceptance.
- 2.29. **"Workaround"** means 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.
- 2.30. **"Work Product"** means the Deliverables and all other programs, algorithms, reports, information, designs, plans and other items developed by the Company in connection with this Contract, and all partial, intermediate or preliminary versions of any of the foregoing.
3. **GENERAL DESCRIPTION OF SERVICES.** The Company shall provide the Implementation Services described in Exhibit C 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

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Requirements on or before **[PLANNED ACCEPTANCE DATE]**. The Company shall also provide the Maintenance Services described in Exhibit E. The Company 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 FOR SYSTEM.*

The Company shall invoice the City **EITHER**:

- a. In accordance with a Milestone Payment Plan, which shall be in direct correlation with the Project Plan submitted by the Company. The Company shall not invoice the City for Services within a particular Milestone until all Services required in connection with that Milestone have been fully delivered, completed and accepted by the City. The City shall pay the Company a fixed price of **[PURCHASE PRICE]** (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, and shall be payable in accordance with Exhibit B (the "Milestone Plan"). The amount of the Purchase Price referenced in this Section constitutes the total fees, charges and expenses payable to the Company 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.

#### **OR**

- b. On a time and materials basis. The City agrees to pay the Company for the Services at the hourly rate(s) set forth in the Scope of Work, which shall remain firm for the duration of the Contract.

A Payment Cap (the "Payment Cap") will be set, which shall constitute the maximum total fees and charges payable to the Company under the Contract and will not be increased except by a written instrument duly executed by both parties.

The City will pay accurate, undisputed, properly submitted invoices within thirty- (30) days after the receipt of the Company's invoice, provided that the invoice has been submitted at the appropriate time.

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

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- 4.3. *INVOICES.* Each invoice sent by the Company shall detail all Services, Products and Deliverables performed and delivered which are necessary to entitle the Company to the requested payment.
- 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; or (b) acceptance by the City of the Milestone to which the invoice applies. For Extended Maintenance Service fees, only subpart (a) of the preceding sentence shall apply.
- 4.5. *RECORDS.* For Time and Materials, the Company shall be responsible for keeping a record that accurately states the number of hours worked by the Consultant(s). The City shall have the right to audit the Company's invoices, expense reports and other documents relating to the Services performed under the Contract, and shall not be required to pay for Services which did not occur, or which occurred in breach of the Contract. The Company shall make such documents available for inspection and copying by the City in Charlotte, North Carolina between the hours of 9:00 a.m. to 5:00 p.m. Monday through Friday, whenever requested by the City.
- 4.6. *ADDITIONAL PURCHASES.* For a period of eighteen months after the date of this Contract, the City shall have the right to purchase and the Company shall sell to the City all Hardware and Software listed in Exhibit A as optional items at the prices set forth in Exhibit A.
- 4.7. *PRE-CONTRACT COSTS.* The City shall not be charged for any Services or other work performed by the Company prior to the Effective Date.
- 4.8. *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 Company necessary to evaluate Company'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 Company. However, if non-compliance is found that would have cost the City in excess of \$10,000 but for the audit, then the Company 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 Company 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. *COMPANY TO PROVIDE ALL HARDWARE AND SOFTWARE.* As part of the Purchase Price, the Company shall provide all hardware, software, labor, equipment and materials required by the City in order for the 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 Company shall deliver the Products by the delivery dates set forth in the Project Schedule, as may be modified by the parties' mutual consent in

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the Project Plan. Delivery shall be to the City's facility at 600 E. Fourth Street in Charlotte, North Carolina unless otherwise agreed in writing by the City.

- 6.3. *TITLE / RISK OF LOSS.* Except for loss or damage occurring in connection with the Company'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 Company.
- 6.5. *SOFTWARE LICENSE FOR EMBEDDED SOFTWARE.* The Company 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 Company's obligations to provide warranty Services or the Maintenance Services, the Company hereby assigns and transfers to the City all of the Company's warranties from the Company's suppliers covering the Hardware, the Embedded Software and Third Party Software. The Company will provide copies of such warranties to the City with delivery of the applicable Hardware or Software. While the Company shall be entitled to make arrangements to have such warranty work performed by the supplier, nothing herein shall relieve the Company 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 Company 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. BACKGROUND CHECKS.**

Prior to starting work under this Contract, the Company is required to conduct a background check on each Company employee assigned to work under the Contract, and shall require its subcontractors (if any) to perform a background check on each of their employees assigned to work under the Contract (collectively, the "Background Checks"). Each Background Check must include: (a) the person's criminal conviction record from the states and counties where the person lives or has lived in the past seven years; and (b) a reference check.

After starting work under this Contract, the Company is required to, on an annual basis, perform a Background Check for each Company employee assigned to work under the Contract during that year, and shall require its subcontractors (if any) to do the same for each of their employees. If the Company undertakes a new project under the Contract, then prior to commencing performance of the project the Company shall perform a Background Check for each Company employee assigned to work on the project, and shall require its subcontractors (if any) to do the same for each of their employees.



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

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

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

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

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

#### **8. DUTY OF COMPANY TO IDENTIFY AND REQUEST INFORMATION, PERSONNEL AND FACILITIES.**

Throughout the duration of this Contract, the Company shall identify and request in writing from the City Project Manager all City resources that may reasonably be required by the Company to perform the Services (the "City Resources"), including all information, City staff, equipment, facility or materials needed by the Company. The Company 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 Company 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 Company will notify the responsible City Key Business Executive of such failure. The Company 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 Company 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 Company is excused from performance under the terms of this Section, the Company will only be excused for delays that occur after it has given notice to the City Key Business Executive of the City's failure.

#### **9. REMOVAL, REPLACEMENT AND PROMOTION OF COMPANY PERSONNEL.**

The City will have the right to require the removal and replacement of any personnel of the Company or the Company's subcontractors who are assigned to provide Services to the City. The City shall be entitled to exercise such right in its sole discretion by providing written notice to the Company.

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 Company proposes to hire or transfer to such positions. As used in this Contract, the term "Key Personnel" shall mean the Company Project Manager, and any other personnel of the Company or its subcontractors who are identified as Key Personnel in an Exhibit to the

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Contract, or whom the City from time to time designates in writing to the Company as fulfilling a key role in the Project. Unless approved by the City in writing, the Company will not: (i) remove the Company'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 Company's Key Personnel in the Project or allow its subcontractors to materially reduce the involvement of Key Personnel in the Project.

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

If the Company gets more than 7 days behind in completing any Deliverable required by this Contract or the Project Plan, the Company 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 Company or its subcontractors, including but not limited to Key Personnel.

#### 10. REPRESENTATIONS AND WARRANTIES OF COMPANY.

10.1. *SPECIFIC WARRANTIES.* Company represents, warrants and covenants that:

- (a) For a period of twelve 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 Company 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) All Software and Hardware is and will be Year 2000 Compliant (as defined below).
- (f) In accordance with the North Carolina electronic data-processing records law N.C.G.S. §132-6-1:

10.1.f.1. All Software and Documentation provided by the Company 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

10.1.f.2. All Software and Documentation provided by the Company or its subcontractors will have sufficient information to enable the City to create

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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 Company 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 Company and/or its subcontractors pursuant to this Contract shall meet the highest industry standards and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;
- (i) Neither the Services, nor the Products nor any Deliverables provided by the Company 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);
- (j) All Hardware shall be delivered and shall remain free and clear of all liens and encumbrances. The Company 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 Company's maintenance of the Software.

For purposes of this Contract, the term "Year 2000 Compliant" means that software will:

- (a) store all date-related information and process all data interfaces involving dates in a manner that unambiguously identifies the century, for all date values before, during and after the Year 2000; (b) calculate, sort, report and otherwise operate correctly and in a consistent manner for all date information processed by the software, whether before, during or after the Year 2000; (c) calculate, sort, report and otherwise operate correctly, in a consistent manner and without interruption regardless whether the date on which the software is operated or executed is before, during or after the Year 2000; (d) report and display all dates with a four-digit date so that the century is unambiguously identified; and (e) handle all leap years, including but not limited to the Year 2000 leap year, correctly;

Prior to System Acceptance, the Company 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 Company will correct all Defects and provide Maintenance Services pursuant to the Exhibit G.

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If the Company 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 Company or its subcontractors or licensors under this Contract.

10.2. *ADDITIONAL WARRANTIES.* Company 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 [STATE OF INCORPORATION];
- (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 Company;
- (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 Company shall not violate any agreement with any third party by entering into or performing this Contract.

#### 11. REMEDIES.

11.1. *RIGHT TO COVER.* If the Company 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 Company is again able to resume performance under this Contract; and
- (b) Deduct any and all expenses incurred by the City in obtaining or performing the Services from any money then due or to become due the Company and, should the City's cost of obtaining or performing the services exceed the amount due the Company, collect the amount due either from the Company.

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

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

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11.4. *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.

11.5. *LIQUIDATED DAMAGES*. The City and the Company acknowledge and agree that the City will incur costs if the Company 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. Accordingly, the Company agrees to pay liquidated damages at the rate of **[LIQUIDATED DAMAGES]** per day for each day the Company is late in meeting a Completion Date set forth in the Project Schedule or the Project Plan. The Company further agrees to pay any liquidated damages that are set forth in Exhibit E in the event it fails to meet a Completion Date for Maintenance Services.

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.

11.6. *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.

12. **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 Company or its subcontractors, the Company 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 Company shall further reload and restore such data at the Company's expense. The Company 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.

#### 13. **TERM AND TERMINATION**.

13.1. *TERM*. Unless terminated in accordance with its terms, this Contract shall commence on the Effective Date, and shall continue until the License has terminated.

13.2. *TERMINATION WITHOUT CAUSE*. The City may terminate this Contract at any time without cause by giving thirty (30) days written notice to the Company. As soon as practicable after receipt of a written notice of termination without cause, Company shall submit a statement to the City showing in detail the Services performed under this Contract through the date of termination. In the event of termination without cause pursuant to this Section, the City agrees to: (i) pay the Company a pro rata amount of the purchase price for Implementation Services rendered through the termination date based on percentage of completion of the applicable payment Milestones; and (ii) return all Hardware which the City elects not to keep, and (iii) pay the Company for any Hardware received by the City which the City has elected to keep, or which has

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been damaged by the City so as to preclude return. The forgoing payment obligation is contingent upon: (i) the Company having fully complied with Section 12-7; and (ii) the Company 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.

13.3. *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.

13.4. *ADDITIONAL GROUNDS FOR DEFAULT TERMINATION BY THE CITY.* By giving written notice to the Company, 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 Company 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 Company to correct all Defects and deficiencies identified by the City with respect to a Deliverable within the time period set forth in Exhibit C;
- (c) Failure of the Company to correct all items identified in a Rejection Notice within the time period specified in Exhibit C;
- (d) Failure of the Company to resolve a problem within the time set forth in Exhibit G regarding Maintenance Services (whether during the Warranty Period or during Extended Mainframe Services);
- (e) The Company makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Contract, Company's Proposal, or any covenant, agreement, obligation, term or condition contained in this Contract; or

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- (f) The Company takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Contract, including but not limited to 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.
- 13.5. *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 Company.
- 13.6. *CROSS TERMINATION.* A default by the City under Exhibit E shall constitute grounds for terminating the Maintenance Services if not cured as provided above, but shall not constitute a basis for the Company to terminate the License or any other obligations the Company may have under this Contract. A default by the City under Exhibit A shall constitute grounds for terminating the Implementation Services if not cured as provided above, but shall not constitute a basis for the Company to terminate the License, the Maintenance Services or any other obligations the Company 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
- 13.7. *OBLIGATIONS UPON EXPIRATION OR TERMINATION.* Upon expiration or termination of this Contract, the Company 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 Company that are necessary to mitigate the Services to a new service provider; and (d) refund to the City all pre-paid Maintenance Fees (other than pre-paid Maintenance Fees for the then current year).
- 13.8. *NO SUSPENSION.* In the event that the City disputes in good faith an allegation of default by the Company, notwithstanding anything to the contrary in this Contract, the Company 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 Company, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.
- 13.9. *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 Key Business Executive of the City Key Business Unit responsible for administering this Contract.
14. **TRANSITION SERVICES UPON TERMINATION.** Upon termination or expiration of this Contract, the Company shall cooperate with the City to assist with the orderly transfer of the Services, functions and operations provided by the Company hereunder to another provider or to the City as determined by the City in its sole discretion. The transition services that the Company shall perform if requested by the City include but are not limited to:
- 14.1. Working with the City to jointly develop a mutually agreed upon transition services plan to facilitate the termination of the Services; and
- 14.2. Notifying all affected service providers and subcontractors of the Company of transition activities;

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### Exhibit A – Sample City Contract

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14.3. Performing the transition service plan activities;

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

14.5. Providing such other reasonable services needed to effectuate an orderly transition to a new system.

15. **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 Milestones and delivery dates and any associated price.

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

Changes that involve or increase in the amounts payable by the City may require execution by a Key Business Executive, the City Manager, or an Assistant City Manager; depending on the amount. Some increases may also require approval by City Council.

#### 16. **INTELLECTUAL PROPERTY**

16.1. **COMPANY OWNERSHIP.** The Company shall have exclusive ownership of intellectual property rights in all Company Software and related Documentation, including but not limited to all copyrights, patents and trade secrets (collectively “Company Intellectual Property”). The Company grants the City a perpetual, royalty-free, non-exclusive license to use and copy the Company Intellectual Property for all purposes of the City and the Affiliates in accordance with the terms of the License.

16.2. **CITY OWNERSHIP.** The City shall have exclusive ownership of all intellectual property rights in all Customizations, Deliverables and other Work Product created by the Company 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 Company hereby assigns and transfers all rights in the City Intellectual Property to the City. The Company further agrees to execute and deliver such assignments and other documents as the City may later require to perfect, maintain and enforce the City’s rights as sole owner of the City Intellectual Property, including all rights under patent and copyright law. The Company hereby appoints the City as attorney in fact to execute all such assignments and instruments and agree that its appointment of the City as an attorney in fact is coupled with an interest and is irrevocable.

The City Intellectual Property shall not include Deliverables created by the Company for other customers prior to the date of this Contract, provided that the Company 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 Company a royalty-free, non-exclusive



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license to use and copy the City Intellectual Property to the extent necessary to perform this Contract. The Company 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.

16.3.*COMPANY WILL NOT SELL OR DISCLOSE DATA.* The Company will treat as Confidential Information under the Confidentiality Contract all data provided by or processed for the City in connection with this Contract or use of the Software (including metadata). Such data shall remain the exclusive property of the City. The Company will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the City in any manner except that contemplated by this Contract.

**17. OTHER OBLIGATIONS OF COMPANY**

17.1.*WORK ON CITY'S PREMISES.* The Company 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 Company 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.

17.2.*DAMAGE TO EQUIPMENT OR FACILITIES.* The Company 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 Company or its subcontractors.

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

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

18.1.The Company 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").

18.2.Unless specified in writing by the City in a specific instance, all Products provided by the Company will be the latest, most recent version available as of the time of installation. The Company 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 Company 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.

18.3.If the Company 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 be the latest, most recent version available as of six months prior to the date of System Acceptance.

18.4.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 Company.

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**Exhibit A – Sample City Contract**

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18.5. The Company shall make the New Technology available to the City at no additional cost if the required by this Contract, or if New Technology is generally commercially available to the Company'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 18.2 or 18.3.

18.6. The Company 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.

18.7. 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 Company from its obligations under this Contract to satisfy the Specifications and Requirements.

19. **INDEMNIFICATION.** To the fullest extent permitted by law, the Company shall indemnify, defend and hold harmless each of the "Indemnitees" (as defined below) from and against any and all "Charges" (as defined below) paid or incurred 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 Company or its subcontractors in connection with this Contract; or (iii) arising from the Company's failure to perform its obligations under this Contract, or from any act of negligence or willful misconduct by the Company or any of its agents, employees or subcontractors relating to this Contract, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible; or (iv) arising from the Company's violation of any law (including without limitation immigration laws); or (v) any claim that the Company or an employee or subcontractor of the Company is an employee of the City, including but not limited to claims relating to worker's compensation, failure to withhold taxes and the like. For purposes of this Section: (a) the term "Indemnitees" means the City and each of the City's officers, officials, employees, agents and independent contractors (excluding the Company); and (b) the term "Charges" means any and all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, royalties, interest charges and other liabilities (including settlement amounts).

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

20. **INSURANCE.** Throughout the term of this Contract, the Company shall comply with the insurance requirements described in this Section. In the event the Company fails to procure and maintain each type of insurance required by this Contract, or in the event the Company 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 Company.

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#### 20.1. *General Requirements.*

- 20.1.1. The Company 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 20**, and the City has approved such insurance. The Company shall not allow any subcontractor to commence work on its subcontract until all insurance required of the subcontractor has been obtained and approved.
- 20.1.2. All insurance policies required by **Section 20.1** shall be with insurers qualified and doing business in North Carolina recognized by the Secretary of State and the Insurance Commissioner's Office. The Company shall name the City as an additional insured under the commercial general liability policy required by **Section 20.1**
- 20.1.3. The Company'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 Company 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 19**).
- 20.1.4. 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 Company and/or subcontractor providing such insurance.
- 20.1.5. Within 3 days after execution of this Contract, the Company shall provide the City with certificates of insurance documenting that the insurance requirements set forth in this **Section 20** 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 Company 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 Company shall not relieve the Company of its obligation to meet the insurance requirements set forth in this Contract.
- 20.1.6. Should any or all of the required insurance coverage be self-funded/self-insured, the Company 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 20**, 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

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

- 20.2.1. *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.

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

20.2.3. Errors and Omissions Liability Insurance as shall protect the Company 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.

20.2.4. Electronic Errors and Omissions. If the risks typically covered by Electronic Errors and Omissions Insurance are not covered by the Company's Errors and Omissions Insurance, the Company shall purchase an electronic errors and omissions insurance policy having aggregate limits of \$1,000,000 and occurrence limits of \$750,000, respectively.

20.2.5. Workers' Compensation Insurance. The Company 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 company.

21. **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 Company to the City that may arise under law or under the terms of this Contract.

22. **SUBCONTRACTING.** The Company shall not subcontract any of its obligations under this Contract without the City's prior written consent. In the event the City does consent in writing to a subcontracting arrangement, Company shall be the prime contractor and shall remain fully responsible for performance of all obligations which it is required to perform under this Contract. Any subcontract entered into by Company shall name the City as a third party beneficiary.

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23. **CONFIDENTIALITY AGREEMENT.** The parties acknowledge that they have executed and entered into a Confidentiality Contract prior to the execution of this Contract (the “Confidentiality Contract”), and that they are bound by all terms contained in the Confidentiality Contract with respect to any Confidential Information which either of them obtains access to in connection with this Contract.
24. **NON-DISCRIMINATION.** The City has adopted a Commercial Non-Discrimination Policy that is described in Section 2, Article V of the Charlotte City Code, and is available for review on the City’s website (the “Non-Discrimination Policy”). The Company agrees to comply with the Non-Discrimination Policy, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the Company shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, age, 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 Company retaliate against any person or entity for reporting instances of such discrimination. The Company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on City contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace. The Company 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 Company from participating in City contracts or other sanctions.

As a condition of entering into this Contract, the Company agrees to: (a) promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation, selection, treatment and payment of subcontractors in connection with this Contract; and (b) if requested, provide to the City within sixty days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Company has used on City contracts in the past five years, including the total dollar amount paid by Contractor on each subcontract or supply contract. The Company further agrees to fully cooperate in any investigation conducted by the City pursuant to the City’s Non-Discrimination Policy as set forth in Section 2, Article V of the City Code, to provide any documents relevant to such investigation that are requested by the City, and to be bound by the award of any arbitration conducted under such Policy. The Company understands and agrees that violation of this clause shall be considered a material breach of this Contract and may result in contract termination, disqualification of the Company from participating in City contracts and other sanctions.

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

25. **DRUG-FREE WORKPLACE.** The City is a drug-free workplace employer. The Company hereby certifies that it has or it will within thirty (30) days after execution of this Contract:
- 25.1. notify employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substance is prohibited in the workplace and specifying actions that will be taken for violations of such prohibition;

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

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

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

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

25.6. require any party to which it subcontracts any portion of the work under the contract to comply with the provisions of this Section.

A false certification or the failure to comply with the above drug-free workplace requirements during the performance of this Contract shall be ground for suspension, termination or debarment.

26. **OTHER SERVICES.** In the event the City desires for the Company to perform any services which are not covered by this Contract ("Other Services"), the Company will provide such Other Services at an additional charge which shall not exceed the rates being charged to similar clients for similar services, plus "Out of Pocket Expenses" as defined below that are related to the Other Services. The City shall not be required to pay for hours worked that which are not reasonable in relation to the service provided, nor shall the City be required to pay for Out-of-Pocket Expenses are not reasonable.

As used in this Contract, the term "Out-of-Pocket Expenses" shall mean the following expenses which are actually incurred by employees of the Company or its subcontractors who live outside of a 100 mile radius of Charlotte, North Carolina and who travel to Charlotte in the performance of the Other Services, when such travel would not otherwise have been necessary for the performance of this Contract:

- Lodging at a local hotel.
- A per diem meals reimbursement of \$40 per day.
- Long distance calls made by employees of Company while in Charlotte, if a given call is necessary for performance of the Services detailed in this Contract.
- Parking, tolls, or rental car.
- Travel costs to and from the City.

For Company or subcontractors and employees who stay in Charlotte over extended time periods, the Company will rent an apartment in the City if doing so proves to be more economical on a monthly average. Otherwise, the Company will attempt to obtain accommodations at the same rates as those applicable for federal government employees. The Company will attempt to minimize travel costs by obtaining the lowest fares reasonably practicable under the circumstances.

Each invoice for Other Services shall detail all services performed and shall itemize in detail and provide documentation for all Out-of-Pocket Expenses for which the Company seeks

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### Exhibit A – Sample City Contract

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reimbursement. The parties acknowledge that the Out-of-Pocket Expenses apply only to Other Services, and that the Company shall not be permitted to charge the City for Out-of-Pocket Expenses related to any Services which are covered by this Contract.

27. **SOURCE CODE.** Company shall cause the Source Code for all Software, New Releases and New Versions to be delivered to the source code escrow agent identified in the Source Code Escrow Contract, at the times set forth therein. The City shall be given such Source Code under the conditions stated in the Source Code Escrow Contract. The Company shall deliver the Source Code for all Customizations to the City prior to System Acceptance. The Company shall deliver the Source Code for all New Releases and New Versions to Customizations to the City within ten days after delivery of each New Release and New Version.
28. **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.

- 28.1. 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 Company:

PHONE:

FAX:

E-MAIL:

With Copy To

Shawn Coffman

City of Charlotte

Work and Asset Management Program Office

1000 Otts Street

Charlotte, N.C. 28205

PHONE: 704-432-4740

FAX: 704-432-4745

E-MAIL: [scoffman@ci.charlotte.nc.us](mailto:scoffman@ci.charlotte.nc.us)

For the City:

Marcy Mars

City of Charlotte

Procurement Services Division

600 East Fourth Street, CMGC 9<sup>th</sup> Floor

Charlotte, NC 28202-2850

PHONE: 704-336-2932

FAX: 704-336-2258

E-MAIL: [mmars@ci.charlotte.nc.us](mailto:mmars@ci.charlotte.nc.us)

With Copy To

Cindy White

City of Charlotte

Office of the City Attorney

600 East Fourth Street, CMGC 15<sup>th</sup> Floor

Charlotte, N.C. 28203-2841

PHONE: 704-336-3012

FAX: 704-336-6644

E-MAIL: [cwhite@ci.charlotte.nc.us](mailto:cwhite@ci.charlotte.nc.us)

- 28.2. 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.

29. **PERFORMANCE BOND** Within ten business days after execution of this Contract, the Company shall provide the City with a performance bond for the full amount of the Purchase Price (the "Performance Bond"). The Performance Bond shall be from a U.S. federally

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### Exhibit A – Sample City Contract

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registered surety or bonding agency that is registered to conduct business in the State of North Carolina.

The Performance Bond shall be conditioned upon the full and faithful performance of each and every term, condition and provision of this Contract, and shall be subject to City approval as to form and content. The Company shall keep the Performance Bond for two years after System Acceptance, provided that on the one-year anniversary date of System Acceptance the Company may reduce the amount of Performance Bond by forty percent. The Company shall pay all premiums chargeable for the bond, and the bond shall contain a provision that it shall not terminate prior to thirty (30) days after written notice to that effect is given to the City.

In the event the Company fails to maintain the Performance Bond as required by this Contract, the City may terminate this Contract for default and, without limiting any other remedies it may have, obtain a refund of all amounts paid to the Company under this Contract.

#### **30. MISCELLANEOUS**

30.1. *ENTIRE AGREEMENT.* This Contract, (including all Exhibits and Attachments), the Confidentiality Contract and the Source Code Escrow Contract 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.

30.2. *AMENDMENT.* No amendment or change to this Contract shall be valid unless in writing and signed by the party against whom enforcement is sought.

30.3. *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.

30.4. *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.

30.5. *NO DELAY DAMAGES.* Under no circumstances shall the City be liable to the Company for any damages arising from delay, whether caused by the City or not.

30.6. *FORCE MAJEURE PRIOR TO SYSTEM ACCEPTANCE.* The following force majeure provisions shall apply to the Company 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:



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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 Company 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 Company.
- (d) Notwithstanding anything contained herein to the contrary, strikes, slow-downs, walkouts, lockouts, and industrial disputes of the Company 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 Company or its are not excused under this provision. Nothing in the preceding Force Majeure provisions shall relieve the Company of any obligation it may have regarding disaster recovery, whether under this Contract or at law.

**30.7. FORCE MAJEURE AFTER SYSTEM ACCEPTANCE.** The following force majeure provisions shall apply to the Company after System Acceptance. After System Acceptance, the Company shall not be excused from performance under this Contract by virtue of force Majeure events. The Company 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 Company’s obligations pursuant to this Contract. Failure to comply with this provision will constitute a default under this Contract, and grounds for immediate termination.

**30.8. 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.

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30.9. *NO PUBLICITY.* No advertising, sales promotion or other materials of the Company or its agents or representations may identify or reference this Contract or the City in any manner without the prior written consent of the City. Notwithstanding the forgoing, the parties agree that the Company 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.

30.10. *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.

30.11. *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:

Section 2	Definitions
Section 4.6	Additional Purchases
Section 4.8	Audit
Section 6.5	Software License for Embedded Software
Section 6.6	Transfer of Warranties
Section 6.7	Replacement Equipment
Section 10	Representations and Warranties
Section 13	Term and Termination
Section 16	Intellectual Property
Section 19	Indemnification
Section 24	Non-Discrimination
Section 28	Notices
Section 30	Miscellaneous

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

30.13. *NO BRIBERY.* The Company certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the forgoing has bribed or attempted to bribe an officer or employee of the City in connection with this Contract.

30.14. *FAMILIARITY AND COMPLIANCE WITH LAWS AND ORDINANCES.* The Company agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Services. The Company further agrees that it will at all times during the term of this Contract be in compliance with all applicable federal, state and/or local laws regarding employment

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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.

- 30.15. **TAXES.** Except as specifically stated elsewhere in this Contract, the Company shall pay all applicable federal, state and local taxes which may be chargeable against the performance of the Services.
- 30.16. **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.
- 30.17. **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

#### **MAINTENANCE SERVICES**

This Exhibit SHALL BE incorporated into and made a part of the Master Contract for System Integration (“MCSI”) between the City of Charlotte (the “City”) and [INSERT COMPANY NAME] (the “Company”). 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 MCSI.

#### **1. GENERAL DESCRIPTION OF COMPANY RESPONSIBILITIES**

Beginning on the date of System Acceptance and continuing throughout the term of this Contract (and any renewal period thereof), the Company shall provide to the City the services specified in the following provisions of this Contract (all of which are collectively referred to in this Contract as the “Maintenance Services”).

#### **2. PREVENTION AND CORRECTION OF DEFECTS.**

- 2.1. **SYSTEM.** The Company shall respond to and correct all Defects in the System within the time frames set forth in **Section 2.15** of this Exhibit. The Company shall further take all actions reasonably necessary to prevent Defects, and to cause the System to reliably and consistently operate in conformance with the Specifications and Requirements.
- 2.2. **SOFTWARE.** Without limiting any of its other obligations under this Contract, the Company shall correct Defects in the Software within the time frames set forth in **Section 2.15** of this Contract, and take such actions as are necessary to ensure that the Software fully conforms to the Specifications and Requirements. The Company’s obligations hereunder extend to Third Party Software and Customizations, as well as other Software (including Upgrades and New Versions to Third Party Software and Customizations).
- 2.3. **HIGHEST INDUSTRY STANDARDS.** All work performed by the Company and/or its subcontractors pursuant to this Contract shall meet the highest industry standards for professional quality and workmanship, and shall be performed by qualified staff using

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quality products and materials.

- 2.4. **SOFTWARE NEW RELEASES AND NEW VERSIONS.** The Company shall provide to the City all New Releases and all New Versions to all Software (including Third Party Software) as soon as reasonably possible following their commercial release at no charge beyond the Maintenance Fee. The New Versions and New Releases provided by the Company to the City will incorporate Customizations at no charge beyond the Maintenance Fee. If requested by the City, the Company shall install New Releases and New Versions at no charge beyond the Maintenance Fee. All New Releases and New Versions provided to the City under this Contract will become part of the Software, and will be maintained by the Company under the terms of this Contract.

The Company will test and certify all New Releases and New Versions before providing them to the City.

Throughout the duration of the Maintenance Services, the Company will provide compatibility in new versions of the Company's Software with the Products that comprise the City's System.

- 2.5. **COMPLIANCE WITH LAWS.** The Company will promptly develop and provide at no charge beyond the Maintenance Fee all changes and additions to the Software and the Hardware that are required to achieve compliance with local, state or federal laws, regulations, codes and guidelines (including all changes to such laws, regulations, codes and guidelines). The Company will develop New Releases as necessary to improve ease of use and correct
- 2.6. **TRAINING AND DOCUMENTATION FOR MAJOR UPDATES AND ENHANCEMENTS.** The Company will provide at no charge beyond the Maintenance Fee all training and Documentation that is necessary for the City to fully utilize all major New Releases and New Versions.
- 2.7. **REPORTING OF DEFECTS.** The Company shall serve as a single source to address all Defects in the System. Notwithstanding the notice provisions contained in this Contract, the City shall be entitled to report Defects to the Company by telephone, E-mail, or other means, provided that all Defects which require immediate attention shall first be reported by telephone. Notice of Defects need not be in writing, and shall be deemed effective when first received by the Company. The City shall not be required to follow up in-person, telephone, E-mail or telefax notices of Defects with a hard copy by mail or other means.
- 2.8. **TELEPHONE SUPPORT.** The Company shall provide toll free "single point of call" telephone support to the City with respect to the use of the Products and the correction of Defects. Such support will be available from Monday through Friday 7:00 a.m. until 6:00 p.m. Eastern Time ("Regular Business Hours"). During Regular Business Hours, the Company will provide sufficient, qualified help desk personnel to ensure that City problems are addressed immediately. At all other times, a recording will advise the City representative the appropriate pager number to utilize. The Company will respond to each page within one hour.

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- 2.9. **REMOTE SUPPORT.** The Company shall provide remote diagnostic and repair service to the City with respect to the use of the Products and the correction of Defects, (“Remote Services”). The Company will make Remote Services available to the City both during Regular business through the help desk, and at other times through the Company staff who respond to pages. The Company shall comply with the security measures set forth on in this Exhibit regarding remote access, and any other security measures provided by the City in writing from time to time regarding access to the System.

The Remote Services to be provided by the Company include but are not limited to the following:

- Software diagnostics
- Database diagnostics
- CPU monitoring and diagnostics
- Memory usage and performance monitoring
- Operating system parameters analysis and diagnostics
- Remote downloading of software (fixes and features releases)
- Immediate response to calls

- 2.10. **ON-SITE SERVICES.** Company shall provide on-site maintenance and support to the extent necessary to correct any Defect in the Products, or the System, or to carry out any of the Company’s other obligations under this Contract. There shall be no charge for such on-site services, other than the Maintenance Fees provided in this Contract.

- 2.11. **CHANGE CONTROL PROCEDURES.** In performing remote support and other Maintenance Services, the Company will comply with the change control procedures established by the City from time to time, provided that the City shall give the Company notice of such procedures.

- 2.12. **ACCESS TO FACILITIES AND PERSONNEL.** In the event Company provides on-site support, the City shall provide the Company with reasonable access, without charge, to the City’s facilities, appropriate personnel, and any other information reasonably requested by Company so as to enable Company to provide Services, provided that the City can do so at no significant cost to the City.

- 2.13. **SEVERITY LEVELS, RESPONSE TIMES AND RESOLUTION TIMES.** The Company will comply with the response times, resolution time and resolution procedures set forth in this Section for each of the priority levels of problems described herein. The City shall assign an initial priority level for each problem reported, either verbally or in writing, based on the conditions described below. The Company will work with the City to upgrade or reduce the level of a particular problem to a different priority level, if after examining the problem there is reason to do so. Notwithstanding

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the foregoing, the Company shall not upgrade or reduce the level of priority of a particular error to a different priority without the City's consent, which consent may not be unreasonably withheld.

Priority One Critical	<p>Priority One applies if the problem could:</p> <ul style="list-style-type: none"> <li>• Prevent the accomplishment of an operational or mission essential function, OR</li> <li>• Causes loss of data or data corruption, OR</li> <li>• Jeopardize safety or security</li> </ul>
Response Time	<p>Immediately, if the problem is reported during Regular Business Hours</p> <p>Within one hour of notification if the problem is reported after Regular Business Hours.</p> <p>If on-site repair is required, the Company will be on-site within two hours after notification.</p>
Resolution Time	Within 12 hours after the problem is first reported by the City.
Liquidated Damages	Ten percent (10%) of the annual Maintenance Fees paid or payable by the City for each instance where the Company fails to resolve a Priority One problem within the resolution time specified above. For each twelve hours that a Priority One problem continues after the resolution time specified above, the Company shall pay additional liquidated damages equal to ten percent (10%) of the annual Maintenance Fees paid or payable by the City
Termination Trigger	The City may exercise the right to terminate this Contract immediately for default upon written notice to the Company in the event that a Priority One problem continues in duration for more than 24hours after it is first reported by the City.

Priority Two	<p>Priority Two applies if the problem could:</p> <ul style="list-style-type: none"> <li>• Adversely affect (but not prevent) the accomplishment of an operational or mission essential function, and no Workaround is available, OR</li> <li>• Adversely affect technical or cost risks to the life cycle support of the System, and no Workaround is available.</li> </ul> <p>Priority Two problems include aborts, but not loss of data or data corruption.</p>
Response Time	<p>Immediately, if the problem is reported during Regular Business Hours</p> <p>Within one hour of notification if the problem is reported after Regular Business Hours.</p>

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	If on-site repair is required, the Company will be on-site within two hours after notification.
Resolution Time	Within 48 hours after the problem is first reported to the City
Liquidated Damages	Ten percent (10%) of the annual Maintenance Fees paid or payable by the City for each instance where the Company fails to resolve a Priority Two problem within the resolution time specified above. For each forty-eight hours that a Priority Two problem continues after the resolution time specified above, the Company shall pay additional liquidated damages equal to ten percent (10%) of the annual Maintenance Fees paid or payable by the City
Termination Trigger	The City may exercise the right to terminate this Contract immediately for default in the event that a Priority Two problem continues in duration for more than forty-eight (48) hours after it is first reported by the City.
Priority Three	<p>Priority Three applies if the problem could:</p> <ul style="list-style-type: none"> <li>• Adversely affect (but not prevent) the accomplishment of an operational or mission essential function, but a Workaround is available, OR</li> <li>• Adversely affect technical or cost risks to the life cycle support of the System, but a Workaround is available.</li> </ul> <p>Priority Three problems do not include aborts or loss of data..</p>
Response Time	<p>Immediately, if the problem is reported during Regular Business Hours.</p> <p>Within eight hours of notification if the problem is reported after normal working hours.</p>
Resolution Time	Resolution within sixty (60) days.
Liquidated Damages	Five percent (5%) of the annual Maintenance Fees paid or payable by the City for each instance where the Company fails to resolve a Priority Three problem within the resolution time specified above. For each twenty days that a Priority Three problem continues after the resolution time specified above, the Company shall pay additional liquidated damages equal to five percent (5%) of the annual maintenance fees paid or payable by the City
Termination Trigger	The City may exercise the right to terminate this Contract in the event that a Priority Three problem continues in duration for sixty (60) or more calendar days after the resolution time specified above.
Priority Four Minor	Any problem related to the System which does not fall within Priority One, Two or Three
Response Time	Immediately, if the problem is reported during Regular Business

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	Hours Within two days of notification if the problem is reported after Regular Business Hours.
Resolution Time	Resolution within the next two New Releases.
Liquidated Damages	Five percent (5%) of the annual Maintenance Fees paid or payable by the City for each instance where the Company fails to resolve a Priority Four problem within the resolution time specified above. For each thirty days that a Priority Four problem continues after the resolution time specified above, the Company shall pay additional liquidated damages equal to five percent (5%) of the annual maintenance fees paid or payable by the City

2.14. **DISASTER RECOVERY.** In the event of a disaster, the Services shall be provided to the City and/or a disaster recovery services vendor at the location of the disaster recovery efforts. Upon the occurrence of a disaster, the Company shall assist the City in performing disaster recovery activities to restore the System to operational service.

2.15. **PHONE LOGS.** Company will keep detailed records of telephone calls, Remote Services, on-site visits and other information necessary to readily identify the date a problem is reported, a summary of procedures followed by the Company to correct the problem and any follow up calls relating to such problem. Each month, the Company will send the City a report containing such information.

2.16. **TECHNICAL RECORDS.** The Company shall produce and maintain during the term of the MASI and for a period of five (5) years thereafter detailed technical records with respect to all Maintenance Services performed under the MASI, including but not limited to engineering notebooks, development commentary, flow charts, logic diagrams and other materials related to the System (the "Technical Records"). The Company shall provide the City with copies of the Technical Records as requested in writing from time to time by the City.

2.17. **PREVENTIVE MAINTENANCE.** The Company shall take all reasonable actions necessary to prevent Defects, and to cause the System to reliably and consistently operate in conformance with the Specifications and Requirements.

### 3. CITY'S RIGHT TO RANDOM AND PERIODIC VALIDATION

Throughout the life of the System, the City shall have the right to, on its own or through any auditor or agent, randomly and periodically perform such tests, verifications or technical validations which the City deems necessary to determine whether the System or the Products are in conformance with the Specifications and Requirements, or to verify the results of any test(s) performed by the Company or its agents.

### 4. ASSURANCE OF CONTINUED MAINTENANCE AND SUPPORT

Without limiting any of the Company's other obligations under this Contract, the Company shall support the immediately preceding version of a Current Release of the Software for at least twenty four (24) months following issuance of such Current Release of the Software, provided that if a Current Release requires the City to incur significant integration costs or significant costs in replacing hardware or software (including operating system software),



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### Exhibit A – Sample City Contract

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then the Company shall support the immediately preceding version for at least forty-eight (48) months following issuance of the Current Release.

5. **SECURITY MEASURES FOR REMOTE ACCESS** The Company will not allow any person or entity to have remote access to the System other than those individuals whom the City has consented in writing to allow access to (“Authorized Personnel”). The Company shall take appropriate steps to insure that all Authorized Personnel who have access to the System shall use such access only for the purpose of correcting Defects in the System or providing New Releases or New Versions to the System. The Company shall take appropriate steps to ensure that all Authorized Personnel comply with this restriction, including but not limited to having such persons execute a written agreement to that effect.

The Company will take such steps as are necessary to ensure that only Authorized Personnel have access to the System.

The Company build and maintain such “firewalls” as are reasonably necessary to insure that access to the System is restricted in accordance with this Contract, and that Company’s access will not create an opportunity for sabotage or improper use of the System.

#### **LICENSE**

This Exhibit is incorporated into and made a part of the Master Contract for System Integration (“MCSI”) between the City of Charlotte (the “City”) and [INSERT COMPANY NAME] (the “Company”). 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 MCSI. 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.

#### **1. GRANT OF LICENSE**

- 1.1. *GRANT OF LICENSE.* Subject to the restrictions set forth in Section 2.2 below, the Company grants to City and the Affiliates a perpetual, nonexclusive, irrevocable, nontransferable, royalty-free license to:

- 1.1.1. Use the Software and the Documentation for all purposes set forth or referenced in the MCSI or the City’s RFP or the Company’s Proposal, including but not limited to: (a) the operation and use of the System, (b) internal training and testing, (c) development, (d) disaster recovery, backup, archive and restore testing and implementation purposes and (e) any other purpose related to the above; and
- 1.1.2. Allow direct and remote access to the Software and Documentation by an unlimited number of users and departments of: (a) the City; (b) any Affiliate, (c) any other entity to which the City provides services through use of the System; and (d) any other person or entity to which the City needs to allow access in order to provide services to any of the above through the System;
- 1.1.3. Modify, improve, enhance, update, integrate and make derivative works of the Software and the Documentation on its own or through a third party; and

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- 1.1.4. Make as many copies of the Software and Documentation as it desires in support of its authorized use of the Software, provided that said copies shall include the Company's or the third party owner's copyright and other proprietary notices (as the case may be).
- 1.2. *RESTRICTIONS ON USE.* The City shall not use, copy, disclose or distribute the Software except as permitted by this License.
- 1.3. *THIRD PARTY ACCESS.* The City may: (a) allow access to the Software and Documentation by third party contractors to modify, improve, enhance, update, integrate and make derivative works of the Software and the Documentation, and (b) make and provide a copy of the Software and Documentation to third parties to whom the City has outsourced disaster recovery functions, operations of human resources, or Year 2000 testing; provided that such third parties execute an agreement containing provisions substantially similar to those set forth in the Confidentiality Agreement.
- 1.4. *SOURCE CODE.* Company shall cause the Source Code for all Customizations (and Updates and Enhancements thereof) to be delivered to the City within ten days after delivery of the Customization. Company shall cause the Source Code for all Company Software (including Updates and Enhancements) to be delivered to the source code escrow agent identified in the Source Code Escrow Agreement. The City shall be given the Source Code under the conditions stated in the Source Code Escrow Agreement.

**2. DELIVERY, TESTING AND ACCEPTANCE**

- 2.1. *DELIVERY.* The Company shall cause the Software to be delivered, configured and integrated at the times set forth in Exhibit C, the Project Schedule and the Project Plan. Any breach by the Company under the MCSI shall constitute a breach of this License.
- 2.2. *ACCEPTANCE.* The Software shall not be deemed to have been accepted by the City until System Acceptance has occurred
- 2.3. *ENHANCEMENTS AND UPDATES.* Company shall provide Enhancements and Updates to the City for so long as the Maintenance Services are in effect. Upon delivery to the City, such Enhancements and Updates of the Company Software and Third Party Software shall be deemed incorporated into and made part of the Company Software or the Third Party Software (as the case may be).

## Section 8

# Exhibit B – Source Code Escrow Agreement

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### EXHIBIT B – SOURCE CODE ESCROW AGREEMENT

CITY OF CHARLOTTE

SOFTWARE SOURCE CODE ESCROW AGREEMENT WITH ELECTRONIC VAULTING  
OPTION Iron Mountain NUMBER:

#### 1. PARTIES.

This Software Source Code Escrow Agreement, (“Agreement”) effective as of the last date next to the signatures below, is between Iron Mountain Intellectual Property Management, Inc., a Delaware corporation doing business as Iron Mountain (“Iron Mountain”) located at 2100 Norcross Parkway, Suite 150, Norcross, Georgia 30071, the City of Charlotte, a North Carolina municipal corporation (“Beneficiary”), and each Depositor that executes Exhibit B, as described in [Section 3.4](#) (each a “Depositor”, collectively the “Depositors”).

#### 2. RECITALS.

- 2.1. Depositors license software to Beneficiary in object code form (the “Software”) pursuant to software license agreements (each a “License Agreement”, collectively the “License Agreements”). The Software in source code form (the “Source Code”), including all relevant commentary, explanation, documentation, and instructions to understand, maintain, correct, complete, duplicate and compile the Source Code, and revisions to the Source Code is collectively hereinafter defined as the “Source Material”. The Software and Source Material are the proprietary and confidential information of Depositor, and Depositor desires to protect such ownership and confidentiality. A description of the Software subject to this Agreement as of the date hereof is attached hereto as Exhibit A on page 13. With the addition of new Depositors pursuant to [Section 3.4](#), a description of the Software subject to this Agreement will be added as a separate Exhibit A for each respective new Depositor.
- 2.2. The purpose of this Agreement is to establish an escrow to protect Depositor’s ownership and confidentiality of the Software and Source Material and to protect Beneficiary’s legitimate use of the Software by assuring the availability of the Source Material in the event certain conditions set forth in [Section 3.5](#) of this Agreement occur.
- 2.3. The parties desire that this Agreement be an agreement supplementary to the License Agreements pursuant to the United States Bankruptcy Code § 365 (n).
- 2.4. In consideration of the mutual covenants and conditions contained in this Agreement, the parties agree as follows.

#### 3. SOURCE MATERIAL ESCROW PROCEDURES.

- 3.1. Delivery of Source Material and Updates to Iron Mountain. Within thirty (30) days after execution of this Agreement, Depositor shall deliver to Iron Mountain a sealed parcel that contains the Source Material (the “Parcel”). Depositor shall also deliver to Iron Mountain all Source Material updates, revisions, and/or new versions (each an “Update”, collectively “Updates”) within thirty (30) days of the release of such Update to the Beneficiary which shall be added to and become part of the Parcel and the Source Material, unless otherwise instructed by Depositor that the Update is a Replacement Parcel. Depositor shall send to Iron Mountain a duplicate Parcel within three (3) days after receiving written notice from Iron Mountain that the Source Material or any Update has been destroyed or damaged. With each delivery of the

**Exhibit B – Source Code Escrow Agreement**

Source Material and Update, Depositor agrees to provide the information specified in [Exhibit A](#), “Description of the Software,” a copy of which is attached hereto and incorporated herein by reference. Title and ownership of the media upon which the Source Material is stored, exclusive of the Source Material itself, shall vest with Iron Mountain upon delivery of the Parcel. Provided that Depositor initials the appropriate spot in [Exhibit B](#) and follows the procedures set forth in Section 15 hereunder, Depositor may transmit Updates over the Internet using Iron Mountain's electronic vaulting services.

- 3.2. Acknowledgement of Receipt by Iron Mountain. Iron Mountain will conduct a deposit inspection upon receipt of any Deposit Material and associated Exhibit A. If Iron Mountain determines that the Deposit Material does not match the description provided by Depositor represented in Exhibit A attached hereto, Iron Mountain will provide Depositor and Beneficiary with notice by electronic mail, telephone, or regular mail of such discrepancies. Iron Mountain will work directly with the Depositor to resolve any such discrepancies prior to accepting Deposit Material. Iron Mountain will provide Depositor with notice from time to time during the first ninety (90) days from the Effective date as a reminder that submission of initial Deposit Material is required. Iron Mountain will also provide notice to Depositor every ninety (90) days thereafter for any updates. Iron Mountain will hold and protect all Deposit Material in physical and/or electronic vaults that are either owned or under the direct control of Iron Mountain.
- 3.3. Record Keeping, Storage, Copies and Inspection of Source Material. Except as set forth in [Section 7.2](#), Iron Mountain shall have no obligation to determine the completeness, accuracy or physical condition of the contents of the Parcel or whether the Parcel contains the Source Material. Iron Mountain shall maintain complete written records of all materials deposited by Depositor pursuant to this Agreement. Beneficiary and Depositor shall be entitled at reasonable times during normal business hours and upon reasonable notice to Iron Mountain to inspect the records that Iron Mountain maintains pursuant to this Agreement, and to inspect the facilities of Iron Mountain and the physical condition of the Source Material.
- 3.4. Qualified Beneficiary/ Depositors. Beneficiary shall have the right to obtain a copy of the Source Material pursuant to this Agreement only if (i) Beneficiary is a party to a License Agreement with the Depositor that is in force and not in material default by Beneficiary, and (ii) all fees related to such Depositor are paid to Iron Mountain. All other licensees of the Software shall have no rights hereunder and Iron Mountain shall have no duties to such licensees. Additional Depositors may be added upon written notice to Iron Mountain and execution and delivery by such new Depositor of a new [Exhibit “B”](#). Each new Depositor shall be bound by the terms and conditions of this Agreement only if such Depositor has sent to Iron Mountain a fully executed copy of the form of acknowledgement attached hereto as [Exhibit “B”](#) in which Depositor accepts the terms and conditions of this Agreement. Each new Depositor also agrees to complete a new [Exhibit “A”](#) and prepare the initial Source Material Parcel deposit as described in [Section 3.1](#) within thirty (30) days after execution of the new [Exhibit B](#). A schedule of Depositors effective as of the date of this Agreement is attached hereto as [Exhibit “C”](#).
- 3.5. Release Conditions. The following events shall be considered “Release Conditions”:

**Exhibit B – Source Code Escrow Agreement**

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- 3.5.1. Depositor requests in writing that Iron Mountain release the Source Material to Beneficiary;
  - 3.5.2. Depositor is in material breach of its obligations to support or maintain the Software under a support and maintenance agreement with Beneficiary and/or under the License Agreement with Beneficiary, after receipt of written notice of breach from Beneficiary;
  - 3.5.3. Depositor has availed itself of, or been subjected to, by any third party, a proceeding in bankruptcy in which Depositor is named debtor;
  - 3.5.4. An assignment by Depositor for the benefit of its creditors;
  - 3.5.5. The appointment of a receiver for Depositor, or any other proceeding involving insolvency or the protection of or from creditors, and the same has not been discharged or terminated without any prejudice to Beneficiary's rights or interests under the License Agreement within thirty (30) days;
  - 3.5.6. Depositor has ceased its ongoing business operations, or has ceased the sale, licensing, maintenance or other support of the Software and no successor of Depositor has undertaken the sale, licensing, maintenance and/or support of the Software; or
  - 3.5.7. The occurrence of any other event or circumstance which demonstrates with reasonable certainty the inability or unwillingness of Depositor to fulfill its material obligations to Beneficiary under the License Agreement, this Agreement or other agreement with Beneficiary related to the Software, including, without limitation, the correction of material defects in the Software.
- 3.6. Source Material Release Procedures. Iron Mountain shall hold the Parcel pursuant to the following terms and conditions.
- 3.6.1. In the event Iron Mountain is notified in writing of a Release Condition (the "Release Condition Notice"), and provided that Iron Mountain has been paid all fees and costs then due and owing, then Iron Mountain shall promptly deliver a copy of the Release Condition Notice to Depositor.
  - 3.6.2. If Iron Mountain does not receive Contrary Instructions (defined below) from Depositor in response to the Release Condition Notice within twenty (20) days of Iron Mountain's delivery to Depositor of the Release Condition Notice, then Iron Mountain shall deliver a copy of the Source Material to Beneficiary. "Contrary Instructions" are defined as Depositor's written notice to Iron Mountain with a copy to the Beneficiary, stating that the Release Condition has not occurred or has been cured.
  - 3.6.3. If Iron Mountain receives Contrary Instructions from Depositor within twenty (20) days of Iron Mountain's delivery to Depositor of the Release Condition Notice, then Iron Mountain shall not deliver a copy of the Source Material to the Beneficiary, but shall continue to hold the Parcel until: (1) otherwise directed by the Depositor and Beneficiary jointly in writing; (2) five (5) business days after Iron Mountain has received a copy of an order or judgment of a court of competent jurisdiction directing Iron Mountain as to the disposition of the Source Material; or (3) five (5) business days after Iron Mountain has received a copy of the final decision of the arbitrator directing Iron Mountain as to the disposition of the Source Material.
- 3.7. Dispute Resolution. Thirty (30) days after receipt of Contrary Instructions from Depositor, Iron Mountain shall have the absolute right, at Iron Mountain's election, to

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# Exhibit B – Source Code Escrow Agreement

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have the matter settled by binding arbitration in accordance with the rules of the American Arbitration Association and such other provisions set forth in the applicable License Agreement. In such event, at the election of Beneficiary, that the AAA Optional Rules for Emergency Measures of Protection shall apply to the proceedings.

- 3.8. Limitations on Beneficiary Use of Source Material. Upon release of the Source Material to Beneficiary, Beneficiary shall use the Source Material only for the purpose of maintaining, updating and enhancing the Software for the uses authorized by the License Agreement and for no other purpose. Beneficiary further agrees that the Source Material is confidential information, and that Beneficiary shall not disclose such confidential information to any person or entity; provided, however, that Beneficiary may engage a third-party contractor to maintain, update and enhance the Software so long as such contractor agrees in writing to maintain the confidentiality of the Source Materials and to use the Source Materials only to maintain, update and enhance the Software for the benefit of the Beneficiary. Beneficiary shall instruct its personnel to keep the Source Material confidential by using the same care and discretion that they use with similar data designated by Beneficiary as confidential. Beneficiary shall maintain the Source Material in a safe, secure location when not in use and shall promptly destroy the Source Material in the event Beneficiary's rights under the License Agreement terminate.

#### 4. TERM AND TERMINATION.

- 4.1. Term of Agreement. This Agreement shall have an initial term of three (3) years from the date hereof unless earlier terminated as provided herein. The term shall be automatically renewed on a yearly basis thereafter, unless Beneficiary or Iron Mountain notifies the other parties in writing at least forty-five (45) days prior to the end of the then current term of its intention to terminate this Agreement.
- 4.2. Termination of Agreement. This Agreement shall terminate upon the occurrence of any of the following.
- 4.2.1. Upon notice after the initial term pursuant to Paragraph 4.1;
- 4.2.2. Upon release of the Source Material pursuant to Section 3;
- 4.2.3. Upon termination of the License Agreement of a Depositor by mutual consent of Depositor and Beneficiary, then this Agreement shall terminate as to that Depositor;
- 4.2.4. In the event of non-payment of fees due Iron Mountain; provided, however that in such event Iron Mountain shall provide written notice of non-payment to all parties to this Agreement. If the amount past due is not received in full within thirty (30) days of the date of said notice, then Iron Mountain shall have the right to terminate this Agreement by sending written notice of termination to all parties; provided, however that if payment is due from a Depositor and not from Beneficiary, then this Agreement shall terminate as to that Depositor only. Iron Mountain shall have no obligation to take any action under this Agreement with respect to a Depositor so long as any amount due Iron Mountain relating to such Depositor remains unpaid. Any party may cure past amounts due, whether or not obligated under this Agreement.
- 4.3. Return of Source Material. In the event of termination of this Agreement, Iron Mountain shall return any Source Material in its possession to Depositor forthwith. If Iron Mountain is unable to locate Depositor, after reasonable attempts to do so within

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### **Exhibit B – Source Code Escrow Agreement**

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90 days from the date of termination of this Agreement, then Iron Mountain will destroy the Source Material.

- 4.4. Survival of Terms. In the event of termination of this Agreement, the rights and obligations of the parties shall terminate, other than the obligation of Depositor and/or Beneficiary to pay Iron Mountain all fees and costs then due, and the obligations of Depositor and Beneficiary pursuant to Paragraph 3.8 (Limitations on Beneficiary Use of Source Material), Section 10 (Restriction on Access to Source Material; Copies), Section 11 (Limitation of Liability of Iron Mountain), Section 12 (Indemnification of Iron Mountain), and Section 14 (Arbitration).
5. COMPENSATION OF Iron Mountain. Depositor and/or Beneficiary shall pay Iron Mountain for its services rendered hereunder in accordance with Iron Mountain's then current schedule of fees and costs, a copy of which is attached hereto as [Exhibit "D,"](#) subject to Depositor's or Beneficiary's obligation for fees and costs described in [Exhibit "B."](#) Iron Mountain may increase its fees and costs annually, but in no event shall such increase be greater than five percent (5%) than the fees and costs for the prior year.
6. REPRESENTATION AND WARRANTIES OF DEPOSITOR.

Depositor represents and warrants the following:

  - 6.1. Source Material as delivered to Iron Mountain is capable of being used to generate the latest version of the Software and that the Depositor shall deliver further copies as and when necessary. The Source Material shall contain all information in human-readable form and on suitable media to enable a reasonably skilled programmer or analyst to understand, maintain and correct the Software without the assistance of any other person.
  - 6.2. Depositor has the right to possess the Source Material, free and clear of any liens, security interests, or other encumbrances;
  - 6.3. Depositor shall deliver a duplicate Parcel within 3 days of receipt of a notice served upon it by Iron Mountain under the provisions of Clause 3.1.
  - 6.4. Depositor owns all intellectual property rights in the Source Material and has the right and authority to grant Iron Mountain and Beneficiary the rights granted by Depositor to Iron Mountain and Beneficiary in this Agreement
  - 6.5. The Source Material is a copy of Depositor's proprietary information corresponding to the Software described in Exhibit A-, is readable from the media upon which it is written as deposited and, is not encrypted.
7. TECHNICAL VERIFICATION.
  - 7.1. Subject to the provisions of Clauses 7.2 and 7.3, Iron Mountain shall bear no obligation or responsibility to any person, firm, company or entity whatsoever to determine the existence, relevance, completeness, accuracy, effectiveness or any other aspect of the Source Material.
  - 7.2. Upon the Source Code being deposited with Iron Mountain, Iron Mountain shall perform those tests in accordance with its Initial Verification as described in Verification Services Options attached hereto as Exhibit E and shall provide a copy of the test report to the parties to this Agreement.

## Section 8

### **Exhibit B – Source Code Escrow Agreement**

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- 7.3. Beneficiary shall be entitled to request that Iron Mountain carry out any level(s) of Verification Services described in Exhibit E attached hereto and Beneficiary and Depositor consent to Iron Mountain's use of a subcontractor to provide such Services as needed. Agreed charges and expenses incurred by Iron Mountain in carrying out Verification Services will be paid by the Beneficiary; save that if the results of the Verification Services indicate that the Source Code is substantially defective in content, Beneficiary shall be entitled to reimbursement for any such charges and expenses from the Depositor.
8. LICENSE.  
The Depositor hereby grants a license to Iron Mountain to make as many copies of the Source Material as may be necessary to comply with its obligations under this Agreement.
9. INTELLECTUAL PROPERTY RIGHTS.  
The release of the Source Material to the Beneficiary will not act as an assignment of any intellectual property rights that the Depositor possesses in the Source Material.
10. RESTRICTION ON ACCESS TO SOURCE MATERIAL.  
Except as otherwise required to carry out its duties hereunder, Iron Mountain shall not permit any Iron Mountain employee, Beneficiary or any other person access to the Source Material except as otherwise provided herein, unless consented to in writing by Depositor. Depositor grants Iron Mountain the right and authorizes Iron Mountain to make copies of the Source Material and deliver a copy of the Source Material to Beneficiary as required to perform its obligations hereunder.
11. LIMITATION OF LIABILITY OF IRON MOUNTAIN.  
IRON MOUNTAIN MAY ACT IN RELIANCE ON ANY ELECTRONIC MAIL OR WRITTEN NOTICE, INSTRUCTION OR REQUEST FURNISHED TO IRON MOUNTAIN HEREUNDER SIGNED OR PRESENTED BY A PERSON APPARENTLY AUTHORIZED TO ACT ON BEHALF OF DEPOSITOR OR BENEFICIARY, AND ALL EMPLOYEES OF DEPOSITOR AND BENEFICIARY ARE CONCLUSIVELY DEEMED TO HAVE SUCH AUTHORITY. NO ACTION OR CLAIM AGAINST IRON MOUNTAIN ARISING UNDER THIS AGREEMENT MAY BE INSTITUTED MORE THAN TWO (2) YEARS AFTER THE EVENT GIVING RISE TO SUCH ACTION OR CLAIM. IRON MOUNTAIN SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) ARISING OUT OF THIS AGREEMENT EVEN IF IRON MOUNTAIN HAS BEEN APPRISED OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING ANYTHING ELSE HEREIN, ALL LIABILITY, IF ANY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, OF ANY PARTY TO THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT EQUAL TO ONE YEAR OF FEES PAID OR OWED TO IRON MOUNTAIN UNDER THIS AGREEMENT. IF CLAIM OR LOSS IS MADE IN RELATION TO A SPECIFIC DEPOSIT OR DEPOSITS, SUCH LIABILITY SHALL BE LIMITED TO THE FEES RELATED SPECIFICALLY TO SUCH DEPOSITS. THIS LIMIT SHALL NOT APPLY TO ANY PARTY FOR: (I) ANY CLAIMS OF INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHT, (II) LIABILITY FOR DEATH OR BODILY INJURY, (III) DAMAGE TO TANGIBLE PROPERTY (EXCLUDING THE SOURCE MATERIAL), (IV) THEFT, OR (V) PROVEN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.



## Section 8

### **Exhibit B – Source Code Escrow Agreement**

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12. INDEMNIFICATION OF IRON MOUNTAIN.

Depositor shall indemnify, defend and hold harmless Iron Mountain and its agents and employees (collectively “Iron Mountain”) from any and all claims, demands, liability, costs and expenses, including attorney’s fees, incurred by Iron Mountain directly or indirectly arising from or relating to the Source Material and/or Iron Mountain’s performance of its duties under this Agreement; provided, however that this indemnity shall not extend to claims, demands, liabilities, costs and expenses arising from or related to material breach of this Agreement by Iron Mountain or the fraud, gross negligence or intentional misconduct by or of Iron Mountain. Since the Beneficiary may have statutory limitations on its ability to assume contractual indemnity liability, if there is a claim brought against Iron Mountain that the Source Material infringes the intellectual property rights of a third party and such claim includes a threat of liability for Iron Mountain (as reasonably determined by Iron Mountain) in the event of release of the Source Material by Iron Mountain to Beneficiary, then Iron Mountain shall notify Beneficiary of same, and Beneficiary shall release Iron Mountain from its obligation to provide the Source Material to Beneficiary as set forth in this Agreement until such time as threat of liability (as reasonably determined by Iron Mountain) has been resolved.

13. NOTICES.

Except as otherwise provided herein for notice of Updates posted to a page at Iron Mountain’s web site pursuant to Paragraph 3.2, all notices, requests, demands, or other communications under this Agreement shall be in writing. Notice shall be sufficiently given for all purposes as follows:

13.1. Personal Delivery. When personally delivered to the individual recipient set forth in this Agreement. Notice is effective on delivery.

13.2. First-Class Mail. When mailed first class to the address of the recipient set forth in this Agreement. Notice is effective three (3) mail days after deposit in a United States Postal Service office or mailbox.

13.3. Certified Mail. When mailed certified mail, return receipt requested. Notice is effective on receipt, if delivery is confirmed by a return receipt.

13.4. Overnight Delivery. When delivered by private overnight delivery service such as Federal Express, Airborne, United Parcel Service, or DHL Worldwide Express, charges pre-paid or charged to the sender’s account. Notice is effective on delivery, if delivery is confirmed by the delivery service.

13.5. Facsimile Transmission. When sent by facsimile to the last facsimile number of the recipient known to the party giving notice. Notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail, or (b) the receiving party delivers a written confirmation of receipt. Any notice given by facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient’s time) or on a non business day

13.6. Name and Address. All notices shall be sent to the persons and addresses set forth below, as may be changed by a party by providing notice of such changed contact and address information pursuant to this Section 13. TO BENEFICIARY: As set forth on Exhibit B, with a copy to:

Cindy White  
City Attorney's Office  
600 East Fourth Street

## Section 8

# Exhibit B – Source Code Escrow Agreement

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Charlotte, NC 28202  
PHONE: 704-336-3012  
FAX: 704-336-8854  
E-MAIL: cwhite@ci.charlotte.nc.us

TO Iron Mountain:

Iron Mountain  
Client Services  
2100 Norcross Parkway, Suite 150  
Norcross, GA 30071  
Telephone: 770-239-9200  
Facsimile: 770-239-9201  
E-mail: ipm-clientservices@ironmountain.com

TO DEPOSITOR: As set forth in Exhibits “B” or “C”.

13.7. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

13.8. Any party may change its address or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

#### 14. ARBITRATION

Any controversy or claim relating to this Agreement (whether contract, tort, or both), or the breach of this Agreement shall be settled by arbitration administered by the American Arbitration Association under its commercial arbitration rules at its Charlotte, NC office, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration panel shall have no authority to modify, amend or change this Agreement, the License Agreement, or any other Agreement between Depositor and Beneficiary. The parties acknowledge and agree that they are waiving their right to a jury trial and to an appeal. Depositor and Beneficiary agree to reimburse Iron Mountain for out-of-pocket arbitration filing fees, room fees, arbitration compensation, and other out-of-pocket arbitration costs (but not including attorney's fees or travel costs) incurred by Iron Mountain, unless it is determined that Iron Mountain is at fault in any such arbitration.

#### 15. UPDATES

15.1. Delivery of Updates via Iron Mountain Electronic Vaulting. Depositor shall have the option to electronically transmit Updates over the Internet to Iron Mountain. Upon receipt of each Update, Iron Mountain shall add such Update subject to Section 3 of the Agreement.

15.1.1. Iron Mountain shall, upon request, provide Depositor with the procedure required for Depositor to transmit the Update electronically.

15.1.2. Depositor shall transmit all Updates to Iron Mountain pursuant to instructions from Iron Mountain, including properly completing the Exhibit A hereto as and incorporated herein by reference ("Description Of The Software"). Iron Mountain shall provide Depositor with a copy of the Exhibit A via e-mail or regular mail. Depositor shall include a properly completed Exhibit A with each Update transmitted to Iron Mountain.

## Section 8

# Exhibit B – Source Code Escrow Agreement

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15.1.3. Iron Mountain shall notify Depositor and Beneficiary upon receipt of each Update, whether received through electronic transmission or otherwise. Iron Mountain shall notify Depositor and Beneficiary by electronic or regular mail and by posting to a page at Iron Mountain's web site reserved for Depositor and Beneficiary.

15.2. Representation and Warranties of Depositor. Depositor represents and warrants the following:

15.2.1. Depositor shall not disclose, copy, deliver or grant the right to use Iron Mountain's electronic vaulting site, including, but not limited to, all related passwords, to any third party, and shall maintain the confidentiality of the electronic vaulting site access codes.

15.2.2. Depositor shall use the electronic vaulting site only for the limited purposes described in this Agreement unless it enters into a separate license agreement for use of the electronic vaulting site for purposes other than those described in this Agreement.

15.3. Representations and Warranties of Iron Mountain. Iron Mountain represents and warrants the following:

15.3.1. Iron Mountain has the right to grant Depositor the right to use the electronic vaulting site for the purposes described in this Agreement.

15.3.2. Iron Mountain shall promptly advise Depositor if Iron Mountain receives notice of any security flaw in the electronic vaulting site, and in such event Iron Mountain shall cure the security flaw, or provide alternate methods of submitting Updates at no charge to Depositor.

15.4. Limitation of Liability of Iron Mountain. Iron Mountain shall not be liable to Depositor or Beneficiary for any Update, or any part thereof, that is transmitted over the Internet to Iron Mountain's SFTP Site but is not received in whole or in part, or for which no Exhibit A is given.

15.5. Restriction on Access to Source Material. Iron Mountain shall use its best efforts to avoid unauthorized access to the passwords, pass phrases to the electronic vaulting site and to the Source Material by its employees or any other person.

## 16. MISCELLANEOUS PROVISIONS.

16.1. Entire Agreement; Acknowledgement. This Agreement and all agreements, exhibits, and schedules referred to in this Agreement constitute the final, complete and exclusive statement of the terms of the Agreement between the parties pertaining to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings or agreements of the parties. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Agreement. This Agreement has been explained to each of the parties by their respective attorneys and the parties acknowledge that it is executed voluntarily with full knowledge of its significance.

16.2. Modification of Agreement. This Agreement may be supplemented, amended or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by all parties.

## Section 8

### **Exhibit B – Source Code Escrow Agreement**

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- 16.3. Ambiguities. Each party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.
- 16.4. Waiver. No waiver of a breach, failure of a condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
- 16.5. Headings. The headings in this Agreement are included for convenience only and shall neither effect the construction or interpretation of any provision in this Agreement nor effect any of the rights or obligations of the parties to this Agreement.
- 16.6. Necessary Acts, Further Assurances. The parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other action as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.
- 16.7. Due Authorization. Each party represents and warrants that the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate, partnership, or limited liability company action.
- 16.8. No Third Party Rights. This Agreement is made solely for the benefit of the parties to this Agreement and their respective permitted successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement.
- 16.9. Severability. If a court of competent jurisdiction holds any provision of this Agreement to be illegible, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected.
- 16.10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.
- 16.11. Substitution. Beneficiary may, in its discretion, replace and substitute Iron Mountain with another party which has the ability to meet Iron Mountain obligations under this Agreement. In such event, Beneficiary will inform Iron Mountain of its intent to make such change, and Iron Mountain will at Beneficiary's election deliver the Deposit Material within twenty (20) days to the substitute escrow agent, and this Agreement will be deemed terminated.
- 16.12. Governing Law and Jurisdiction. The parties acknowledge that this Agreement is made and entered into and in Charlotte, North Carolina, and will be performed in Charlotte, North Carolina. The parties further acknowledge and agree that North Carolina law shall govern all the rights, obligations, duties and liabilities of the parties under this Agreement, and that North Carolina law shall govern the interpretation and enforcement of this Agreement and any other matters relating to this Agreement (all without regard to North Carolina conflicts of law principles).

**Exhibit B – Source Code Escrow Agreement**

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- 16.13. No Publicity. No advertising, sales promotion or other materials of Iron Mountain or Depositor or its agents or representations may identify or reference this Agreement or the Beneficiary in any manner without the prior written consent of the Beneficiary.
- 16.14. Interests of the Parties. Iron Mountain covenants that its officers, employees and shareholders have no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement.
- 16.15. No Bribery. Company certifies that neither it, nor any of its affiliates or subcontractors, nor any employees of any of the forgoing has bribed or attempted to bribe an officer or employee of the City in connection with this Agreement.

# Appendix A

## Functional / Technical Requirements

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### APPENDIX A: FUNCTIONAL / TECHNICAL REQUIREMENTS

#### 1 INTRODUCTION

The Service Provider will provide an enterprise WAM software solution that meets the Work and Asset Management needs of the City of Charlotte. Functional requirements are described in a series of tables that must be completed and returned with the proposal. It is not anticipated that any one software package will meet all requirements listed in the tables.

To be considered for this procurement Service Provider must submit an enterprise asset management application with the following modules in the core product as a minimum:

- Asset/Equipment module with the ability to handle all types of assets maintained by a large City government including buildings, equipment, vehicles, and linear asset infrastructure such as roads, sewer lines and water lines.
- Work Management including handling of work orders for preventive and corrective maintenance
- Materials Management including complete capabilities for storeroom and inventory management and built-in capability to assign materials to work orders.
- Procurement capabilities including robust ability to handle purchase requisitions, purchase orders, receiving and matching of receipts against invoices and purchase orders.
- Mobile capabilities that include the ability to use mobile devices for work order tracking by field employees and inventory transactions by storeroom employees.
- ESRI GIS integration capability built into the core product. The GIS capabilities must work seamlessly with the WAM Solution's asset tracking capabilities.

It is expected that some modules described in the Functional Requirements Tables may be furnished by 3rd party vendors. The Service Provider will be responsible to identify and propose fully integrated 3rd party products necessary to complete the specified functional requirements.

#### 2 SOFTWARE TECHNICAL REQUIREMENTS

The core WAM Solution software to be furnished by Service Provider must meet the following basic technical requirements as a minimum:

- The system will utilize Microsoft SQL Server 2005 or Oracle 10g or higher as the back-end database.
- The system will be fully web based. This means that end users can run the core application with no application software other than a web browser installed on their computer.
- The system should be capable of running on MS Server 2003 based servers, though other server operating systems may be considered.

Attached is a Technical Requirements form that requests details of your software system requirements. This form must be completed and returned with your proposal. The Technical requirements form also requires submittal of a detailed hardware architecture diagram showing each server and other hardware that you recommend for your system. **The detailed architecture diagram must be submitted with your proposal.**

## Appendix A

### Functional / Technical Requirements

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#### 3 SOFTWARE FUNCTIONAL REQUIREMENTS

The software Functional Requirements are detailed in the attached Functional Requirements Tables. The entire set of tables must be completed and submitted with your proposal. Each line in the table must be completed with one of the following codes:

- S Supported in current version
- F Supported in future version
- C Supported with configuration
- R Support through custom report development
- M Supported with modification (customization)
- T Supported with 3rd party or partner product
- N Not supported by systems included in this proposal

Entering any of the response codes listed above except N means that the function described is included with the software being provided in the price quoted in this proposal. Entry of code N means that the function described is not included with the software being provided in this proposal.

It is not expected that every Service Provider will meet every functional requirement with out-of-the-box software. **Inaccurate completion of the tables may be grounds for Proposal disqualification.**

#### 4 DOCUMENTATION AND SOURCE CODE

Describe your approach to system documentation (hardcopy, on-line help, web-based, etc.) and the availability of source code. Specifically, define the documentation available as related to the following areas:

- Software Specifications
- Data model
- Source code
- User reference manuals
- Training manuals
- Run time version of the developed software
- Source code for custom developed software

#### 5 THIRD PARTY SERVICES

No portion of the agreement may be assigned to a third party without the written consent of City of Charlotte.

- Confirm that you will maintain ultimate responsibility for work completed by third parties to supply the equipment, or software personnel, or act as sub-contractors. Explicitly identify any contractor or third party personnel who will serve as part of your proposed team.
- The proposal must clearly identify any third party products or services that are part of the solution, including the name of the third party and the duration, nature, and scope of the relationship.

**6 MAINTENANCE**

All equipment and software involved with the proposed solution will be covered by a 100% warranty with normal maintenance service at no charge for at least 1 year from the date the service is installed.

- Describe the product warranty. If not available, state the alternative available options.
- Describe maintenance plans for the system once product warranties have expired.
- Describe in detail any available 24X7 help desk support.
- Please provide maintenance response times for outages. Please confirm whether emergency dispatch is available and the price.
- Please confirm that you shall construct a detailed maintenance schedule, with escalation procedures for bug reporting, bug fixing and bug testing in coordination with identified City of Charlotte resources.
- Maintenance should include future updates and enhancements to software.
- State the frequency of system enhancements or upgrades.
- Describe the process to install upgrades or enhancements. What impact do upgrades and enhancements have on system availability? Does it require taking the system off-line?



## **Appendix B**

### **Functional Requirements Checklist**

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#### **APPENDIX B – FUNCTIONAL REQUIREMENTS CHECKLIST**

The functional requirements checklist is posted in portable document format as a separate document on the IPS website. Please contact the City's Procurement Services representative for this project, Ms. Marcy Mars, at [mmars@ci.charlotte.nc.us](mailto:mmars@ci.charlotte.nc.us) for a copy of the requirements checklist in MS Excel format. Please complete functional requirements spreadsheets in totality.

## Appendix C

### Technical Requirements Checklist

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#### APPENDIX C – TECHNICAL REQUIREMENTS CHECKLIST

The technical requirements checklist is posted in portable document format as a separate document on the IPS website. Please contact the City's Procurement Services representative for this project, Ms. Marcy Mars, at [mmars@ci.charlotte.nc.us](mailto:mmars@ci.charlotte.nc.us) for a copy of the requirements checklist in MS Excel format. Please complete technical requirements spreadsheets in totality.