

REQUEST FOR PROPOSALS
CHARITABLE CAMPAIGN MANAGEMENT
SERVICES
RFP # 269-2010-126



MECKLENBURG COUNTY
NORTH CAROLINA

AUGUST 31, 2009

REQUEST FOR PROPOSALS
RFP # 269-2010-126
Charitable Campaign Management Services

August 31, 2009

Dear Service Provider:

Mecklenburg County, located in the State of North Carolina, is now accepting Proposals for Charitable Giving Management Campaign Services. 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 15, 2009 at 2 p.m.**, at the Charlotte-Mecklenburg Government Center (CMGC), 600 East Fourth Street, Charlotte, North Carolina 28202, 9th Floor Room 901. 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 may be obtained by contacting Esezele Payne at epayne@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 **October 1, 2009 3 p.m.**

One electronic copy of the Proposal on a CD in a searchable format such as MS Word or Adobe Acrobat 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 six (6) copies of your Proposal must be submitted in a sealed box or opaque envelope plainly marked with the Proposal number and service description as follows:

Request for Proposals

Attention: Esezele Payne

Name of Company Submitting Proposal

Charitable Campaign Management Services

RFP # 269-2010-126

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

Sincerely,

Kay Elmore
Procurement Services Division Manager

cc: Joel Riddle
RFP file

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Section 1

Introduction and General Information

1. INTRODUCTION.

1.1. Objective.

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

1.2. Definitions.

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

Acceptance: Refers to receipt and approval by the County of a Deliverable or Service in accordance with the acceptance process and criteria set forth in the Contract.

Affiliates: Refers to all departments or units of the County and all other governmental units, towns, boards, committees or municipalities for which the County processes data or performs services that involve the Deliverables or Services.

Contract: Refers to a written agreement executed by the County and Service Provider for all or part of the Services covered by this RFP.

County: Refers to Mecklenburg County, North Carolina.

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

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

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

Deliverables: Refers to all tasks, reports, information, designs, plans and other items, which the Company is required to complete and deliver to the County in connection with this Contract.

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

Evaluation Committee: Refers to a committee, as appointed by the County, responsible for determining the best Service Provider for the Services described in this RFP.

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Introduction and General Information

<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>Project:</i>	Refers to the procurement process to choose a Service Provider to perform Charitable Campaign Management Services.
<i>Project Plan:</i>	Refers to the detailed plan for delivery of the Services as described in Section 3, in the form accepted in writing by the County in accordance with the terms of this RFP and resultant Contract.
<i>Proposal:</i>	Refers to the Proposal submitted by a Service Provider for the Services as outlined in this RFP.
<i>Services:</i>	Refers to the Charitable Campaign Management Services as requested in this RFP.
<i>Service Provider:</i>	Refers to a company that has interest in providing the Services required by this RFP.
<i>Specifications and Requirements:</i>	Refers to all definitions, descriptions, requirements, criteria, warranties and performance standards relating to the Deliverables and Services 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 Deliverables or Services.
<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 County 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 County will not be bound by or be responsible for any explanation, interpretation or conclusions of this RFP or any documents provided by the County other than those provided by the County through the issuance of addenda. In no event may a Service Provider rely on any oral statement by the County or its agents, advisors or consultants.

Should a Service Provider find discrepancies or omissions in this RFP or any other documents provided by the County, the Service Provider should immediately notify the County of such potential discrepancy in writing, and a written addendum may be issued if the County determines clarification is necessary. Each Service Provider

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requesting an interpretation will be responsible for delivering such requests to the County's designated representative as directed in Section 2 of this RFP.

1.4. County's Rights and Options.

The County reserves the following rights, which may be exercised at the County'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 County;
- 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 County to evaluate the Proposals submitted;
- 1.4.6. To conduct investigations with respect to the qualifications and experience of each Service Provider;
- 1.4.7. To waive any defect or irregularity in any Proposal received;
- 1.4.8. To reject any or all Proposals;
- 1.4.9. To share the Proposals with County employees other than the Evaluation Committee or County 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 County, with one or more of the Service Providers responding, which may be done without or without re-solicitation.
- 1.4.11. To discuss and negotiate with selected Service Provider(s) any terms and conditions in the Proposals including but not limited to financial terms; and
- 1.4.12. To enter into any Contract deemed by the County to be in the best interest of the County, with one or more of the Service Providers responding.

1.5. Expense of Submittal Preparation.

The County 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 County for the costs and expenses associated with the procurement process.

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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 County. No binding -contract, obligation to negotiate, nor any other obligation shall be created on the part of the County unless the County 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 County selecting the Service Provider to engage in further discussions. The commencement of such discussions, however, does not signify a commitment by the County to execute a Contract or to continue discussions. The County 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 County, 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 County 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. including Personal Identification information to include, but not be limited to, social security numbers, bank account numbers, and drivers license numbers. After the Proposal due date, the County's Evaluation Committee, as well as other County 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**

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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 County may reveal any trade secret materials contained in such response to all County staff and County 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 County to assist in the evaluation process.

Furthermore, each Service Provider agrees to indemnify and hold harmless the County 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 County 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 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 County 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 County 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 County 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 County shall ultimately determine the timing and sequence of events resulting from this RFP. The County reserves the right to delay the closing date and time for any phase if County staff believe that an extension will be in the best interest of the County.

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- 1.6.8. Reservation of Right to Amend RFP.
The County 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 County. Any addenda will be posted to the Internet at www.ips.state.nc.us, bid# 269-2010-126. Service Providers are required to acknowledge their receipt of each addenda 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 County 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 County 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 County. 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 County's election. Any false or misleading statements found in 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 a 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 County shall have the option to accept subject to exception by Contract.
- 1.6.13. 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 all subcontractors. The County retains the right to approve all subcontractors.

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- 1.6.14. Equal Opportunity.
The County has an equal opportunity purchasing policy. The County seeks to ensure that all segments of the business community have access to supplying the goods and services needed by County programs. The County provides equal opportunity for all businesses and does not discriminate against any Service Providers regardless of race, color, religion, age, sex, national origin or disability.
- 1.6.15. Use of County's Name.
No advertising, sales promotion or other materials of the Service Provider or its agents or representatives may identify or reference the County in any manner absent the prior written consent of the County.
- 1.6.16. Withdrawal for Modification of Proposals.
Service Providers may change or withdraw their Proposals at any time prior to the Proposal due date; however, no oral modifications will be allowed. Only telegrams, letters, or other formal written requests for modifications or corrections of a previously submitted Proposal, which is addressed in the same manner as the Proposal, and received by the County prior to the scheduled closing time for receipt of Proposals, will be accepted. The Proposal, when opened, will then be corrected in accordance with such written request(s), provided that the written request is contained in a sealed envelope, which is plainly marked "**Modifications to Proposal.**"
- 1.6.17. 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 County in connection with the Contract.
- 1.6.18. 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 Section 8. 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 Section 8. 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.
- 1.6.19. Fair Trade Certifications.
By submission of a Proposal, the Service Provider certifies that in connection with this procurement:

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- 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.

- 1.6.20. Clarification of Ambiguities.
Any Service Provider believing that there is any ambiguity, inconsistency or error in this RFP shall promptly notify the County in writing of such apparent discrepancy. Failure to notify will constitute a waiver of claim for ambiguity, inconsistency or error.
- 1.6.21. Service Provider's Obligation to Fully Inform Themselves.
Service Providers or their authorized representatives are expected to fully inform themselves as to all conditions, requirements and specifications of this RFP before submitting Proposals. Failure to do so will be at the Service Provider's own risk.
- 1.6.22. Disclaimer.
Each Service Provider must perform its own evaluation and due diligence verification of all information and data provided by the County. The County makes no representations or warranties regarding any information or data provided by the County.

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
August 31, 2009	<i>Issuance of RFP.</i> The County issues this RFP.
September 8, 2009	<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 11, 2009	<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 Esezele Payne at the address and number listed in Section 2.3. Questions are due by 3 p.m. on September 11, 2009.
September 15, 2009	<i>Non-Mandatory Pre-Proposal Conference.</i>
September 18, 2009	<i>Submission of Written Questions After the Pre-Proposal Conference.</i>
October 1, 2009	<i>Proposal Submission.</i> Proposals are due by 3 p.m. on October 1, 2009, at the Procurement Services Division, CMGC 9 th Floor. All Proposals will be time-stamped upon receipt and held in a secure place until this date.
October 1, 2009 – November 1, 2009	<i>Evaluation.</i>
January 1, 2010	<i>Charitable Campaign Management Services.</i> Service Provider begins providing all Charitable Campaign Management Services.

2.2. Intent to Propose.

Please acknowledge receipt of this RFP via facsimile by **September 8, 2009** using the Request for Proposals Acknowledgement Form located in Section 7, Form One. Complete the form in its entirety advising the County of your firm's intention to submit or not submit a Proposal. Fax the completed and signed form to 704-632-8269, Attention: Esezele Payne.

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 County. Address requests for information or clarification of this RFP to Esezele Payne 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 11, 2009.**

After the Pre-Proposal Conference, questions must be submitted in writing by September 19, 2009. In the case of questions not submitted by the deadline, 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 County will post the answer or information to the Internet at www.ips.state.nc.us, solicitation# 269-2010-126.

Esezele Payne
City of Charlotte
Procurement Services Division
600 East 4th Street, CMGC 9th Floor
Charlotte, NC 28202
RFP # 269-2010-126
Fax: 704-632-8269
E-mail: epayne@ci.charlotte.nc.us

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

2.4. Pre-Proposal Conference.

A Non-Mandatory Pre-Proposal Conference will be conducted on **September 15, 2009 at 2 p.m.** The meeting will be held at the Charlotte-Mecklenburg Government Center, 600 East Fourth Street, Charlotte, North Carolina 28202, 9th Floor Room 9901.

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 Esezele Payne in advance of the conference date and time identifying the special accommodations required.

2.5. Submission of Proposals.

One electronic copy on a CD in a searchable format such as MS Word or Adobe Acrobat 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 six (6) copies shall be submitted to the address listed in Section 2.3 above by **October 1, 2009, on or before but no later than 3 p.m.** The "original" Proposal and each of the six (6) copies shall be complete and unabridged, and shall not refer to any other copy of the signed/sealed original for any references, clarifications, or additional information.

Section 2

Procurement Process

Proposals are to be compatible with the County's in-house office paper program and waste reduction goals and policies. Therefore, it is desired that all responses meet the following requirements:

- All Proposals shall be 8 1/2" x 11" format with all standard text no smaller than eleven (11) points;
- All copies must be printed double-sided;
- All Proposals and copies are printed on recycled paper (at least 10% post-consumer recovered material and at least 30% total recovered material), and indicate this information accordingly on the response;
- Unless absolutely necessary, all proposals and copies should minimize or eliminate use of non-recyclable or non re-usable materials such as three ring binders, plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Glued materials, paper clips, and staples are acceptable; and
- Materials must be submitted in a format that allows for easy removal and recycling.

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

Due to increased security concerns at the Charlotte-Mecklenburg Government Center (CMGC), your sealed boxed including any portions marked as Confidential/Trade Secret, may be searched and thoroughly inspected prior to admittance. Please allow time for this search to take place and to re-seal the box 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 County reserves the right to waive such errors in its sole discretion. The County, 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 County.

The County may in its discretion require one or more Service Providers to make presentations to the Evaluation Committee or appear before the County 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

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comments, as the County deems appropriate. Service Providers will be notified in advance of the time and format of such meetings.

Since the County 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.

3. SCOPE OF CHARITABLE CAMPAIGN MANAGEMENT SERVICES

3.1. General Scope.

Mecklenburg County currently operates two charitable giving fundraising campaigns during the year. The first is an Arts and Science Council (ASC) fundraising drive usually conducted during the winter of the year, and the second is a United Way campaign conducted during the fall. The two most recent campaigns (Fall 2008 United Way and Winter 2009 ASC) resulted in charitable donations from Mecklenburg County employees of approximately \$450,000.

In the fall of 2008, The Mecklenburg County Board of County Commissioners requested that staff review the feasibility of expanding the County's charitable giving campaign to include charities other than the ASC and the United Way. In addition, they asked staff to look at combining all charitable fundraising campaigns into one. On July 7, the Board approved the expansion and consolidation of the campaign beginning in the fall of 2010.

The County will work with the selected Managing Organization to familiarize them with our approach to campaign management. The County is seeking to find an organization to manage the day to day operations of the campaign including, but not limited to, the following:

- Review and approve/deny each charitable organization's request for participation based on the criteria outlined in County policy.
- Develop a website for employees to make donations (provide a paper format as well).
- Work with County staff to manage collection of donations.
- Track and report donations to County staff as needed
- Manage payments to each charity receiving donations

No County dollars will be used to pay the Managing Organization. Rather, the managing organization will determine a percentage of total donations required to manage the campaign (ex. 2% of total donations). Thereafter, the managing organization will be paid a percentage of funds received.

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

3.2. Campaign Management.

The Service Provider will be responsible for the overall management, coordination and administration of the County's annual charitable giving campaign operated in the fall of each year. Services will include the following duties:

- Notify interested charities that the County is accepting applications for the upcoming campaign year during January and February.
- Serve as point of contact for all interested charities.
- Review each charitable application to determine whether each passes all the requirements for participation in the County's expanded campaign as

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Scope of Services

outlined in County policy (see Minimum Charitable Organization Requirements below) by late April/early May of the year.

- Notify each agency or independent charity whether their request to participate was approved or denied and if denied, why.
- Manage the appeals process for agencies that were denied participation.
- Include on the information about the agency the amount of funds they report will stay in the Greater Charlotte Metropolitan Area (defined to include Mecklenburg, Cabarrus, Union, Iredell, Gaston, Lincoln and Rowan).
- Ensure compliance with all federal, state and local laws associated with charitable fundraising.
- Design and manage a website for Mecklenburg County employees to review charitable organizations and make charitable donations via an online platform. Work with the County's Information Services and Technology (IST) department to ensure there will be no continuity or usage problems for employees.
- Provide training to County employees on how to implement and operate the web software.
- Provide a campaign coordinator toolkit that will allow authorized County employees to run reports and queries and download forms and other documents.
- Allow employees to make donations via payroll deduction, checks, vacation cash out, one time donation or credit card.
- Provide a paper process for County employees to choose if they would rather not donate via a web interface.
- Provide a customer service center or hotline number that County employees may contact with questions/concerns.
- Receive and appropriately allocate all charitable donations to the appropriate charities in an accurate and timely manner within one week of receipt from the County.
- Provide detailed financial reporting that would allow County Payroll staff and other authorized personnel to easily review giving histories, transaction details, payment histories and other reporting.

3.3. Pricing.

The County expects to establish a long-term relationship with its Charitable Campaign Management 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 County having an option to renew for two (2) additional consecutive one- (1) year terms thereafter.

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. The expectation is that the pricing model will include a

percentage of overall donations. A pricing worksheet is provided in Section 7, Form 4 to assist you.

3.4. Project Schedule.

- Creation of website, paper application and any other set up required (May/June 2010);
- Work with chair, co-chair and department coordinators to apprise them of the new campaign process-June/July 2010;
- Create campaign branding, determine kickoff approach, determine prizes, raffles, etc and set targets for the campaign-July/August 2010;
- Campaign Kickoff-September 2010;
- Campaign close-November 2010; and
- Review performance of Service Provider-November/December 2010.

3.5. Progress Reports.

Throughout the development and implementation period, the Service Provider will be required to prepare and submit weekly written reports to the County 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 County which will be required for the Service Provider to perform the Services two (2) weeks in advance of the need.

3.5 Technical specifications.

The County requires the Service Provider to adhere to standards for any site created that are part of the overall standard for <http://www.mecklenburgcountync.gov>– both visually and by way of the interactive interface created by the Service Provider. While the site created and managed by the Service Provider will be technically separated from the County’s own site, access to the new site and navigation within it and back to the County’s site must be as seamless as possible.

3.5.1 Sample Pages.

Service Provider will submit as part of their proposal, for County approval, online webpage that fit the look and feel of www.mecklenburgcountync.gov as well as the functionality for the Customer.

3.5.2 Setup/Development/Interface.

Since access to a landing page for County will necessarily lie outside of the County’s network, it is vital that the page look and feel like a www.mecklenburgcountync.gov page – as closely as is possible, including links back to areas within www.mecklenburgcountync.gov.

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The selected Service Provider will need to work closely with the County during the development phase, as well as at various times during the operational phases afterward to ensure that links are maintained, proper graphics used and any changes that are required of the Service Provider be done in a timely manner. Ongoing management and communications between the County and Service Provider will be a vital component to a successful contract.

The Service Provider may utilize templates for managing pages or other components, provided that the Service Provider can manage those effectively. It is up to the Service Provider to maintain its own system, and to take the lead on providing what the County needs – whether it's template-based or manual/coded.

The selected Service Provider must demonstrate that its system is stable, reliable and scalable. The website must be secure (SSL certified) and conform to the County's data retention requirements.

3.5.3 Management/Support/Customer Service.

The Service Provider must demonstrate that it is capable of maintaining a stable site.

Downtime shall be minimal (less than 99%). Outages must be reported immediately to the County Project Manager, and scheduled outages or downtime for updates must be communicated in advance to the County Project Manager and take place at "off-peak" times.

The Service Provider must show experience and competence in these and related areas of customer service relationships. The Service Provider must be able to facilitate direct customer service needs with any Customer, with minimal intervention on the part of the County.

3.6. Customer Service.

The County is very focused on Customer Service with a philosophy to provide all customers with quality services in a manner that is courteous, responsive, accessible, and seamless. The Services will be delivered with patience, understanding, good will, and without regard to our own convenience. The selected Service Provider will be expected to use these guidelines in developing the Proposed Solution:

- Accessible, courteous, responsive and seamless customer service is of highest priority for the County.
- Accessible service means that citizens have easy access to the organization.
- Seamless customer service means that a customer gets good service no matter who is responsible.
- Responsible customer service means that our employees know what they are doing; that information they give is accurate; that they have a good understanding of how to get problems and decisions made; that they are trained and evaluated for the jobs they are doing.
- Customer Service goals must be measurable and regularly evaluated.

- Continuous improvements in customer service must be made in order to make County services accessible, responsive and as seamless as possible.

3.7. Security Requirements.

The Service Provider must define and demonstrate security procedures that are in place. The County requires that security measures be taken – both physical security and network security, in that the County's information and other documents are made available only to the Service Provider and parties that the County approves. Describe your security procedures to include physical plant, electronic data, hard copy information, and employee security. Each Service Provider must be PCI compliant. 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.

3.8. County Contract Requirements.

The County will enter into a Contract written by the County 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 Exhibit A, and any proposed additional terms or conditions deemed important by the Service Provider. The County 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 County reserves the right to change the proposed contractual terms and conditions prior to or during contract negotiations if it is in the County's best interest to do so.

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

3.9. Vendor Registration.

The County is pleased at your interest in doing business with Mecklenburg County and appreciates the opportunity to provide you with information regarding procurement protocols. The County'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 do 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 County 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 or Small Business Enterprise (MWSBE). The link below will provide you with the opportunity to complete your registration on-line with the County.

<https://cityvendors.charmeck.org>

4. PROPOSAL FORMAT.

The County desires all Proposals to be identical in format in order to facilitate comparison. While the County's format may represent departure from the Service Provider's preference, the County 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 Section 4;
- e. The "Addenda Receipt Confirmation" set forth in Section 7, Form Two;
- f. The "Proposal Submission" set forth in Section 7, Form Three;
- g. The "Pricing Worksheet" set forth in Section 7, Form Four;
- h. The "MWBE Compliance" set forth in Section 7, Form Six; and
- i. 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. Proposals are to be compatible with the County's in-house office paper program and waste reduction goals and policies. Therefore, it is desired that all responses meet the following requirements:

- All Proposals shall be 8 1/2" x 11" format with all standard text no smaller than eleven (11) points;
- All copies must be printed double-sided;
- All Proposals and copies are printed on recycled paper (at least 10% post-consumer recovered material and at least 30% total recovered material), and indicate this information accordingly on the response;
- Unless absolutely necessary, all proposals and copies should minimize or eliminate use of non-recyclable or non re-usable materials such as three ring binders, plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Glued materials, paper clips, and staples are acceptable; and
- Materials must be submitted in a format that allows for easy removal and recycling.

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

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

4.1. Proposal Content.

4.1.1. Cover Letter.

The Proposal must include a letter of transmittal attesting to its accuracy, signed by an individual authorized to execute binding legal documents on behalf of the Service Provider as outlined in Section 1.6.3. 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 County. 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.

4.1.2. Executive Summary.

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

4.1.3. 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 Charitable Campaign Management projects as described in Section 3. Additionally, **ALL** of the following information shall be included:

Financials:

- Information on how the County's funds will be protected if the Service Provider goes out of business or files for bankruptcy.
- Information on the type of reconciliation that will be implemented in the provision of Services.
- Information on reporting/tracking capabilities by individual and department.
- Describe the process for allocating resources between gifts designated to a federation, designated to specific charities under a federation or designated to independent charities and the process for ensuring that the donation is designated to the appropriate organization.
- Describe the process for changing, deleting, amending or otherwise altering contributions after the original contribution has been made (ex. a mid-year reduction).
- Describe fee structure. Is there a per pledge charge, a flat fee, other?
- Describe which costs are recurring vs. which costs are one-time costs.

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- Describe the payment schedule (i.e. will payment from the County be required biweekly, monthly or other)?
- Describe the process and all associated requirements for remitting funds to the Service Provider organization (wire, ACH transfer, check, or other).
- Outline information needed from the County's payroll system to process transactions (No Social Security #'s will be provided by the County) and the format in which it will be submitted.

Minimum Charitable Requirements:

- Provide proof that the Service Provider is a 501 (c) 3 organization eligible to receive tax deductible contributions under 26 U.S.C 170 and any relevant laws of the State of North Carolina.
- Provide proof that each of the Service Providers member agencies or independent charities must meet all 20 of the Better Business Bureau Standards for charitable accountability.
- Provide proof that the Service Provider is either a member of a federation or a local charity that can keep 95% of funds in the Greater Charlotte Metropolitan Area (defined to include Mecklenburg, Cabarrus, Union, Iredell, Gaston, Lincoln and Rowan Counties).
- Maintain administrative costs (General and Administrative and Fundraising) at or less than 25% of total revenue.
- Provide to the Service Provider the amount of money that will be kept in the Greater Charlotte Metropolitan area (even if the amount is zero).
- The Service Provider and each of its member agencies or independent charitable organization must provide an annual report that includes a full description of the federation and each member organization activities and supporting services and identifies its directors and chief administrative personnel. Independent charities are also required to provide this information. No standard format is necessary as long as it covers financials, risk factors, board of directors, etc in an annual report).
- Provide proof that the federation, each of its member agencies or independent charitable organization accounts for its funds in accordance with generally accepted accounting principles, was audited in accordance with generally accepted auditing standards by an independent certified public accountant within one year immediately

preceding the application date, and received an unqualified opinion letter.

- Provide documentation that the federation and each of its member agencies or the independent charitable organization devote *all* of their activities to providing health and human services, environmental services or services in the area of the arts and sciences.
- Provide documentation that the federation and each of its member agencies or the independent charitable organization is chartered or incorporated in the State of North Carolina.
- Certify that the publicity and promotional activities and material of the federation, the member agencies or the independent charitable organization are truthful and non-deceptive.
- Certify that the federation, each member agency or independent charitable organization are operated without unlawful discrimination in regard to all person served, and must comply with all requirements of law regarding non-discrimination and equal opportunity for its officers employees and volunteers.

Technology:

- Outline the technological system requirements that the organization's online pledge service requires.
- Provide information on whether a website can be customized and the consequences of customization.
- Provide information on website training tools provided by the Service Provider.

4.1.4. Proposed Solution.

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

4.1.4.1. Process.

What steps will your organization take to ensure that the transition of Services runs smoothly?

4.1.4.2. Project Plan.

Prepare and submit a Project Plan (preferably in MS Project format) to describe, to the best of your ability, all times, tasks and resources associated with the performance of Services. The Project Plan is subject to the terms set forth in Section 8 of this

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RFP. The project plan shall also include **ALL** of the following information:

4.1.4.3. Client Relationship Management.

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

4.1.4.4. Risk Management.

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

4.1.4.5. Pricing.

The County is requesting a firm fixed price Contract for three (3) years plus pricing for contract extensions. Pricing **MUST** include all aspects of the Project. Please refer to Section 7, Form 4 for a pricing worksheet to assist you.

4.1.5. 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 i.

4.1.6. Exceptions to the RFP.

Exceptions must be submitted in accordance with Section 1.6.18 of this RFP. 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 Sample County Contract prior to signature, reviews must be completed before your Proposal is submitted.

Section 5

Background and Experience

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? How many employees are at your organization? 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, including any potential conflicts of interest or apparent bias;
- 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 Charitable Campaign Management 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 Charitable Campaign Management business segments that have occurred in the latest two (2) years or are anticipated in the future.

5.4. Analytical Approach (no response required).

The evaluation of financial viability of the Service Providers was developed with one primary goal in mind: to protect the County 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.

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5.5. **Guarantor.**

The nature of the relationship between the Service Provider and its guarantor is crucial to protect the County 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 County, without exception, within twenty-four (24) hours upon the County's request during the Proposal evaluation process.

DO NOT INCLUDE the financial information requested in this section with your Proposal SUBMISSION.

If the Service Provider does not have the audited financial statements requested, it is the responsibility of the Service Provider to provide the County with information of sufficient quantity and with verifiable sources to ascertain that the Service Provider 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 County:

- 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 Section 8. 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;

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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 County. 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 County. For any subcontractor providing more than fifteen percent (15%) of the Services, the County reserves the right, at its sole discretion, to reject the subcontractor if it fails to meet minimum financial requirements. In the event the County'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

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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. 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.) 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 County. All records for subsidiaries or affiliates of the parent company that may be involved in the provision of Services to the County must be included.

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

5.8. Financial and Legal Considerations.

The Service Provider must have the financial information requested in this Section 5.8 readily available and have the ability to provide it to the City/County, without exception, within twenty-four (24) hours upon the City/County'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 County 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.

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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 County 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.

5.9. Management Approach.

- 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.

5.10. 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 County;
- 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.

5.11. References.

Provide an organization name, address, contact name, and contact telephone number for three (3) customers of comparable size and scope of service that your Company has been under contract with to provide Charitable Campaign Management Services for during the past five (5) years.

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 solution for the County based on, but not limited to, the criteria below. The County reserves the right to modify the evaluation criteria or waive portions thereof. Proposals will be evaluated on the following major categories:

- a. Qualifications, Experience and Approach;
- b. Financial Qualifications;
- c. Cost Effectiveness and Value; and
- d. Acceptance of the Terms of the Contract.

6.1. Qualifications, Experience and Approach.

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

6.2. 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 County 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.

6.3. Cost Effectiveness and Value.

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

6.4. Acceptance of the Terms of the Contract.

The County will evaluate the Proposals for compliance with the terms, conditions, requirements, and specifications stated in this RFP including the sample contract language provided in Section 8. 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 1.6.18 of this RFP.

Section 7
Required Forms – Form One

REQUIRED FORM 1 - REQUEST FOR PROPOSALS ACKNOWLEDGEMENT

The Service Provider hereby certifies receipt of the Request for Proposals for Mecklenburg County, North Carolina RFP #269-2010-126, Charitable Campaign Management Services. This form should be completed upon receipt of the County's Request for Proposals and faxed in time for the County to receive it by or before **September 8, 2009**. Please fax the completed Request for Proposals Acknowledgement Form to the attention of:

Esezele Payne
Procurement Services Division
Fax: 704-632-8269

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

REQUIRED FORM 2 - ADDENDA RECEIPT CONFIRMATION

RFP # 269-2010-126

Charitable Campaign Management Services

Please acknowledge receipt of all addenda by including this form with your Proposal. All addenda will be posted to www.ips.state.nc.us.

ADDENDUM #:

**DATE ADDENDUM
DOWNLOADED FROM NC IPS:**

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

(Please Print Name)

Date

Authorized Signature

Title

Company Name

Section 7
Required Forms – Form Three

REQUIRED FORM 3 - PROPOSAL SUBMISSION FORM

RFP # 269-2010-126

Charitable Campaign Management Services

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 County 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 County, to waive formalities, technicalities, to recover and re-bid this RFP. Proposal is valid for one hundred and eighty (180) calendar days from the Proposal due date.

Service Provider

Date

Authorized Signature

Please type or print name

Section 7
Required Forms – Form Four

REQUIRED FORM 4 - PRICING WORKSHEET

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. **If there are additional costs associated with the Services, please add to this chart. Your Price Proposal must reflect all costs that the County will be responsible for.**

PRICING/PERCENT	TOTAL COST
SUBTOTAL	

EXHIBIT A – SAMPLE COUNTY CONTRACT

As used in this Section of the RFP, the term “Contract” shall refer to the agreement entered into between the County and the successful Service Provider, and the term “Company” shall refer to the successful Service Provider.

RECITALS

WHEREAS, the County issued a Request For Proposals (RFP # 269-2010-126) for Charitable Campaign Management Services dated August 31, 2009. This Request for Proposals together with all attachments and addenda, is referred to herein as the “RFP; and

WHEREAS, the County desires that the Company provide certain Charitable Campaign Management Services, and the Company desires to provide such Services; and

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

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

CONTRACT

1. EXHIBITS.

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

1.1. EXHIBIT A: STATEMENT OF WORK

1.1.1. Appendix A: PROJECT PLAN

1.1.2. Appendix B: PRICING

2. DEFINITIONS.

This section shall include, but not be limited to, all terms defined in Section 1 of the RFP.

3. DESCRIPTION OF SERVICES.

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

3.2. The Company shall perform the Services on site at the County’s facility in Charlotte, North Carolina, except as mutually agreed upon in writing in specific instances by the County.

4. COMPENSATION.

4.1. TOTAL FEES AND CHARGES.

The County agrees to pay the Company a fixed price (the “Purchase Price”) as full and complete consideration for the satisfactory performance of all the requirements of this Contract. This amount constitutes the maximum total fees and charges payable to the Company under this Contract including Expenses and will not be increased except by a written instrument duly executed by both parties, which expressly states that it amends this Section of the Contract.

4.2. MILESTONE PAYMENT PLAN.

The Company shall invoice the County for the Purchase Price in accordance with the Milestone Plan, which shall be attached as Appendix B to the Statement of Work. The Company shall not invoice the County for any Services or Deliverables within a particular Milestone until all Services and Deliverables required in connection with that Milestone have been fully delivered, completed and Accepted by the County.

4.3. NO EXPENSES CHARGEABLE.

The Company shall not be entitled to charge the County for any travel, mileage, meals, materials or other costs or expenses associated with this Contract.

4.4. EMPLOYMENT TAXES AND EMPLOYEE BENEFITS.

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

4.5. INVOICES.

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

4.5.2. The Company shall mail all invoices to:

Accounts Payable
Attn: Payroll/Patricia Howie
Mecklenburg County
600 East 4th Street
Charlotte, NC 28202

4.6. DUE DATE OF INVOICES.

Payment of invoices shall be due within thirty—(30) days after receipt of an accurate, undisputed properly submitted invoice by the County.

4.7. PRE-CONTRACT COSTS.

The County shall not be charged for any Services or other work performed by the Company prior to the Effective Date of this Contract.

4.8. **AUDIT.**

During the term of this Contract and for a period of one (1) year after termination of this Contract, the County 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 County's payment obligations. The County 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 County in excess of \$10,000 but for the audit, then the Company shall be required to reimburse the County 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 Deliverables within the time frames provided by this Contract and Exhibit A, including all completion dates, response times and resolution times (the "Completion Dates"). Except as specifically stated in this Contract, there shall be no extensions of the Completion Dates. All references to days in this Contract (including the Exhibits) shall refer to calendar days rather than business days, unless this Contract provides otherwise for a specific situation.

6. **NON-APPROPRIATION OF FUNDS.**

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

7. **COMPANY PROJECT MANAGER.**

The duties of the Company Project Manager include, but are not limited to:

- 7.1. Coordination of Project schedules and the Company's resource assignment based upon the County's requirements and schedule constraints;
 - 7.2. Management of the overall Project by monitoring and reporting on the status of the Project and actual versus projected progress, and by consulting with the County's Project Manager when deviations occur and by documenting all such deviations in accordance with agreed upon change control procedures;
 - 7.3. Provision of consultation and advice to the County on matters related to Project implementation strategies, key decisions and approaches, and Project operational concerns/issues and acting as a conduit to the Company's specialist resources that may be needed to supplement the Company's normal implementation staff;
 - 7.4. Acting as the Company's point of contact for all aspects of contract administration, including invoicing for Services, and status reporting;
 - 7.5. Facilitation of review meetings and conferences between the County and the Company's executives when scheduled or requested by the County;
 - 7.6. Communication among and between the County and the Company's staff;
 - 7.7. Promptly responding to the County's Project Manager when consulted in writing or by E-mail with respect to Project deviations and necessary documentation;
 - 7.8. Identifying and providing the County with timely written notice of all issues that may threaten the Company's Services in the manner contemplated by the Contract (with "timely" meaning immediately after the Company becomes aware of them);
 - 7.9. Ensuring that adequate quality assurance procedures are in place through the Project; and
 - 7.10. Meeting with other Service Providers working on County projects that relate to this effort as necessary to resolve problems and coordinate the Services.
- 8. COUNTY PROJECT MANAGER.**
- The duties of the County Project Manager are to (1) ensure that the Company delivers all requirements and specifications in the Contract; (2) coordinate the County's resource assignment as required to fulfill the County's obligations pursuant to the Contract; (3) promptly respond to the Company's Project Manager when consulted in writing or by E-mail with respect to project issues; and (4) act as the County's point of contact for all aspects of the Project including contract administration and coordination of communication with the County's staff. The County shall be allowed to change staffing for the County Project Manager position on one (1) business day's notice to the Company.
- 9. PROGRESS REPORTS.**
- The Company shall prepare and submit to the County bi-weekly (or at such other times as may be agreed in Exhibit A) written progress reports, which accomplish each of the following:
- 9.1. Update the project schedule set forth in Exhibit A, indicating progress for each task and Deliverable.
 - 9.2. Identify all information, personnel, equipment, facilities and resources of the County that will be required for the Company to perform the Services for the

subsequent month.

- 9.3. Identify and report the status of all tasks and Deliverables that have fallen behind schedule.
 - 9.4. Identify and summarize all risks and problems identified by the Company, which may affect the performance of the Services.
 - 9.5. For each risk and problem, identify the action and person(s) responsible for mitigating the risk and resolving the problem.
 - 9.6. For each risk and problem identified, state the impact on the project schedule.
- 10. DUTY OF COMPANY TO IDENTIFY AND REQUEST INFORMATION, PERSONNEL AND FACILITIES.**
- The Company shall identify and request in writing from the County in a timely manner: (i) all information reasonably required by the Company to perform each task comprising the Services, (ii) the County's personnel whose presence or assistance reasonably may be required by the Company to perform each task comprising the Services, and (iii) any other equipment, facility or resource reasonably required by the Company to perform the Services. Notwithstanding the foregoing, the Company shall not be entitled to request that the County provide information, personnel or facilities other than those which Exhibit A specifically requires the County to provide, unless the County can do so at no significant cost. The Company shall not be relieved of any failure to perform under this Contract by virtue of the County's failure to provide any information, personnel, equipment, facilities or resources: (i) that the Company failed to identify and request in writing from the County pursuant to this Section; or (ii) which the County is not required to provide pursuant to this Contract. In the event the County fails to provide any information, personnel, facility or resource that it is required to provide under this Section, the Company shall notify the County in writing immediately in accordance with the notice provision of this Contract. Failure to do so shall constitute a waiver by Company of any claim or defense it may otherwise have based on the County's failure to provide such information, personnel, facility or resource.
- 11. COMPANY PERSONNEL REMOVAL, REPLACEMENT, PROMOTION, ETC.**
- 11.1. The County 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 County based on experience, qualifications, performance, conduct, compatibility, and violation of County policy or any other reasonable grounds. The addition or promotion of any personnel to key positions within the Project must be approved by the County in writing. The Company will replace any personnel that leave the Project, including but not limited to Key Personnel, with persons having at least equivalent qualifications who are approved by the County in writing.
 - 11.2. Unless approved by the County in writing, the Company's personnel set forth in Exhibit A (the "Key Personnel") shall stay on the Project until termination without any material reduction of such Key Personnel's duties, time on the Project or level of involvement. In the event of a breach or potential breach of the foregoing sentence, the Company will use its best efforts to maintain such Key Personnel on the Project (if necessary, in a subcontracting role).
 - 11.3. As used in this Contract, the "personnel" includes all staff provided by the

Company or its subcontractors, including but not limited to Key Personnel.

12. ACCEPTANCE OF TASKS, DELIVERABLES AND MILESTONES.

Within a reasonable time after a particular Deliverable or Milestone has been completed (or such specific time as may be set forth in Exhibit A), the Company shall submit a written notice to the County's Project Manager stating the Deliverable(s) or Milestone met. This notice shall include a signature page for sign-off by the County Project Manager indicating acceptance of such Deliverable(s) or Milestone.

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

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

13. NON-EXCLUSIVITY.

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

14. EACH PARTY TO BEAR ITS OWN NEGOTIATION COSTS.

Each party shall bear its own cost of negotiating this Contract and developing the exhibits. The County shall not be charged for any Services or other work performed by the Company prior to the Effective Date.

15. REPRESENTATIONS AND WARRANTIES OF COMPANY.

15.1. GENERAL WARRANTIES.

- 15.1.1. The Services shall satisfy all requirements set forth in the Contract, including but not limited to the attached Exhibits;
- 15.1.2. The Services provided by the Company under the Contract will not infringe or misappropriate any patent, copyright, trademark, or trade secret rights of any third party;
- 15.1.3. The Company has taken and will continue to take precautions sufficient to ensure that it will not be prevented from performing all or part of its obligations under the Contract by virtue of interruptions in the computer systems used by the Company;
- 15.1.4. All Services performed by the Company and/or its subcontractors pursuant to this Contract shall meet the highest industry standards and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;
- 15.1.5. Neither the Services, nor any Deliverables provided by the Company under this Contract will infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party;
- 15.1.6. The Company and each Consultant provided by the Company to the County shall have the qualifications, skills and experience necessary to perform the Services described or referenced in Exhibit A;
- 15.1.7. All information provided by the Company about each Consultant is accurate; and
- 15.1.8. Each Consultant is an employee of the Company, and the Company shall make all payments and withholdings required for by law for the Company for such Consultant.

15.2. ADDITIONAL WARRANTIES.

The Company further represents and warrants that:

- 15.2.1. It is a legal entity and if incorporated, duly incorporated, validly existing and in good standing under the laws of the state of its incorporation or licensing and is qualified to do business in North Carolina;
- 15.2.2. It has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Contract;
- 15.2.3. The execution, delivery, and performance of this Contract have been duly authorized by the Company;
- 15.2.4. No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Contract;
- 15.2.5. In connection with its obligations under this Contract, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses; and
- 15.2.6. The performance of this Contract by the Company and each Consultant

provided by the Company will not violate any contracts or agreements with third parties or any third party rights (including but not limited to non-compete agreements, non-disclosure agreements, patents, trademarks or intellectual property rights).

16. OTHER OBLIGATIONS OF THE COMPANY.

16.1. WORK ON COUNTY'S PREMISES.

The Company and all Consultants will, whenever on the County's premises, obey all instructions and County policies, which are provided to them with respect to performing Services on the County's premises.

16.2. 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.

16.3. REGENERATION OF LOST OR DAMAGED DATA.

With respect to any data which the Company or any Consultants have negligently lost or negligently damaged, the Company shall, at its own expense, promptly replace or regenerate such data from the County's machine-readable supporting material, or obtain, at the Company's own expense, a new machine-readable copy of lost or damaged data from the County's data sources.

17. REMEDIES.

17.1. 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 County 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 County in obtaining or performing the Services from any money then due or to become due the Company and, should the County's cost of obtaining or performing the services exceed the amount due the Company, collect the amount due either from the Company.

17.2. RIGHT TO WITHHOLD PAYMENT.

If the Company breaches any provision of this Contract, the County shall have a right to withhold all payments due to the Company until such breach has been fully cured.

17.3. SPECIFIC PERFORMANCE AND INJUNCTIVE RELIEF.

The Company agrees that monetary damages are not an adequate remedy for the Company's failure to provide the Services or Deliverables as required by this Contract, nor could monetary damages be the equivalent of the performance of

such obligation. Accordingly, the Company hereby consents to an order granting specific performance of such obligations of the Company in a court of competent jurisdiction within the State of North Carolina. The Company further consents to the County obtaining injunctive relief (including a temporary restraining order) to assure performance in the event the Company breaches the Contract.

17.4. 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.

17.5. OTHER REMEDIES.

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

18. TERM AND TERMINATION OF CONTRACT.

18.1. TERM.

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

18.2. TERMINATION BY THE COUNTY.

The County may terminate the Contract at any time without cause by giving thirty (30) days prior written notice to the Company. As soon as practicable after receipt of a written notice of termination without cause, Company shall submit a statement to the County showing in detail the Services performed under this Contract through the date of termination. The forgoing payment obligation is contingent upon: (i) the Company having fully complied with Section 18.8; and (ii) the Company having provided the County with written documentation reasonably adequate to verify the number of hours of Services rendered by each Consultant through the termination date and the percentage of completion of each task.

18.3. TERMINATION FOR DEFAULT BY EITHER PARTY.

By giving written notice to the other party, either party may terminate the Contract upon the occurrence of one or more of the following events:

- a. The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in the Contract, provided that, unless otherwise stated in the Contract, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party; or
- b. The other party attempts to assign, terminate or cancel the Contract contrary to the terms hereof; or
- c. The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary

bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under the Contract shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.

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

Notwithstanding anything contained herein to the contrary, upon termination of this Contract by the Company for default, the Company shall continue to perform the Services required by this Contract for the lesser of: (i) six (6) months after the date the County receives the Company's written termination notice; or (ii) the date on which the County completes its transition to a new Service Provider.

18.4. **ADDITIONAL GROUNDS FOR DEFAULT TERMINATION BY THE COUNTY.**

By giving written notice to the Company, the County may also terminate the 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 a particular task by the completion date set forth in this Contract;
- b. The Company makes or allows to be made any materially written misrepresentation or provides any materially misleading written information in connection with this Contract, or any covenant, agreement, obligation, term or condition contained in this Contract; or
- c. The Company takes or fails to take any action which constitutes grounds for immediate termination under the terms of the Contract, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by the Contract, or failure to provide the proof of insurance as required by the Contract.

18.5. **NO SUSPENSION.**

In the event that the County disputes in good faith an allegation of default by the Company, notwithstanding anything to the contrary in the Contract, the Company agrees that it will not terminate the Contract or suspend or limit the Services or any warranties or repossess, disable or render unusable any software supplied by the Company, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.

18.6. **CANCELLATION OF ORDERS AND SUBCONTRACTS.**

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

18.7. **AUTHORITY TO TERMINATE.**

The County Manager or any designee of the County Manager is authorized to terminate this Contract on behalf of the County.

18.8. **OBLIGATIONS UPON EXPIRATION OR TERMINATION.**

Upon expiration or termination of this Contract, the Company shall promptly (a) return to the County all computer programs, files, documentation, data, media, related material and any other material and equipment that is owned by the County; (b) deliver to the County all Work Product; and (c) allow the County access to the systems, software, infrastructure, or processes of the Company that are necessary to mitigate the Services to a new service provider.

18.9. **NO EFFECT ON TAXES, FEES, CHARGES OR REPORTS.**

Any termination of this Contract shall not relieve the Company of the obligation to pay any fees, taxes or other charges then due to the County, nor relieve the Company of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve the Company from any claim for damages previously accrued or then accruing against the Company.

19. TRANSITION SERVICES UPON TERMINATION.

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

- Working with the County to jointly develop a mutually agreed upon Transition Services Plan to facilitate the termination of the Services;
- Notifying all affected service providers and subcontractors of the Company;
- Performing the Transition Service Plan activities;
- Answering questions regarding the Services on an as-needed basis; and
- Providing such other reasonable services needed to effectuate an orderly transition to a new service provider.

20. 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 and is attached to this Contract (a "Change Statement"). The Change Statement shall set forth in detail: (i) the Change requested, including all modifications of the duties of the parties; (ii) the reason for the proposed Change; and (iii) a detailed analysis of the impact of the Change on the results of the Services and time for completion of the Services, including the impact on all 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 an increase in the amounts payable by the County may require execution by the County Manager or a designee depending on the amount. Some increases may also require approval by County Board of Commissioners.

21. COUNTY OWNERSHIP OF WORK PRODUCT.

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

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

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

22. LICENSING.

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

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

23. RELATIONSHIP OF THE PARTIES.

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

24. INDEMNIFICATION.

The Company shall indemnify, defend and hold harmless the County and the County's officers, employees and agents from and against any and all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations and other liabilities (including settlement amounts) that arise directly or indirectly from:

- 24.1. Any infringement of any copyright, trademark, patent, or other proprietary rights, or any misappropriation of any trade secrets, in connection with any software, documentation, services or other products supplied directly or indirectly by the Company in connection with the Contract, or any allegation of any of the foregoing (collectively referred to as "Infringement Claims");
- 24.2. Any act(s) of negligence or willful misconduct by the Company or any of its agents, employees or subcontractors (or any allegations of any of the foregoing), 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;
- 24.3. 26.3 Any acts or omissions of the Company with respect to any of the Services provided by the Company under the Contract (or any allegations of any of the foregoing);
- 24.4. 26.4 The County's refusal to produce any item of "Confidential Information" (as defined in the Confidentiality and Non-Disclosure Contract) of the Company after receiving a request for such item and after being instructed by the Company not to produce it; or
- 24.5. 26.5 Any claims by any persons or entities supplying labor or material to the Company in connection with the performance of the Company's obligations under the Contract.

If an Infringement Claim occurs, the Company shall either: (i) procure for the County 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 Services or any component thereof shall not be adversely affected by such replacement or modification. If the Company is unable to do (i) or (ii) within thirty (30) days after receiving notice of the Infringement Claim the County shall have the right to terminate all Contract documents and receive as a pro rata refund of all amounts paid under the Contract documents.

25. SUBCONTRACTING.

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

26. CONFIDENTIAL INFORMATION.

26.1. CONFIDENTIAL INFORMATION.

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

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

26.1.2. *Information of the County or its suppliers, contractors or licensors marked "Confidential" or "Proprietary."*

26.1.3. *Information relating to criminal investigations conducted by the County, and records of criminal intelligence information compiled by the County.*

26.1.4. *Information contained in the County's personnel files, as defined by N.C. Gen. Stat. 160A-168.* This consists all information gathered by the County about employees, except for that information which is a matter of public record under North Carolina law.

26.1.5. *Citizen or employee social security numbers collected by the County.*

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

26.1.7. *Local tax records of the County that contains information about a taxpayer's income or receipts.*

26.1.8. *Any attorney /County privileged information disclosed by either party.*

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

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

26.1.11. *Building plans of county-owned buildings or structures, as well as any detailed security plans.*

26.1.12. *Billing information of customers compiled and maintained in connection with the County providing utility services.*

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

Categories 26.1.3 through 26.1.13 above constitute “Highly Restricted Information,” as well as Confidential Information. The Company acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Contract, and agrees that: (a) all provisions in this Contract applicable to Confidential Information shall apply to Highly Restricted Information; and (b) the Company will also comply with any more restrictive instructions or written policies that may be provided by the County from time to time to protect the confidentiality of Highly Restricted Information.

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

26.2. **RESTRICTIONS.**

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

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

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

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

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

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

26.2.6. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, the Company shall assert this Contract as a ground for refusing the demand

and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.

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

26.3. EXCEPTIONS. The parties agree that the Company shall have no obligation with respect to any Confidential Information which the Company can establish:

26.3.1. Was already known to the Company prior to being disclosed by the disclosing party;

26.3.2. Was or becomes publicly known through no wrongful act of the Company;

26.3.3. Was rightfully obtained by the Company from a third party without similar restriction and without breach hereof;

26.3.4. Was used or disclosed by the Company with the prior written authorization of the County;

26.3.5. Was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, the Company shall first give to the County notice of such requirement or request;

26.3.6. Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the Company shall take use its best efforts to obtain an agreement or protective order providing that, to the greatest extent possible, this Contract will be applicable to all disclosures under the court order or subpoena.

26.4. UNINTENTIONAL DISCLOSURE.

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

26.5. REMEDIES.

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

27. INSURANCE.

27.1. TYPES OF INSURANCE.

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

- 27.1.1. Automobile Liability - Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit - bodily injury and property damage.
- 27.1.2. Commercial General Liability - Bodily injury and property damage liability as shall protect the Company and any subcontractor performing Services under this Contract, from claims of bodily injury or property damage which arise from performance of this Contract, whether such operations are performed by the Company, any subcontractor, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate, or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, operations, personal injury liability and contractual liability, assumed under the indemnity provision of this Contract.
- 27.1.3. Workers’ Compensation and Employers Liability - meeting 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.
- 27.1.4. Errors and Omissions Liability – including Electronic Errors and Omissions as shall protect the contractor and his employees for negligent acts, errors or omissions in performing the services under this contract. The amount of this insurance shall not be less than \$1,000,000 each claim
- 27.1.5. Fidelity Bond – providing employee dishonesty coverage on all employees at a limit of no less than \$500,000.

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

27.2. OTHER INSURANCE REQUIREMENTS.

- 27.2.1. The County shall be exempt from, and in no way liable for any sums of money, which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Company and/or subcontractor providing such insurance.
- 27.2.2. Mecklenburg County shall be named as an additional insured for operations or services rendered under the general liability coverage. The

Company's insurance, except for Automobile Liability, shall be primary of any self-funding and/or insurance otherwise carried by the County for all loss or damages arising from the Company's operations under this agreement.

- 27.2.3. Certificates of such insurance will be furnished to the County and shall contain the provision that the County be given thirty (30) days' written notice of any intent to amend coverage reductions or material changes or terminate by either the insured or the insuring Company.
- 27.2.4. Should any or all of the required insurance coverage be self-funded/self-insured, a copy of the Certificate of Self-Insurance or other documentation from the North Carolina Department of Insurance shall be furnished to the County.
- 27.2.5. If any part of the Services under this Contract is sublet, the subcontractor shall be required to meet all insurance requirements as listed above. However, this will in no way relieve the Company from meeting all insurance requirements or otherwise being responsible for the subcontractor.

28. NON-DISCRIMINATION.

The County 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 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 County and others.

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 County 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 County 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 County contracts or other sanctions.

The Company agrees to fully cooperate in any investigation conducted by the County pursuant to the County's Commercial Non-Discrimination Policy, to provide any documents relevant to such investigation that are requested by the County, 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 County contracts and other sanctions.

29. DRUG-FREE WORKPLACE.

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

- 29.1. Notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the Company's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- 29.2. Establishing a drug-free awareness program to inform employees about (i) the dangers of drug abuse in the workplace, (ii) the Company's policy of maintaining a drug-free workplace, (iii) any available drug counseling, rehabilitation, and employee assistance programs, and (iv) the penalties that may be imposed upon employees for drug abuse violations;
- 29.3. Notifying each employee that as a condition of employment, the employee will (i) abide by the terms of the prohibition outlined 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;
- 29.4. Notifying the County within ten days after receiving from an employee a notice of a criminal drug statute conviction or after otherwise receiving actual notice of such conviction;
- 29.5. Imposing a sanction on, or requiring the satisfactory participation in a drug counseling, rehabilitation or abuse program by, an employee convicted of drug crime;
- 29.6. Making a good faith effort to continue to maintain a drug-free workplace for employees; and
- 29.7. Requiring any party to which it subcontracts any portion of the Services under the Contract to comply with the provisions of 29.1 through 29.6.

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

30. NOTICES AND PRINCIPAL CONTACTS.

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

For the Company:

For the County:

Kay Elmore
City of Charlotte/Mecklenburg County
Procurement Services Division
600 East Fourth Street, CMGC 9th Floor
Charlotte, NC 28202-2850

PHONE:

PHONE: 704-336-2524

FAX:
E-MAIL:

FAX: 704-336-2258
kelmore@ci.charlotte.nc.us
With Copy To (County:
Tyrone Wade
Mecklenburg County
County Attorney's Office
600 East Fourth Street
CMGC 11th Floor
Charlotte, NC 28202
PHONE: (704)336-4135
TyroneC.Wade@mecklenburgcountync.gov

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.

31. MISCELLANEOUS.

31.1. ENTIRE AGREEMENT.

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

31.2. AMENDMENT.

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

31.3. GOVERNING LAW AND JURISDICTION.

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

31.4. BINDING NATURE AND ASSIGNMENT.

This Contract shall bind the parties and their successors and permitted assigns. Neither party may assign any of the rights and obligations thereunder without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void.

31.5. COUNTY NOT LIABLE FOR DELAYS.

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

31.6. FORCE MAJEURE.

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

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

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

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

31.7. SEVERABILITY.

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

31.8. NO PUBLICITY.

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

31.9. APPROVALS.

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

31.10. WAIVER.

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

31.11. SURVIVAL OF PROVISIONS.

The following sections of this Contract shall survive the termination hereof:

Section 4.4	“Employment Taxes and Employee Benefits”
Section 15	“Representations and Warranties of Company”
Section 18	“Term and Termination of Contract”
Section 21	“County Ownership of Work Product”
Section 24	“Indemnification”
Section 26	“Confidential Information”
Section 27	“Insurance”
Section 30	“Notices and Principal Contacts”
Section 31	“Miscellaneous”

31.12. CHANGE IN CONTROL.

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

31.13. DRAFTERS PROTECTION.

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

31.14. FAMILIARITY AND COMPLIANCE WITH LAWS AND ORDINANCES.

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

regarding employment practices. Such laws will include, but shall not be limited to workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all OSHA regulations applicable to the Services.

31.15. **CONFLICT OF INTEREST.**

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

31.16. **NO BRIBERY.**

The Company certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the forgoing has bribed or attempted to bribe an officer or employee of the County in connection with the Contract.

31.17. **HARASSMENT.**

The Company agrees to make itself aware of and comply with the County's Harassment Policy. The County will not tolerate or condone acts of harassment based upon race, sex, religion, national origin, color, age, or disability. Violators of this policy will be subject to termination.

31.18. **TAXES.**

The Company shall pay all applicable federal, state and local taxes, which may be chargeable against the performance of the Services.