

REQUEST FOR PROPOSALS

HOTLINE SERVICES

RFP # 269-2014-042



CHARLOTTESM

**CITY OF CHARLOTTE
NORTH CAROLINA**

APRIL 9, 2014

REQUEST FOR PROPOSALS
RFP # 269-2014-042
Hotline Services

April 9, 2014

Dear Service Provider:

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

An electronic copy of the RFP in Microsoft Word format may be obtained by contacting Sarah Poulton at spoulton@charlottenc.gov.

All Proposals are due no later than **April 23, 2014 at 2:00 p.m.**

RFP questions must be directed to Sarah Poulton, Shared Services, Procurement Management Division, by email spoulton@charlottenc.gov. The City is an equal opportunity purchaser.

Sincerely,

Kay Elmore
Procurement Management Division Manager

cc: RFP Project Team
RFP file

Checklist for submitting a Proposal:

Step 1-Read the document fully.

Step 2-If you plan on submitting a Proposal then fax **Form 1 in Section 6** to the number listed on the sheet.

Steps 3-If you have any questions send them before the deadline listed in **Section 2.3**.

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

Proposal Format-Proposals should be formatted as follows:

- ☐ Proposed Solution per **Section 4.1.1**
- ☐ **Section 6, Form 1, Proposal Submission**
- ☐ **Section 6, Form 2, Pricing Worksheet**
- ☐ **Section 6, Form 3, Service Provider Background and Experience**
- ☐ **Section 6, Form 4, References**
- ☐ **Section 6, Form 5, E-Verify Certification**

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

If awarded a contract, you will have to submit the following when you sign a contract:

- ☐ Insurance certificate per requirements in **Exhibit A, Section 27**.
- ☐ Business licenses per requirements in **Exhibit A, Section 22**.

It is the Service Provider's responsibility to check www.ips.state.nc.us for any addenda or changes to this Project. Search for bid # 269-2014-042 to find if any documents or changes have been posted.

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Section 1

Introduction and General Information

1. INTRODUCTION.

1.1. Objective.

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

1.2. Definitions.

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

<i>Acceptance:</i>	Refers to receipt and approval by the City of a Deliverable or Service in accordance with the acceptance process and criteria set forth in the Contract.
<i>Affiliates:</i>	Refers to all departments or units of the City and all other governmental units, towns, boards, committees or municipalities for which the City processes data or performs services that involve the Deliverables or Services.
<i>Contract:</i>	Refers to a written agreement executed by the City and Service Provider for all or part of the Services covered by this RFP.
<i>City:</i>	Refers to the City of Charlotte, North Carolina.
<i>City Manager:</i>	Refers to the administrative manager of the City.
<i>City Managers' Office:</i>	Refers to the Department of the City Manager of the City of Charlotte.
<i>City Project Manager:</i>	Refers to a specified City employee representing the best interests of the City for this Project.
<i>Company:</i>	Refers to a Service Provider that has been selected by the City to provide the Services required by this RFP.
<i>Company Project Manager:</i>	Refers to a specified Company employee representing the best interests of the Company for this Project.
<i>Deliverables:</i>	Refers to all tasks, reports, information, designs, plans and other items, which the Company is required to complete and deliver to the City in connection with this Contract.
<i>Department:</i>	Refers to a department within the City of Charlotte.
<i>Documentation:</i>	Refers to all written, electronic, or recorded works, that describe the use, functions, features, or purpose of the Deliverables or Services or any component thereof, and which are published or provided to the City by the Company or its subcontractors, including without limitation all end user manuals, training manuals, guides, program listings, data models, flow charts, logic diagrams, and other materials related to or for use with the Deliverables or Services.

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Introduction and General Information

<i>Evaluation Committee:</i>	Refers to a committee, as appointed by the City, responsible for determining the best Service Provider for the Services described in this RFP.
<i>Hotline:</i>	Refers to both the toll-free phone number and the internet-based reporting system established and maintained by the Service Provider for the purpose of capturing User Reports.
<i>Project:</i>	Refers to the procurement process to choose a Service Provider to perform Hotline Services for the City.
<i>Proposal:</i>	Refers to the Proposal submitted by a Service Provider for the Services as outlined in this RFP.
<i>Reports:</i>	Refers to a Users' calls including information on alleged fraud, waste, abuse, corruption or other wrongdoing related to City operations.
<i>Services:</i>	Refers to the Hotline 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>Users:</i>	Refers to individuals that utilize the Hotline to report alleged fraud, waste, abuse, safety violations, corruption or other wrongdoing related to City operations.
<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.

Each Service Provider must perform its own evaluation and due diligence verification of all information and data provided by the City. The City makes no representations or warranties regarding any information or data provided by the City, and assumes no responsibility for conclusions or interpretations derived from the information presented in this RFP, or otherwise distributed or made available during this procurement process. In addition, the City will not be bound by or be responsible for

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Introduction and General Information

any explanation, interpretation or conclusions of this RFP or any documents provided by the City other than those provided by the City through the issuance of addenda. In no event may a Service Provider rely on any oral statement by the City or its agents, advisors or consultants.

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

1.4. City's Rights and Options.

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

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

1.5. Expense of Submittal Preparation.

The City accepts no liability for the costs and expenses incurred by the Service Providers in responding to this RFP, in preparing responses for clarification, in attendance at interviews, participating in contract development sessions, or in meetings and presentations required for the contract approval process. Service Providers cannot make any claims whatsoever for reimbursement from the City 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 City. No binding contract, obligation to negotiate, or any other obligation shall be created on the part of the City unless the City and the Service Provider execute a Contract. No recommendations or conclusions from this RFP process concerning the Service Provider shall constitute a right (property or otherwise) under the Constitution of the United States or under the Constitution, case law, or statutory law of North Carolina.

1.6.2. 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 as further described below. After the Proposal due date, in addition to the City's Evaluation Committee, other City staff and consultants will be reviewing the Proposal, and members of the general public who submit public records requests will receive those portions of the Proposal that are not designated as "trade secret" by the Service Provider.

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 1.6.2.

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 or flash drive for electronic files, marked **"Trade Secret—Confidential and Proprietary Information—Do Not Disclose Except for the Purpose of Evaluating this Proposal,"** and (b) the same trade secret/confidentiality designation should be stamped on each page of the trade secret materials contained in the envelope and on each page of the electronic file.

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

Furthermore, each Service Provider agrees to indemnify and hold harmless the City and each of its officers, employees, and agents from all costs, damages, and expenses incurred in connection with refusing to disclose any material, which the Service Provider has designated as a trade secret. **Any Service Provider that designates its entire Proposal as a trade secret may be disqualified.**

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- 1.6.3. Amendments to RFP.
If the City amends this RFP, addenda will be posted to the Internet at www.ips.state.nc.us, bid# 269-2014-042. Service Providers are required to acknowledge their receipt of each addendum by including the Addenda Receipt Confirmation Form set forth in Section 6, Form 2 with their Proposal.
- 1.6.4. 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.
- 1.6.5. Proposal Terms Firm and Irreversible.
The signed Proposal shall be considered a firm offer on the part of the Service Provider. The City reserves the right to negotiate price and Services. All Proposal responses (including all statements, claims, declarations, prices and specifications in the Proposals) shall be considered firm and irrevocable for purposes of future Contract negotiations unless specifically waived in writing by the City. The Service Provider chosen for award should be prepared to have its Proposal and any relevant correspondence incorporated into the Contract, either in part or in its entirety, at the City's election. Any false or misleading statements found in the Proposal or Contract exceptions not included in the Proposal may be grounds for disqualification.
- 1.6.6. Proposal Binding for 180 Days.
Section 6, Form 3 contains a statement to the effect that the Proposal is a firm offer for one-hundred-eighty (180) calendar day period from the date of the opening. This statement must be signed by an individual authorized to bind the Service Provider. All prices quoted shall be firm and fixed for the full Contract period. The City shall have the option to accept subject to exception by Contract.
- 1.6.7. Equal Opportunity.
The City has an equal opportunity purchasing policy. The City seeks to ensure that all segments of the business community have access to supplying the goods and services needed by City programs. The City provides equal opportunity for all businesses and does not discriminate against any Service Providers regardless of race, color, religion, age, sex, and national origin or disability.
- 1.6.8. Use of City's Name.
No advertising, sales promotion or other materials of the Service Provider or its agents or representatives may identify or reference the City in any manner absent the prior written consent of the City.
- 1.6.9. No Bribery.
In submitting a response to this RFP, each Service Provider certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the foregoing has bribed, or attempted to bribe, an officer or employee of the City in connection with the Contract.

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- 1.6.10. 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 7. 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 7. 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.
- 1.6.11. Fair Trade Certifications.
By submission of a Proposal, the Service Provider certifies that in connection with this procurement:
- The prices have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with anyone;
 - Unless otherwise required by law, the prices which have been quoted in its Proposal have not been knowingly disclosed by the Service Provider and will not knowingly be disclosed by the Service Provider prior to opening; and
 - No attempt has been made or will be made by the Service Provider to induce any other person or firm to submit or not to submit a Proposal for the purpose of restricting competition.
- 1.6.12. Service Provider’s Obligation to Fully Inform Themselves.
Service Providers or their authorized representatives are expected to fully inform themselves as to all conditions, requirements and specifications of this RFP before submitting Proposals. Failure to do so will be at the Service Provider’ own risk.
- 1.6.13. E-Verify Certification.
For any Proposal to be considered responsive, the successful Service Provider shall be required to provide a certification attesting that the Service Provider is in compliance with the E-Verify provisions of Article 2 of Chapter 64 of the North Carolina General Statutes and shall ensure that any subcontractors used by the Service Provider on this Project will also comply with the E-Verify provisions. The certification is attached to this RFP as Form 5.

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
April 9, 2014	<i>Issuance of RFP.</i> The City issues this RFP.
April 23, 2014	<i>Proposal Submission.</i> Proposals are due by 2:00 p.m. on April 23, 2014. Proposals must be emailed to Sarah Poulton at spoulton@charlottenc.gov.
April 23, 2014 – May 7, 2014	<i>Evaluation.</i>
June 16, 2014	<i>Hotline Services.</i> Service Provider begins providing all Hotline Services.

3. SCOPE OF HOTLINE SERVICES

3.1. General Scope.

The City of Charlotte seeks a qualified firm to establish and operate a dedicated toll-free Hotline and internet-based reporting system available 24/7/365 basis to receive information regarding alleged fraud, waste, abuse, corruption, safety and policy violations, or other wrongdoing related to City operations-

The Service Provider shall initiate and maintain an information reporting system for all City of Charlotte employees, or contractors and vendors in connection with contracts to provide services or goods to the City. Information will be received via phone call or through an internet website created and maintained by the Service Provider. Callers and internet Hotline Users will have the ability to provide their names and other identifying information or remain anonymous. The Service Provider shall document information on Hotline Reports, which shall be sorted by type.

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

3.2. Hotline Reports Received via Telephone.

The Service Provider shall set up and operate a dedicated toll-free telephone Hotline. Calls to the Hotline must be answered by personnel trained to ask appropriate questions needed to capture sufficient, specific information, screen out inappropriate calls, and follow the specific protocol as developed jointly by the Service Provider and the City.

Additional requirements are as follows:

- The Hotline will be unique to the City and the number will be retained by, or transferred to, the City after termination of the Contract.
- No record of incoming phone numbers will be recorded or retained, unless caller opts to provide such identifying information.
- Calls must be answered live 24 hours a day, 7 days a week, and 365 days per year, within twenty (20) seconds.
- The Service Provider shall accommodate multiple calls simultaneously. If more than two (2) overlapping calls are received, the User should be requested to call back in fifteen (15) minutes, or consider reporting via the Hotline website. No recorded incoming messages should be made.
- A sufficient number of personnel with Spanish translating abilities must be maintained at all times, and the system must accommodate needs of persons with disabilities.
- Users shall be provided an identifying number which they can use to provide additional information via the website or a subsequent phone call, should they choose to make contact again.

3.3. Hotline Reports Received via Website (Optional).

The City may require the Service Provider to provide and maintain a secure website where anonymous Hotline Reports can be filed. The Service Provider shall assist the City in developing the website data collection screens, which will synch with the requirements for phone calls above. Internet Reports will be read by trained personnel and routed according to established protocol within thirty (30) minutes

following the posting of the Report. The escalation policy referred to below also applies to internet Reports.

Additional requirements include, but are not limited to:

- The website must be standalone, hosted and maintained in its entirety by the Service Provider. A link will be supplied to the City for communication.
- Website Users shall be provided an identifying number which they can use to provide additional information via the website or a subsequent phone call, should they choose to make contact again.

3.4. Initial Report Management.

Report details shall be provided to the City in a regular and timely manner. The Service Provider shall assist the City in the establishment of an escalation policy and follow such protocols once established.

3.5. Optional Case Management Services.

The Service Provider shall provide a secure, confidential method of recording and transmitting details of Reports gathered via phone or website. If the City should choose to use it, the Service Provider shall provide web-based access to the case management system for designated City staff. The case management system should provide, at a minimum, on-demand reports and facilitate analysis of the case database. Hotline Reports and related case management data shall be transferred to the City upon Contract termination.

Service Providers shall indicate in their Proposals the full case management services available and indicate pricing for these services in Section 6, Form 4.

3.6. Data Security and Privacy.

The Service Provider shall comply with all stipulations set forth in Exhibit A, Section 32 ("Data Security and Privacy").

3.7. Pricing.

The City expects to establish a long-term relationship with its Hotline Services 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 five (5) years, with the City 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. A pricing worksheet is provided in Section 6, Form 4 to assist you.

3.8. City Contract Requirements.

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

Section 3

Scope of Services

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

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

4. PROPOSAL FORMAT.

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

- a. Proposed Solution;
- b. The "Proposal Submission" set forth in Section 6, Form 1;
- c. The "Pricing Worksheet" set forth in Section 6, Form 2;
- d. The "Background and Experience" set forth in Section 6, Form 3;
- e. The "References" set forth in Section 6, Form 4;
- f. The "E-Verify Certification" set forth in Section 6, Form 5; and
- g. Exceptions to the Remainder of the RFP.

All Proposals shall be 8 1/2" x 11" format with all standard text no smaller than eleven (11) points. All submissions should use one-sided copying and be professionally bound with tab dividers corresponding to the content requirements specified below.

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

Service Providers are required to organize the information requested in this RFP in accordance with the format and instructions outlined above and detailed below. Failure to do so may result in the City, at its sole discretion, deeming the Proposal non-responsive. 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. Proposed Solution.
Given the purpose of this project and the City's goals as stated in this RFP, provide a creative solution to meet such goals. **For each component of the Project described in Section 3, state whether your Proposed Solution complies and provide a description of how the Proposed Solution complies as well as any additional information requested.** If you wish to add supplemental information, it shall be labeled "Supplemental Information."
- 4.1.2. 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 b through f.
- 4.1.3. Exceptions to the RFP.
Exceptions must be submitted in accordance with Section 1.6.13 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 counsel needs to review the Sample City Contract prior to signature, reviews must be completed before your Proposal is submitted.

5. PROPOSAL EVALUATION CRITERIA.

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

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

- a. Qualifications and Experience
- b. Project Approach / Proposed Solution;
- c. Cost Effectiveness and Value; and
- d. Acceptance of the Terms of the Contract.

5.1. Qualifications and Experience

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

5.2. Project Approach / Proposed Solution.

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

5.3. 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.

5.4. Acceptance of the Terms of the Contract.

The City will evaluate the Proposals for compliance with the terms, conditions, requirements, and specifications stated in this RFP including the sample contract language provided in Section 7. 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 Sections 1.6.13 and 4.1.4 of this RFP.

Section 6

Required Forms

REQUIRED FORM 1 - PROPOSAL SUBMISSION FORM

RFP # 269-2014-042

Hotline Services

This Proposal is submitted by:

Service Provider Name: _____

Representative (printed): _____

Representative (*signed*): _____

Address: _____

City/State/Zip: _____

Email address: _____

Telephone: _____

(Area Code) Telephone Number

Facsimile: _____

(Area Code) Fax Number

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

1. In preparing its proposal, the Service Provider has considered all proposals submitted from qualified, potential subcontractors and suppliers; and has not engaged in or condoned prohibited discrimination.
2. For purposes of this section, *prohibited discrimination* means discrimination against any person, business or other entity in contracting or purchasing practices on the basis of race, color, sex, or national origin. Without limiting the foregoing, *prohibited discrimination* also includes retaliating against any person, business or other entity for reporting any incident of prohibited discrimination.
3. Without limiting any other provision of the solicitation for proposals on this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the City to reject the bid submitted by the Bidder on this Project and to terminate any contract awarded based on such bid.
4. As a condition of contracting with the City, the Service Provider agrees to maintain documentation sufficient to demonstrate that it has not discriminated in its solicitation or selection of subcontractors. The Service Provider further agrees to promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation and selection of subcontractors. Failure to maintain or failure to provide such information

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Required Forms

constitutes grounds for the City to reject the bid submitted by the Service Provider or terminate any contract awarded on such bid.

5. The information contained in this Proposal or any part thereof, including its Exhibits, Schedules, and other documents and instruments delivered or to be delivered to the City, is true, accurate, and complete. This Proposal includes all information necessary to ensure that the statements therein do not in whole or in part mislead the City as to any material facts. It is understood by the Service Provider that the City reserves the right to reject any and all Proposals, to make awards on all items or on any items according to the best interest of the City, to waive formalities, technicalities, to recover and re-bid this RFP. Proposal is valid for one hundred and eighty (180) calendar days from the Proposal due date.

Service Provider

Date

Authorized Signature

Please type or print name

Section 6

Required Forms

REQUIRED FORM 2 - PRICING WORKSHEET

RFP # 269-2014-042

Fraud Hotline Services

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

1. Basic Pricing.

Service Providers shall indicate their yearly flat rate pricing for all potential years of the Contract:

Year 1 Cost	Year 2 Cost	Year 3 Cost	Year 4 Cost	Year 5 Cost	Total Cost
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

2. Pricing Including Case Management.

The City may elect to utilize case management service at a later date. Service Providers shall provide pricing for the Services including case management below:

Year 1 Cost	Year 2 Cost	Year 3 Cost	Year 4 Cost	Year 5 Cost	Total Cost
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

3. Pricing Including Online Reporting.

The website reporting as described in Section 3.3 is an option requested by the City. Services Providers shall indicate a yearly price for the use of this service **only** below:

Year 1 Cost	Year 2 Cost	Year 3 Cost	Year 4 Cost	Year 5 Cost	Total Cost
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

Section 6

Required Forms

REQUIRED FORM 3 – SERVICE PROVIDER’S BACKGROUND RESPONSE

RFP # 269-2014-042

Hotline Services

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

Question	Response
Service Provider Identification	
Service Provider Name (Official Name)	
Service Provider Location (corporate headquarters)	
Service Provider Experience	
Years of Experience:	
# of years in business	
# of years providing public sector	
Customer Base:	
# of public sector clients	
# of public sector clients using the services being proposed	
# of clients that are municipalities	
Identify by name some of the clients similar to City (e.g., similar in size, complexity, location, type of organization)	
List any terminated projects. Please disclose the jurisdiction and explain the reason for the termination.	
List any litigation that you have been involved with during the past two (2) years on Hotline Services implementations.	
Additional Narrative Response	
Provide an overview and history of your company.	
Detail how long the company has been providing Hotline Services to local governments, including information regarding experience with similar Hotline Services projects.	

Section 6

Required Forms

Describe the key individuals, along with their qualifications, professional certifications and experience that would comprise your organization's team for providing Services to the City.	
Explain how your organization ensures that personnel performing the Services are qualified and proficient.	
Please provide information regarding the level of staffing at your organization's facilities.	
Describe the risks associated with this Contract. What contingencies have been built in to mitigate those risks?	
Describe the results of any third party security audits from the last five (5) years.	
Describe the case management services included in your base pricing in Section 6, Form 4. What other case management services does your company provide?	

Section 6

Required Forms

REQUIRED FORM 4 – REFERENCES

RFP # 269-2014-042

Hotline Services

Reference 1	
Company Name	
Contact Name	
Phone Number	
Reference 2	
Company Name	
Contact Name	
Phone Number	
Reference 3	
Company Name	
Contact Name	
Phone Number	
Reference 4	
Company Name	
Contact Name	
Phone Number	
Reference 5	
Company Name	
Contact Name	
Phone Number	

REQUIRED FORM 5 – E-VERIFY CERTIFICATION

RFP # 269-2014-042

Hotline Services

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

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

Signature of Company's Authorized Representative

Date

Print Name and Title: _____

Exhibit A – Sample City Contract

EXHIBIT A – SAMPLE CITY CONTRACT

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

RECITALS

WHEREAS, the City issued a Request For Proposals (RFP # 269-2014-042) for Hotline Services dated MARCH 31, 2014. This Request for Proposals together with all attachments and addenda, is referred to herein as the “RFP”; and

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

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

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

CONTRACT**1. EXHIBITS.**

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

1.1. EXHIBIT A: PRICE SCHEDULE

1.2. EXHIBIT B: SCOPE OF WORK

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

4. COMPENSATION.**4.1. TOTAL FEES AND CHARGES.**

The City agrees to pay the Company a flat rate 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.

Exhibit A – Sample City Contract

- 4.2. NO EXPENSES CHARGEABLE.
The Company shall not be entitled to charge the City for any travel, mileage, meals, materials or other costs or expenses associated with this Contract.
- 4.3. EMPLOYMENT TAXES AND EMPLOYEE BENEFITS.
The Company represents and warrants that the employees provided by the Company to perform the Services (“Consultants”) are actual employees of the Company, and that the Company shall be responsible for providing all salary and other applicable benefits to each Consultant. The Company further represents, warrants and covenants that it will pay all withholding tax, social security, Medicare, unemployment tax, worker’s compensation and other payments and deductions that are required by law for each Consultant. The Company agrees that the Consultants are not employees of the City.
- 4.4. INVOICES.
- 4.4.1. Each invoice sent by the Company shall detail all Services performed and delivered which are necessary to entitle the Company to the requested payment under the terms of this Contract.
- 4.4.2. The Company shall email all invoices to cocap@ci.charlotte.nc.us
- OR**
- The Company shall mail all invoices to:
- City of Charlotte AP
Attn: Internal Audit/Gregory McDowell
P. O. Box 37979
Charlotte, NC 28237-7979
- For either option, Accounts Payable (or AP) must be in the first line. On the Attn: line, you must indicate the department or area, along with the appropriate contact name.
- Invoices that are addressed directly to City departments and not to Accounts Payable may not be handled as quickly as invoices that are addressed correctly.
- 4.5. 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 City.
- 4.6. PRE-CONTRACT COSTS.
The City shall not be charged for any Services or other work performed by the Company prior to the Effective Date of this Contract.
- 4.7. AUDIT.
During the term of this Contract and for a period of one (1) year after termination of this Contract, the City shall have the right to audit, either itself or through an independent auditor, all books and records and facilities of the Company necessary to evaluate Company’s compliance with the terms and conditions of this Contract or the City’s payment obligations. The City shall pay its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs of the Company. However, if non-compliance is found that would have cost the City in excess of

Section 7

Exhibit A – Sample City Contract

\$10,000 but for the audit, then the Company shall be required to reimburse the City for the cost of the audit.

5. TIME IS OF THE ESSENCE.

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

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 City’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 City’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 City on matters related to Project implementation strategies, key decisions and approaches, and Project operational concerns/issues and acting as a conduit to the Company’s specialist resources that may be needed to supplement the Company’s normal implementation staff;
- 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 City and the Company’s executives when scheduled or requested by the City;
- 7.6. Communication among and between the City and the Company’s staff;
- 7.7. Promptly responding to the City Project Manager when consulted in writing or by E-mail with respect to Project deviations and necessary documentation;
- 7.8. Identifying and providing the City with timely written notice of all issues that may threaten the Company’s Services in the manner contemplated by the Contract (with “timely” meaning immediately after the Company becomes aware of them);
- 7.9. Ensuring that adequate quality assurance procedures are in place through the Project; and
- 7.10. Meeting with other service providers working on City projects that relate to this effort as necessary to resolve problems and coordinate the Services.

Section 7

Exhibit A – Sample City Contract

8. CITY PROJECT MANAGER.

The duties of the City Project Manager are to (1) ensure that the Company delivers all requirements and specifications in the Contract; (2) coordinate the City's resource assignment as required to fulfill the City's obligations pursuant to the Contract; (3) promptly respond to the Company Project Manager when consulted in writing or by E-mail with respect to project issues; and (4) act as the City's point of contact for all aspects of the Project including contract administration and coordination of communication with the City's staff. The City shall be allowed to change staffing for the City Project Manager position on one (1) business day's notice to the Company.

9. PROGRESS REPORTS.

The Company shall prepare and submit to the City reports as established in Exhibit A.

10. DUTY OF COMPANY TO IDENTIFY AND REQUEST INFORMATION, PERSONNEL AND FACILITIES.

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

11. COMPANY PERSONNEL REMOVAL, REPLACEMENT, PROMOTION, ETC.

11.1. The City will have the right to require the removal and replacement of any personnel of the Company or the Company's subcontractors who are assigned to provide Services to the City based on experience, qualifications, performance, conduct, compatibility, and violation of City policy or any other reasonable grounds. The addition or promotion of any personnel to key positions within the Project must be approved by the City in writing. The Company will replace any personnel that leave the Project, with persons having at least equivalent qualifications who are approved by the City in writing.

11.2. As used in this Contract, the "personnel" includes all staff provided by the Company or its subcontractors.

12. BACKGROUND CHECKS.

Prior to starting work under this Contract, the Company is required to conduct a background check on each Company employee assigned to work under this Contract, and shall require its subcontractors (if any) to perform a background check on each of their employees assigned to work under this Contract (collectively, the "Background Checks"). Each Background Check

Exhibit A – Sample City Contract

must include: (a) the person's criminal conviction record from the states and counties where the person lives or has lived in the past seven (7) years; and (b) a reference check.

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

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

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

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

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

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

13. NON-EXCLUSIVITY.

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

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 City 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 sufficient precautions to ensure that it will not be prevented from performing all or part of its obligations under the Contract by virtue of interruptions in the computer systems used by the Company;

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- 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 City 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 CITY'S PREMISES.

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

16.2. RESPECTFUL AND COURTEOUS BEHAVIOR.

The Company shall assure that its employees interact with City employees and with the public in a courteous, helpful and impartial manner. All employees of the

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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. **REPAIR OR REPLACEMENT OF DAMAGE EQUIPMENT OR FACILITIES.**

In the event that the Company causes damage to the City's equipment or facilities, the Company shall, at its own expense, promptly repair or replace such damaged items to restore them to the same level of functionality that they possessed prior to the Company's action.

16.4. **REGENERATION OF LOST OR DAMAGED DATA.**

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

16.5. **E-VERIFY.**

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

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 City may take any of the following actions with or without terminating this Contract, and in addition to and without limiting any other remedies it may have:

- a. Employ such means as it may deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and the Company is again able to resume performance under this Contract; and
- b. Deduct any and all expenses incurred by the City in obtaining or performing the Services from any money then due or to become due the Company and, should the City's cost of obtaining or performing the services exceed the amount due the Company, collect the amount due from the Company.

17.2. **RIGHT TO WITHHOLD PAYMENT.**

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

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

Exhibit A – Sample City Contract

performance of such obligations of the Company in a court of competent jurisdiction within the State of North Carolina. The Company further consents to the City obtaining injunctive relief (including a temporary restraining order) to assure performance in the event the Company breaches the Contract.

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 or reasonably anticipated 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 five (5) years with the City having the unilateral right to renew for two (2) consecutive one (1) year terms.

18.2. TERMINATION BY THE CITY.

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

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

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under the Contract shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.

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

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

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

By giving written notice to the Company, the City may also terminate the Contract upon the occurrence of one or more of the following events (which shall each constitute separate grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):

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

18.5. **NO SUSPENSION.**

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

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

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

18.7. **AUTHORITY TO TERMINATE.**

The following persons are authorized to terminate this Contract on behalf of the City:
(a) the City Manager, any Assistant City Manager, or any designee of the City

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Manager; or (b) the Department Director of the City Department responsible for administering this Contract.

18.8. OBLIGATIONS UPON EXPIRATION OR TERMINATION.

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

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 City, nor relieve the Company of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve the Company from any claim for damages previously accrued or then accruing against the Company.

18.10. OTHER REMEDIES.

The remedies set forth in this Section and **Section 19** shall be deemed cumulative and not exclusive, and may be exercised successively or concurrently, in addition to any other remedies available under this Contract or at law or in equity.

19. TRANSITION SERVICES UPON TERMINATION.

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

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

20. CHANGES.

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

completion of the Services, including the impact on all Milestones and delivery dates and any associated price.

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

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

21. CITY OWNERSHIP OF WORK PRODUCT.

- 21.1. The parties agree that the City shall have exclusive ownership of all reports, documents, designs, ideas, materials, reports, concepts, plans, creative works, and other work product developed for or provided to the City in connection with this Contract, and all patent rights, copyrights, trade secret rights and other intellectual property rights relating thereto (collectively the "Intellectual Property"). The Company hereby assigns and transfers all rights in the Intellectual Property to the City. The Company further agrees to execute and deliver such assignments and other documents as the City may later require to perfect, maintain and enforce the City's rights as sole owner of the Intellectual Property, including all rights under patent and copyright law. The Company hereby appoints the City as attorney in fact to execute all such assignments and instruments and agree that its appointment of the City as an attorney in fact is coupled with an interest and is irrevocable.
- 21.2. The City grants the Company a royalty-free, non-exclusive license to use and copy the Intellectual Property to the extent necessary to perform this Contract. The Company shall not be entitled to use the Intellectual Property for other purposes without the City's prior written consent, and shall treat the Intellectual Property as "Confidential Information" pursuant to Section 26 of the Contract.
- 21.3. The Company will treat as Confidential Information under the Confidentiality and Non-Disclosure Contract all data in connection with the Contract. City data processed by the Company shall remain the exclusive property of the City. The Company will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the City in any manner except that contemplated by the Contract.

22. LICENSING.

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

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

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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.

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

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

This **Section 24** shall remain in force despite termination of this Contract (whether by expiration of the term or otherwise).

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 that it is required to perform under the Contract. Any subcontract entered into by Company shall name the City as a third party beneficiary.

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26. CONFIDENTIAL INFORMATION.

26.1. CONFIDENTIAL INFORMATION.

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

- 26.1.1. *Trade secrets.* For purposes of this Contract, trade secrets consist of *information* of the City or any of its suppliers, contractors or licensors: (a) that derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.
- 26.1.2. *Information of the City or its suppliers, contractors or licensors marked “Confidential” or “Proprietary.”*
- 26.1.3. *Information relating to criminal investigations conducted by the City, and records of criminal intelligence information compiled by the City.*
- 26.1.4. *Information contained in the City’s personnel files, as defined by N.C. Gen. Stat. 160A-168.* This consists of all information gathered and/or maintained by the City about employees, except for that information which is a matter of public record under North Carolina law.
- 26.1.5. *Citizen or employee social security numbers collected by the City.*
- 26.1.6. *Computer security information of the City,* including all security features of electronic data processing, or information technology systems, telecommunications networks and electronic security systems. This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software and codes.
- 26.1.7. *Local tax records of the City that contains information about a taxpayer’s income or receipts.*
- 26.1.8. *Any attorney / City 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 city-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 City 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

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

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

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 City or Company who: (i) has a need to know such Confidential Information, and (ii) has executed a confidentiality agreement incorporating substantially the form of this Section of the Contract and containing all protections set forth herein.
- 26.2.3. It shall not use any Confidential Information of the City for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written agreements between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.
- 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 City and the City's vendors, licensors and suppliers (including but not limited to seeking injunctive relief where reasonably necessary) against any person who has possession of or discloses Confidential Information in a manner not permitted by this Contract.
- 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 City or destroyed upon satisfaction of the purpose of the disclosure of such information.

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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 City;
- 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 City 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 possible extent possible, this Contract will be applicable to all disclosures under the court order or subpoena.

26.4. UNINTENTIONAL DISCLOSURE.

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

26.5. REMEDIES.

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

27. INSURANCE.

27.1. TYPES OF INSURANCE.

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

- 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 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

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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 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.

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

27.2. **OTHER INSURANCE REQUIREMENTS.**

- 27.2.1. The City shall be exempt from, and in no way liable for any sums of money, which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Company and/or subcontractor providing such insurance.
- 27.2.2. City of Charlotte shall be named as an additional insured for operations or services rendered under the automobile and general liability coverage. The Company's insurance shall be primary of any self-funding and/or insurance otherwise carried by the City for all loss or damages arising from the Company's operations under this agreement.
- 27.2.3. Certificates of such insurance will be furnished to the City and shall contain the provision that the City be given thirty (30) days' written notice of any intent to amend coverage reductions or material changes or terminate by either the insured or the insuring Company.
- 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 City.
- 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. COMMERCIAL NON-DISCRIMINATION.

The City has adopted a Commercial Non-Discrimination Ordinance that is set forth in Section 2, Article V of the Charlotte City Code, and is available for review on the City's website (the "Non-Discrimination Policy"). As a condition of entering into this Contract the Company agrees to comply with the Non-Discrimination Policy, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the Company shall not discriminate on the basis of race, gender, religion, national origin, sexual orientation, ethnicity, age, disability, or political affiliation in the solicitation, selection, hiring, or treatment of subcontractors, vendors, suppliers, or commercial customers in connection with

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a City contract or contract solicitation process, nor shall the Company retaliate against any person or entity for reporting instances of such discrimination. The Company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on City contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace.

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

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

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

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) Section 29.1, and (ii) notify the Company of any criminal drug statute conviction for a violation occurring in the workplace not later than five (5) days after such conviction;
- 29.4. Notifying the City within ten days after receiving from an employee a notice of a criminal drug statute conviction or after otherwise receiving actual notice of such conviction;
- 29.5. Imposing a sanction on, or requiring the satisfactory participation in a drug

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- 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:

PHONE: _____

FAX: _____

E-MAIL: _____

With Copy To (Service Provider):

PHONE: _____

EMAIL: _____

For the City:

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

PHONE: 704-336-2524

FAX: 704-336-2258

kelfmore@ci.charlotte.nc.us

With Copy To (City):

Cindy White
 City of Charlotte
 City Attorney's Office
 600 East Fourth Street
 CMGC 15th Floor
 Charlotte, NC 28202

PHONE: (704)336-3012

cwhite@ci.charlotte.nc.us

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. **CITY NOT LIABLE FOR DELAYS.**

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

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 City by telephone (to be confirmed by written notice within two (2) days of the inception of the failure or delay) of the occurrence

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of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents the Company from performing its obligations for more than five (5) days, the City may terminate this Contract.

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 City in any manner absent the written consent of the City.

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 4.3 “Employment Taxes and Employee Benefits”

Section 15 “Representations and Warranties of Company”

Section 18 “Term and Termination of Contract”

Section 21 “City 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 City shall have the option of terminating this Contract by written notice to the Company. The Company shall notify the City within ten (10) days of the occurrence of a change in control. As used in this Contract, the term “Control” shall mean the possession, direct or indirect, of either (i) the ownership of or ability to direct the voting of, as the

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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. **DRAFTER’S PROTECTION.**

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

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 that 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 City in connection with the Contract.

31.17. **HARASSMENT.**

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

31.18. **TRAVEL UPGRADES.**

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

31.19. TAXES.

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

31.20. COUNTERPARTS.

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

32. DATA SECURITY AND PRIVACY**32.1. CONTRACT DATA.**

The parties acknowledge that the City has exclusive ownership of all data generated, provided to or made available to the Company in connection with this Contract, including all without limitation documents recording citizen comments and all report structures in which such data are reported (the “Contract Data”). The Company will treat the Contract Data as Confidential Information under the Confidentiality and Non-Disclosure Agreement. The Company will not reproduce, copy, duplicate, disclose, or use the Contract Data in any manner except as necessary to perform this Contract.

32.2. GENERAL REQUIREMENTS.

With respect to Contract Data, the Company shall:

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

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

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

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

32.3. AUTHENTICATION.

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

32.4. PREVENTING UNAUTHORIZED ACCESS.

The Company shall identify in writing a security administrator to coordinate with the City. The Company shall take appropriate measures to protect against the misuse of

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and/or unauthorized access to the Contract Data, including the use of passwords and validated user identification for Company employees. The Company will take appropriate measures to address any such misuse or unauthorized access.

32.5. **IF UNAUTHORIZED ACCESS IS SUSPECTED.**

The Company shall promptly investigate any suspicion or allegation of misuse or unauthorized access to Contract Data. If the Company learns or has reason to believe that Contract Data has been disclosed or accessed by an unauthorized party, the Company shall notify the City immediately and shall take at the Company's expense all remedial action required by law or as reasonably requested by the City to remedy such disclosure or unauthorized access.

32.6. **CITY'S RIGHT TO OBTAIN CONTRACT DATA.**

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

32.7. **TRANSITION SERVICES.**

Upon expiration or termination of this Contract for any reason, The Company shall at no cost to the City provide such services as are reasonably requested by the City to transition the Contract Data to the City or to another service provider, including without limitation providing information regarding data fields and data format and responding to questions.

32.8. **CONTRACT DATA TO REMAIN IN THE U.S.**

The Company will ensure that all Contract Data remains within the confines of the United States including any backup data, replication sites, and disaster recovery sites.