

REQUEST FOR PROPOSALS
WELLNESS PROGRAM AND RELATED
SERVICES

RFP # 269-2011-222



CITY OF CHARLOTTE
NORTH CAROLINA

FEBRUARY 18, 2011

REQUEST FOR PROPOSALS
RFP # 269-2011-222
Wellness Program and Related Services

FEBRUARY 18, 2011

Dear Service Provider:

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

One electronic copy of the Proposal should be sent via email and three (3) hard copies of your Proposal must be submitted via mail. All Proposals are due to: Deirdre Kelley, Managing Partner, Kelley Benefits Group, 7202 Versailles Lane, Charlotte, NC 28277, deirdre@dakbenefits.com no later than **MARCH 11, 2011 at 5p.m.**

Any questions during the RFP process should be addressed to Deirdre Kelley at 704-756-7182 or deirdre@dakbenefits.com

Sincerely,

Anna Ellis
City of Charlotte Benefits Manager

Checklist for submitting a Proposal:

Step 1-Read the document fully.

Step 2-If you plan on submitting a Proposal then email **Form 1 in Section 7** to the number listed on the sheet.

Steps 3-If you have any questions send them before the deadline listed in **Section 2.1**.

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

Proposal Copies

- ☐ 1-Electronic Copy sent via email
- ☐ 3- Copies “marked Original” (*MUST be bound*)

Proposal Format-If submitting a Proposal, all required copies should be formatted in this manner.

- ☐ Cover Letter per **Section 4.1.1**
- ☐ Executive Summary per **Section 4.1.2**
- ☐ Background and Experience per **Section 5 (read 5.1 thru 5.7 and answer)**
- ☐ Answer all questions listed under **Section 4.1.4**
- ☐ **Section 7-Form 3**
- ☐ **Section 7-Form 4**
- ☐ **Section 7-Form 5**
- ☐ Exceptions to any part of the RFP (If you take any exceptions to anything in this document list it in a category in your Proposal called “Exceptions” and offer an alternative solution).

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 **Section 8.29**.
- ☐ Business licenses per requirements in **Section 8.24**.

It is the Service Provider’s responsibility to check www.ips.state.nc.us for any addendums or changes to this Project. Search for bid # 269-2011-222 to find if any documents or changes have been posted.

Section 1

Introduction and General Information

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Section 1

Introduction and General Information

1. INTRODUCTION.

1.1. Objective.

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

1.2. Definitions.

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

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

Affiliates: Refers to all departments or units of the 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.

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

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

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

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

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

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

Documentation: Refers to all written, electronic, or recorded works, that describe the use, functions, features, or purpose of the Deliverables or Services or any component thereof, and which are published or provided to the 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.

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

Milestones: Refers to the benchmarks of performance (consisting of an identified deadline for the completion of specific

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Introduction and General Information

	services and/or the Acceptance of identified Deliverables), as specified in this RFP.
<i>Project:</i>	Refers to the procurement process to choose a Service Provider to perform Wellness Program and Related Services for the City.
<i>Project Plan:</i>	Refers to the detailed plan for delivery of the Services as described in Section 3, in the form accepted in writing by the City in accordance with the terms of this RFP and resultant Contract.
<i>Proposal:</i>	Refers to the Proposal submitted by a Service Provider for the Services as outlined in this RFP.
<i>Services:</i>	Refers to the Wellness Program and Related Services as requested in this RFP.
<i>Service Provider:</i>	Refers to a company that has interest in providing the Services required by this RFP.
<i>Specifications and Requirements:</i>	Refers to all definitions, descriptions, requirements, criteria, warranties and performance standards relating to the Deliverables and Services which are set forth or referenced in: (i) this RFP; (ii) the Documentation; and (iii) any functional and/or technical specifications which are published or provided by the Company or its licensors or suppliers from time to time with respect to all or any part of the Deliverables or Services.
<i>Work Product:</i>	Refers to the Deliverables and all other programs, algorithms, reports, information, designs, plans and other items developed by the Service Provider in connection with this RFP, and all partial, intermediate or preliminary versions of any of the foregoing.

1.3. Accuracy of RFP and Related Documents.

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

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

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1.4. City's Rights and Options.

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

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

1.6. Proposal Conditions.

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

1.6.1. RFP Not An Offer.

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

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

1.6.2. Right to Terminate Discussions.

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

1.6.3. Requirement for Representation as to Accuracy and Completeness of Proposal.

Each Service Provider shall make the following representations and warranty in its Proposal Cover Letter, the falsity of which might result in rejection of its Proposal: **"The information contained in this Proposal or any part thereof, including its Exhibits, Schedules, and other documents and instruments delivered or to be delivered to the City, is true, accurate, and complete. This Proposal includes all information necessary to ensure that the statements therein do not in whole or in part mislead the City as to any material facts."**

1.6.4. Trade Secrets/Confidentiality.

Upon receipt at the City of Charlotte, your Proposal is considered a public record except for material which qualifies as "trade secret" information under N.C. Gen. Stat. 66-152 et. seq. including Personal Identification information to include, but not be limited to, social security numbers, bank account numbers, and drivers license numbers. After the Proposal due date, the City's Evaluation Committee, as well as other City staff and members of the general public who submit public records requests will review the Proposal.

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

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

In submitting a Proposal, each Service Provider agrees that the City may reveal any trade secret materials contained in such response to all City staff and City officials involved in the selection process, and to any outside

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consultant or other third parties who serve on the Evaluation Committee or who are hired or appointed by the City to assist in the evaluation process.

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

1.6.5. Prohibited Discrimination.

The City is committed to promoting equal opportunities for all and to eliminating prohibited discrimination in all forms. For purposes of this section, Prohibited Discrimination means discrimination in the solicitation, selection, and/or treatment of any subcontractor, vendor, supplier or commercial customer on the basis of race, ethnicity, gender, age, religion, national origin, disability or other unlawful form of discrimination. Without limiting the foregoing, Prohibited Discrimination also includes retaliating against any person, business or other entity for reporting any incident of Prohibited Discrimination. It is understood and agreed that not only is Prohibited Discrimination improper for legal and moral reasons, Prohibited Discrimination is also an anti-competitive practice that tends to increase the cost of goods and services to the City and others. As a condition of entering into any Contract, the Service Provider shall represent, warrant and agree that it does not and will not engage in or condone Prohibited Discrimination. Without limiting any rights the City may have at law or under any other provision of any Contract, it is understood and agreed that a violation of this provision constitutes grounds for the City to terminate any such Contract.

1.6.6. Statutory Requirements.

Any Contract awarded as a result of this RFP shall be in full conformance with all statutory requirements of North Carolina and all statutory requirements of the Federal Government, to the extent applicable.

1.6.7. Reservation of Right to Change Schedule.

The City shall ultimately determine the timing and sequence of events resulting from this RFP. The City reserves the right to delay the closing date and time for any phase if City staff believe that an extension will be in the best interest of the City.

1.6.8. Reservation of Right to Amend RFP.

The City reserves the right to amend this RFP at any time during the process, if it believes that doing so is in the best interests of the City. Any addenda will be posted to the Internet at www.ips.state.nc.us, bid# 269-269-2011-222.

1.6.9. Additional Evidence of Ability.

Service Providers shall be prepared to present additional evidence of experience, qualifications, abilities, equipment, facilities, and financial standing. The City reserves the right to request such information at any time during the Proposal evaluation period for this RFP.

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- 1.6.10. No Collusion or Conflict of Interest.
By responding to this RFP, the Service Provider shall be deemed to have represented and warranted that the Proposal is not made in connection with any competing Service Provider submitting a separate response to this RFP, and is in all respects fair and without collusion or fraud.
- 1.6.11. Proposal Terms Firm and Irreversible.
The signed Proposal shall be considered a firm offer on the part of the Service Provider. The City reserves the right to negotiate price and Services. All Proposal responses (including all statements, claims, declarations, prices and specifications in the Proposals) shall be considered firm and irrevocable for purposes of future Contract negotiations unless specifically waived in writing by the City. The Service Provider chosen for award should be prepared to have its Proposal and any relevant correspondence incorporated into the Contract, either in part or in its entirety, at the City's election. Any false or misleading statements found in the Proposal or Contract exceptions not included in the Proposal may be grounds for disqualification.
- 1.6.12. Proposal Binding for 180 Days.
Each Proposal shall contain a statement to the effect that the Proposal is a firm offer for one-hundred-eighty (180) calendar day period from the date of the opening. This statement must be signed by an individual authorized to bind the Service Provider and include their name, title, address, and telephone number. All prices quoted shall be firm and fixed for the full Contract period. The City shall have the option to accept subject to exception by Contract.
- 1.6.13. SBO Program.
It is the policy of the City of Charlotte in accordance with SB 1336 as approved by the NC General Assembly on August 27, 2002, that Small Business Enterprises shall have the maximum opportunity to compete for and participate in the performance of contracts issued on behalf of the City of Charlotte. The City further requires that its contractors agree to take all the necessary and responsible steps to ensure that Small Business Enterprises have the maximum opportunity to participate as subcontractors for contractors issued by City of Charlotte, Economic Development Division.
- 1.6.14. Subcontracting.
The Service Provider given contract award shall be the prime contractor and shall be solely responsible for contractual performance. In the event of a subcontracting relationship, the Service Provider shall remain the prime contractor and will assume all responsibility for the performance of the Services that are supplied by all subcontractors. The City retains the right to approve all subcontractors.
- 1.6.15. Equal Opportunity.
The City has an equal opportunity purchasing policy. The City seeks to ensure that all segments of the business community have access to supplying the goods and services needed by City programs. The City provides equal opportunity for all businesses and does not discriminate

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against any Service Providers regardless of race, color, religion, age, sex, and national origin or disability.

- 1.6.16. Use of City's Name.
No advertising, sales promotion or other materials of the Service Provider or its agents or representatives may identify or reference the City in any manner absent the prior written consent of the City.
- 1.6.17. Withdrawal for Modification of Proposals.
Service Providers may change or withdraw their Proposals at any time prior to the Proposal due date; however, no oral modifications will be allowed. Only telegrams, letters, or other formal written requests for modifications or corrections of a previously submitted Proposal, which is addressed in the same manner as the Proposal, and received by the City prior to the scheduled closing time for receipt of Proposals, will be accepted. The Proposal, when opened, will then be corrected in accordance with such written request(s), provided that the written request is contained in a sealed envelope, which is plainly marked "**Modifications to Proposal.**"
- 1.6.18. No Bribery.
In submitting a response to this RFP, each Service Provider certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the foregoing has bribed, or attempted to bribe, an officer or employee of the City in connection with the Contract.
- 1.6.19. Exceptions to the RFP.
Other than exceptions that are stated in compliance with this Section, each Proposal shall be deemed to agree to comply with all terms, conditions, specifications, and requirements of this RFP including the Sample Contract language included as Section 8. An "exception" is defined as the Service Provider's inability or unwillingness to meet a term, condition, specification, or requirement in the manner specified in the RFP including the Sample Contract language included as Section 8. All exceptions taken must be identified and explained in writing in your Proposal and must specifically reference the relevant section(s) of this RFP. If the Service Provider provides an alternate solution when taking an exception to a requirement, the benefits of this alternative solution and impact, if any, on any part of the remainder of the Service Provider's solution, must be described in detail.
- 1.6.20. Fair Trade Certifications.
By submission of a Proposal, the Service Provider certifies that in connection with this procurement:
- The prices have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with anyone;
 - Unless otherwise required by law, the prices which have been quoted in its Proposal have not been knowingly disclosed by the Service Provider and will not knowingly be disclosed by the Service Provider prior to opening; and

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- No attempt has been made or will be made by the Service Provider to induce any other person or firm to submit or not to submit a Proposal for the purpose of restricting competition.

1.6.21. Clarification of Ambiguities.

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

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

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

1.6.23. Disclaimer.

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

Section 3

Scope of Services

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
FEBRUARY 18, 2011	<i>Issuance of RFP.</i> The City issues this RFP.
FEBRUARY 22, 2011	<i>Request for Proposals Acknowledgement.</i> Service Providers who intend to submit a Proposal shall submit the RFP Acknowledgement Form on this date to the email address listed in Section 2.2.
MARCH 11, 2011	<i>Proposal Submission.</i> Proposals are due by 5p.m. on MARCH 11, 2011.
MARCH 12, 2011 – APRIL 8, 2011	<i>Evaluation.</i>
MARCH 29 & 30, 2011	<i>Finalist Presentations</i>
JUNE 2011	<i>Finalist Selected</i>
FALL 2011	<i>Wellness Program and Related Services.</i> Service Provider begins providing all Wellness Program and Related Services.

2.2. Intent to Propose.

Please acknowledge receipt of this RFP via email by **FEBRUARY 22, 2011** using the Request for Proposals Acknowledgement Form located in Section 7, Form One. Complete the form in its entirety advising the City of your firm's intention to submit or not submit a Proposal. Email the completed and signed form to Deirdre@dakbenefits.com, Attention: Deirdre Kelley.

2.3. Interpretations and Addenda.

No interpretation or clarification of the meaning of any part of this RFP will be made orally to any Service Provider. Service Providers must request such interpretations or clarifications in writing. Address requests for information or clarification of this RFP

Section 3

Scope of Services

to Deirdre Kelley at the e-mail address listed below. When submitting questions, please reference the RFP page and topic number.

Deirdre Kelley
Kelley Benefits Group
7202 Versailles Lane
Charlotte, NC 28277
704-756-7182
E-mail: deirdre@dakbenefits.com

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

2.4. Submission of Proposals.

One electronic emailed copy and three original Proposals signed in ink by a company official authorized to make a legal and binding offer, shall be submitted to the address listed in Section 2.3 above by MARCH 11, 2011 on or before but no later than 5p.m. Each copy shall be complete and unabridged, and shall not refer to any other copy of the signed/sealed original for any references, clarifications, or additional information.

When received, all Proposals and supporting materials, as well as correspondence relating to this RFP, shall become the property of the City.

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

2.5. Correction of Errors.

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

2.6. Evaluation.

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

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

Section 3

Scope of Services

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

3. SCOPE OF WELLNESS PROGRAM AND RELATED SERVICES.

3.1. Background and Purpose for Wellness and Related Services

The City offers comprehensive wellness programs and is looking for a partner to assist them in administering their current programs and to become a long term strategic partner. The City has approximately 6,000 active employees, 3,860 dependents and 935 pre-65 retirees who are eligible to participate in their wellness programs. (HRA and coaching). Wellness has been a part of the City's culture since 2004 when they selected Gordian (OnLife Health) to become their wellness partner

Organizations must have the capability of providing comparable wellness services that are currently in effect. The City is also looking for a strategic partner who will be able to assist them with their long term strategies, incentive program administration and to be able to document the success of their wellness initiatives over time.

The general scope of services currently includes:

- Wellness planning and strategy development
- Health Assessment (Online and telephonic)
- Portal/Web content
- Health coaching and outreach (Email and telephonic)
- Program mailings and employee communications
- Automated monthly data feed for incentive administration and management reporting
- On-site biometric screenings

3.2. Overall Project Description Plan Design

The 2011 wellness plan design is as follows.

- All employees who attend an on-site screening, complete a health assessment and actively engage in a health coaching program will have their medical contribution reduced by \$400 per year which will be deducted from payroll on a weekly basis. For 2011, 5100 employees elected the wellness premium incentive medical plan option and 600 chose not to participate in the incentive requirements by enrolling in the standard medical plan option. These employees however still have access to the health assessment and health coaching benefit.
- In addition, the City offers a deductible incentive to non-tobacco users. All employees who do not use tobacco will save \$300 on their medical plan deductible. Tobacco users that request an exemption and agree to enroll in tobacco cessation are also eligible for the incentive. The tobacco cessation program enrollment requires monthly cessation coaching phone calls with a cessation coach.

Wellness Program Components

Section 3

Scope of Services

Core services include:

- Health Assessment
- Telephonic/web-based health coaching
- Biometric screenings

Biometric screening program components include:

- Fasting finger stick
- Height/Weight
- Waist circumference and BMI
- Blood pressure
- Pulse
- Glucose
- Cholesterol
- HDL
- LDL
- Triglycerides
- HDL Ratio
- LDL/HDL ratio

The pricing also includes:

- Event scheduling
- Fulfillment of supplies
- Shipping
- Travel of screeners
- Site management
- Certified trainers
- Lab testing
- Individual and aggregate reporting
- Data processing and transfer
- Health Coaching

Health Coaching is telephonic or web-based. Current coaching topics include:

- Tobacco cessation
- Weight management
- Nutrition
- Exercise
- Stress

The City also has a dedicated telephone line for all inbound calls. Employees are required to contact their coach at least every 60-90 days to continue to be eligible for the premium reduction. Inbound calls are unlimited. Dependents and pre-65 retirees are eligible to participate in the health assessment and health coaching program. Tobacco cessation participants are required to engage telephonically at least every 30 days.

Section 3

Scope of Services

Additional telephonic condition management programs are also available through the City's medical plan administrator, BlueCross Blue Shield of North Carolina.

3.3. Pricing.

The City expects to establish a long-term relationship with its Wellness Program and Related 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 Three (3) 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. Cost must be in United States dollars rounded to the nearest quarter of a dollar. A pricing worksheet is provided in Section 7, Form 4 to assist you.

3.4. Transition of Services.

The selected Wellness Service Provider shall commit to working with the City to ensure a smooth transition. Minimizing the disruption to City employees already in a coaching relationship is an important consideration in the selection process. The following is an overview, not intended to be all inclusive of the transition components that shall take place, and be managed between the City of Charlotte and the selected Service Provider:

Working with the City and current provider, should a new Service Provider be selected, to discuss patterns, trends and current Clients;

Be responsible for ensuring a smooth transition by coordinating the transition with the current provider,

3.5. Customer Service.

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

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

Section 3

Scope of Services

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

3.6. **Security Requirements.**

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

3.7. **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 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.

3.8. **Background Checks.**

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

After starting work under the Contract, the Service Provider shall be required to, on an annual basis, perform a Background Check for each Service Provider employee assigned to work under the Contract during that year, and shall require its subcontractors (if any) to do the same for each of their employees. If the Service Provider undertakes a new project under the Contract, then prior to commencing performance of the project the Service Provider shall perform a Background Check for each Service Provider 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 the Contract fall within the categories described below, the Background Checks that the Service Provider 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.

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Scope of Services

- 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 Service Provider 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 Service Provider 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 Service Provider 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.

3.9. Vendor Registration.

The City is pleased at your interest in doing business with the City of Charlotte and appreciates the opportunity to provide you with information regarding procurement protocols. The City's vendor management philosophy supports a fair, open, and inclusive process that offers the same access and information to all Service Providers. To assist you in familiarizing yourself with procurement at the City, please follow the link below to the "How to Business with the City of Charlotte" booklet:

<http://www.charmeck.org/city/charlotte/nbs/ed/SBO/Documents/HTDBbooklet.pdf>

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

<https://cityvendors.charmeck.org>

Section 4

Proposal Format

4. PROPOSAL FORMAT.

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

- a. Cover letter;
- b. Executive Summary;
- c. Background and Experience as requested in Section 5;
- d. Proposed Solution as requested in Section 4;
- e. The "Proposal Submission" set forth in Section 7, Form Three;
- f. The "Pricing Worksheet" set forth in Section 7, Form Four;
- g. The "Proposal Certification" set forth in Section 7, Form Five;
- h. 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.

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

4.1. Proposal Content.

4.1.1. Cover Letter.

The Proposal must include a letter of transmittal attesting to its accuracy, signed by an individual authorized to execute binding legal documents on behalf of the Service Provider as outlined in Section 1.6.3. The cover letter shall provide the name, address, telephone and facsimile numbers of the Service Provider along with the name, title, address, telephone and facsimile numbers of the executive that has the authority to contract with the City. The cover letter shall present the Service Provider's understanding of the Project, a summary of the approach to be undertaken to perform the Services, as well as a summary of the costs to provide the Services.

4.1.2. Executive Summary.

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

Section 4

Proposal Format

4.1.3. Background and Experience.

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

4.1.4. 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.**

Also, please address the following as completely as possible. **If you wish to add supplemental information, it shall be labeled "Supplemental Information."**

Health Risk Assessment (HRA)

1. Describe your HRA. Is the tool available via the web, paper and telephonically?
2. Can biometric data be uploaded into the HRA?
3. Can your organization provide individual HRA data to third parties in order for them to identify individuals who may be eligible for other clinical programs offered by the City?
4. Please provide a URL and password for a HRA/portal demo.

Biometric Screening

1. Please indicate whether this service is provided directly by your organization or if it is subcontracted out to a third party vendor.
2. Describe your capabilities in obtaining biometric data for employees and dependents that are not able to attend an on-site screening event. For each alternative please include in the pricing section of this RFP.
3. Can your organization provide on-site coaching during the on-site screening events? Please describe your capabilities and include in the pricing section of this RFP as an optional service.

Health Coaching

1. Describe your outreach and risk stratification process for your health coaching programs. Please provide a listing of all of the condition management programs that are available.
2. Besides telephonic coaching, what other types of programs do you offer either online or onsite?
3. Please provide data on your engagement results.
4. Provide a complete description of your smoking cessation program.

Incentive Program Tracking

1. Based on the City's current wellness incentive programs, describe how you would track and record their incentive programs.

Section 4

Proposal Format

2. Can your organization provide a monthly file feed to The City in order for them to determine which employees have satisfied the requirements to receive a premium discount?

Data and Reporting

1. Describe your process for importing eligibility data to tie it to wellness compliance.
2. Provide a listing/samples of all reports which are part of your standard reporting package.

Communication

1. Provide your standard communication plan and provide sample materials.

Implementation

1. Based on the information in this RFP, please provide us with a sample implementation plan/timeline that you would use for The City.

Reference

Please provide a minimum of three current references in the chart below:

Client Reference	Current Client Reference 1	Current Client Reference 2	Current Client Reference 3
Company Name			
Contact Name			
Phone Number			
# of Employees (eligible to receive HRA and screening services)			
Service/Programs Delivered			
Length of Service Relationship			
Other Vendors with whom you Integrate for Client			

Wellness Consulting

Base on your knowledge of the City's wellness programs, please provide any observation/suggestions to improve the current program based on your experience with wellness programs you administer for other clients.

The City's employee workforce is comprised of public safety (50%), labor and trades (30%), and administrative/professional (20%). Describe how your solution will provide appropriate, enaging services to each of these division.

Additional RFP Questions

Process.

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

Section 4

Proposal Format

Project Plan.

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

Client Relationship Management.

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

Risk Management.

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

Pricing.

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

4.1.5. Required Forms.

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

4.1.6. Exceptions to the RFP.

Exceptions must be submitted in accordance with Section 1.6.19 of this RFP. If exceptions are not identified in your Proposal they may not be considered during Contract negotiation and could result in Proposal being rejected from further consideration. If legal council needs to review the Sample City Contract prior to signature, reviews must be completed before your Proposal is submitted.

Section 5

Background and Experience

5. SERVICE PROVIDER'S BACKGROUND AND EXPERIENCE.

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

5.1. Official Name.

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

5.2. Service Provider Background.

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

5.3. Proposing Organization's Structure.

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

5.4. Analytical Approach (no response required).

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

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

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

5.5. Guarantor.

The nature of the relationship between the Service Provider and its guarantor is crucial to protect the City in the event that the contracting Service Provider defaults

Section 5

Background and Experience

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

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

5.6. Requests for Financial Information.

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

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

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

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

- a. Include in the statement of guarantor(s), as described in Section 5.5. Guarantor, evidence of the ability of the guarantor to meet the short-term funding needs of this project;
- b. Evidence that demonstrates the ability to obtain the insurance as required in Section 8. Such insurance should provide coverage in the stated amount for each occurrence of bodily injury and for each occurrence of property damage with coverage for products/completed operations, personal injury liability, and contractual liability;
- c. Annual audited financial reports for each of the past five (5) fiscal years, prepared in accordance with Generally Accepted Accounting Principles (GAAP), and all relevant notes;
- d. The most recent Form 10-K and Form 10-Q filed with the Securities and Exchange Commission (SEC); or, if the contractor is not regulated by the SEC, then the most recent quarterly financial report.

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Background and Experience

- e. Description of any material adverse changes in financial position within the past five (5) years; any material changes in the mode of conducting business; any bankruptcy proceedings, mergers, acquisitions, takeovers, joint ventures, and/or divestitures within the past five (5) years. In addition, provide a clear and definitive statement of the following:
- Years of providing similar Services by the Service Provider and/or predecessor organization;
 - Whether or not the Service Provider (and/or predecessor, guarantor or subcontractor) has declared bankruptcy within the last five (5) years;
 - Description of the financial impact of any past or pending legal proceedings and judgments, as identified in Section 5.10 that could materially affect the Service Provider's financial position or ability to provide Services to the City. This information will be reviewed and assessed in accordance with the information provided by the Service Provider, in the above referenced Section;
 - All credit reports, credit bulletins, and any other published statements by the most recognized agencies (Standard & Poors Rating Group, Moody, Investor Services, Dun & Bradstreet, and Value Line) that have been issued or published about the entity within the past five (5) years;
 - The prospectus or offering statement for the entity's latest security or equity offering;
 - The company name, contact person, telephone number, and fax number of at least two (2) references from bank or institutional lenders which have extended credit to the entity in the past five (5) years; or if the entity has not applied for credit in the past five (5) years, the contact person's name, telephone number, and fax number of at least two (2) references from banks with which the entity conducts business;
 - The company name, contact person, telephone number, and fax number of at least two (2) credit references from suppliers/vendors; and
 - Any additional information, which the Service Provider believes, is appropriate to fully reflect the financial strength of the entity.

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

5.7. Proposed Project Team.

If the Service Provider's proposal submission will be from a team composed of more than one (1) company or if any subcontractor will provide more than fifteen percent (15%) of the Services, all participating companies must be identified. Provide a description, which includes the teaming relationships, form of partnership, each team member's contribution, and the experience of each team member, which qualifies

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Background and Experience

them to fulfill their responsibility. Provide descriptions and references for the projects on which team members have previously collaborated.

5.8. Past or Pending Judgments.

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

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

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

5.9. Financial and Legal Considerations.

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

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

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

- a. For each entity identified in Section 5.3a, specify the entity’s total revenue, number of employees, products and services, affiliated companies, and other descriptive information;

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Background and Experience

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

5.10. Personnel Management.

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

Section 6

Evaluation Criteria

6. PROPOSAL EVALUATION CRITERIA.

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

Proposals will be assessed to determine the most comprehensive, competitive and best value solution for the 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, Experience and Approach;
- b. Financial Qualifications;
- c. Cost Effectiveness and Value; and
- d. Acceptance of the Terms of the Contract.

6.1. Qualifications, Experience and Approach.

Service Providers will be evaluated based upon their understanding, experience and qualifications in performing the same or substantially similar Services, as reflected by 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.

6.2. Financial Qualifications.

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

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

6.3. Cost Effectiveness and Value.

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

6.4. Acceptance of the Terms of the Contract.

The 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 8. Regardless of exceptions taken, Service Providers shall provide pricing based on the requirements and terms set forth in this RFP. Exceptions shall be identified in accordance with Section 1.6.19 of this RFP.

Section 7
Required Forms – Form One

REQUIRED FORM 1 - REQUEST FOR PROPOSALS ACKNOWLEDGEMENT

The Service Provider hereby certifies receipt of the Request for Proposals for the City of Charlotte, North Carolina RFP #269-2011-222, Wellness Program and Related Services. This form should be completed upon receipt of the City's Request for Proposals and submitted on or before **FEBRUARY 22, 2011**. Please email the completed Request for Proposals Acknowledgement Form to the attention of:

Deirdre Kelley
Kelley Benefits Group
Deirdre@dakbenefits.com

Date: _____

Authorized Signature: _____

Title: _____

Company Name: _____

Contact Name: _____

Contact E-mail address: _____

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

_____ **We plan on submitting a Proposal**

_____ **We do not plan on submitting a Proposal**

Section 7
Required Forms – Form Three

REQUIRED FORM 3 - PROPOSAL SUBMISSION FORM

RFP # 269-2011-222

Wellness Program and Related Services

This Proposal is submitted by:

Service Provider Name: _____

Representative (printed): _____

Representative (*signed*): _____

Address: _____

City/State/Zip: _____

Telephone: _____

(Area Code) Telephone Number

Facsimile: _____

(Area Code) Fax Number

It is understood by the Service Provider that the 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 7

Required Forms – Form Four

REQUIRED FORM 4 - PRICING WORKSHEET

Regardless of exceptions taken, Service Providers shall provide pricing based on the requirements and terms set forth in this RFP. Pricing must be all-inclusive and cover every aspect of the Project. 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.**

Pricing must be firm for the initial three (3) year term of the Agreement. Price adjustments may be implemented for the two (2) optional one (1) year renewal terms, thereafter.

The pricing and program components must be clearly defined and all out of scope or non-standard services should be clearly highlighted. Please use the following grid as a guideline.

Program Description	Program Components	Pricing
HRA and portal		
Biometric Screenings		
Health Coaching		
Incentive Tracking Administration		
Data Management and Reporting		

Fees shown above are all inclusive and the City of Charlotte shall not be liable for any additional Services incurred on the part of the Service Provider in the course of providing Wellness Related Services to the City

Section 7
Required Forms – Form Five

REQUIRED FORM 5 - PROPOSAL CERTIFICATION

AGREEMENT TITLE: **Wellness Program and Related Services**

SERVICE PROVIDER: _____

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

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

NAME OF FIRM

BY: _____
SIGNATURE OF AUTHORIZED OFFICIAL

TITLE

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 # 269-269-2011-222) for Wellness Program and Related Services dated FEBRUARY 18, 2011. 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 Wellness Program and Related 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: STATEMENT 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 A attached to this Contract and incorporated herein by reference (the “Services”). Without limiting the foregoing, the Company will perform the Services and meet the requirements as set forth in Exhibit A. However, the Company shall not be responsible for tasks specifically assigned to the City in this Contract or in Exhibit A.

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

4. COMPENSATION.

4.1. TOTAL FEES AND CHARGES

The City agrees to pay the Company a fixed price (the “Purchase Price”) as full and complete consideration for the satisfactory performance of all the

requirements of this Contract. This amount constitutes the maximum total fees and charges payable to the Company under this Contract including Expenses and will not be increased except by a written instrument duly executed by both parties, which expressly states that it amends this Section of the Contract.

- 4.2. IF EXPENSES **NOT** ALLOWED USE THIS LANGUAGE: 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 Consultants provided by the Company to perform the Services are actual employees of the Company, and that the Company shall be responsible for providing all salary and other applicable benefits to each Consultant. The Company further represents, warrants and covenants that it will pay all withholding tax, social security, Medicare, unemployment tax, worker's compensation and other payments and deductions which are required by law for each Consultant. The Company agrees that the Consultants are not employees of the 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
Attn: Anna Ellis
 - 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 \$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. EMPLOYEES.

The Company shall employ people who are highly qualified specialists in specific wellness and health coaching disciplines. Specialists must possess training, education, experience and commitment to answer questions, make referrals, and help resolve important issues.

The City has the right to require immediate removal and replacement of any personnel deemed unsatisfactory by the City Point of Contact, at any time, for any reason.

Each Company employee must read, understand and sign the Confidentiality and Non-Disclosure Agreement and Assignment of Property Rights found as Exhibit C. Company Employees may not begin providing Services to the City under this Contract without agreeing to and signing Exhibit C. A copy of this fully executed Agreement must be provided to the City Point of Contact when completed.

7. NON-APPROPRIATION OF FUNDS.

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

8. COMPANY PROJECT MANAGER.

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

- 8.1 Management of the overall Wellness Services Program to ensure the highest level of wellness services is delivered to all City employees;
- 8.2 Management of the overall Project by monitoring and reporting on the status of the Project and actual versus projected progress, and by consulting with the City's Project Manager when deviations occur and by documenting all such deviations in accordance with agreed upon change control procedures;
- 8.3 Provision of consultation and advice to the City on matters related to Project implementation strategies, key decisions and approaches, and Project operational concerns/issues and acting as a conduit to the Company's specialist resources that may be needed to supplement the Company's normal implementation staff;
- 8.4 Acting as the Company's point of contact for all aspects of contract administration, including invoicing for Services, and status reporting;
- 8.5 Facilitation of review meetings and conferences between the City and the Company's executives when scheduled or requested by the City;
- 8.6 Communication among and between the City and the Company's staff;

- 8.7 Promptly responding to the City's Project Manager when consulted in writing or by E-mail with respect to Project deviations and necessary documentation;
- 8.8 Identifying and providing the City with timely written notice of all issues that may threaten the Company's Services in the manner contemplated by the Contract (with "timely" meaning immediately after the Company becomes aware of them);
- 8.9 Ensuring that adequate quality assurance procedures are in place through the Project; and
- 8.10 Meeting with other Service Providers working on City projects that relate to this effort as necessary to resolve problems and coordinate the Services.

9. CITY PROJECT MANAGER.

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

10. PROGRESS REPORTS.

The Company shall prepare and submit to the City bi-weekly (or at such other times as may be agreed in Exhibit A) written progress reports, which accomplish each of the following:

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

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

The Company shall identify and request in writing from the City in a timely manner: (i) all information reasonably required by the Company to perform each task comprising the Services, (ii) the City's personnel whose presence or assistance reasonably may be required by the Company to perform each task comprising the Services, and (iii) any other equipment, facility or resource reasonably required by the Company to perform the Services. Notwithstanding the foregoing, the Company shall not be entitled to request

that the City provide information, personnel or facilities other than those which 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) which the City is not required to provide pursuant to this Contract. In the event the City fails to provide any information, personnel, facility or resource that it is required to provide under this Section, the Company shall notify the City in writing immediately in accordance with the notice provision of this Contract. Failure to do so shall constitute a waiver by Company of any claim or defense it may otherwise have based on the City's failure to provide such information, personnel, facility or resource.

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

- 12.1. The City will have the right to require the removal and replacement of any personnel of the Company or the Company's subcontractors who are assigned to provide Services to the City based on experience, qualifications, performance, conduct, compatibility, and violation of City policy or any other reasonable grounds. The addition or promotion of any personnel to key positions within the Project must be approved by the City in writing. The Company will replace any personnel that leave the Project, including but not limited to Key Personnel, with persons having at least equivalent qualifications who are approved by the City in writing.
- 12.2. Unless approved by the City in writing, the Company's personnel set forth in Exhibit A (the "Key Personnel") shall stay on the Project until termination without any material reduction of such Key Personnel's duties, time on the Project or level of involvement. In the event of a breach or potential breach of the foregoing sentence, the Company will use its best efforts to maintain such Key Personnel on the Project (if necessary, in a subcontracting role).
- 12.3. As used in this Contract, the "personnel" includes all staff provided by the Company or its subcontractors, including but not limited to Key Personnel.

13. BACKGROUND CHECKS.

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

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

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

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

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

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

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

14. ACCEPTANCE OF TASKS, DELIVERABLES AND MILESTONES.

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

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

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

15. NON-EXCLUSIVITY.

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

16. EACH PARTY TO BEAR ITS OWN NEGOTIATION COSTS.

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

17. REPRESENTATIONS AND WARRANTIES OF COMPANY.

17.1 GENERAL WARRANTIES.

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

17.2 ADDITIONAL WARRANTIES.

The Company further represents and warrants that:

- 17.2.1 It is a legal entity and if incorporated, duly incorporated, validly existing and in good standing under the laws of the state of its incorporation or licensing and is qualified to do business in North Carolina;
- 17.2.2 It has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Contract;
- 17.2.3 The execution, delivery, and performance of this Contract have been duly authorized by the Company;
- 17.2.4 No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Contract;
- 17.2.5 In connection with its obligations under this Contract, it shall comply

with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses; and

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

18. OTHER OBLIGATIONS OF THE COMPANY.

18.1. WORK ON CITY'S PREMISES.

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

18.2. RESPECTFUL AND COURTEOUS BEHAVIOR.

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

18.3. REPAIR OR REPLACEMENT OF DAMAGE EQUIPMENT OR FACILITIES.

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

18.4. REGENERATION OF LOST OR DAMAGED DATA.

With respect to any data which the Company or any Consultants have negligently lost or negligently damaged, the Company shall, at its own expense, promptly replace or regenerate such data from the 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.

19. REMEDIES.

19.1. RIGHT TO COVER.

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

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

19.2. **RIGHT TO WITHHOLD PAYMENT.**

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

19.3. **SPECIFIC PERFORMANCE AND INJUNCTIVE RELIEF.**

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

19.4. **SETOFF.**

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

19.5. **OTHER REMEDIES.**

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

20. TERM AND TERMINATION OF CONTRACT.

20.1. **TERM.**

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

20.2. **TERMINATION BY THE CITY.**

The City may terminate the Contract at any time without cause by giving thirty (30) days prior written notice to the Company. As soon as practicable after receipt of a written notice of termination without cause, Company shall submit a statement to the City showing in detail the Services performed under this Contract through the date of termination. The forgoing payment obligation is contingent upon: (i) the Company having fully complied with Section 20.8; and (ii) the Company having provided the City with written documentation reasonably adequate to verify the number of hours of Services rendered by each Consultant through the termination date and the percentage of completion of each task.

20.3. **TERMINATION FOR DEFAULT BY EITHER PARTY.**

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

- a. The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in the Contract, provided that, unless otherwise stated in the Contract, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such

default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party; or

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

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

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

- 20.4. **ADDITIONAL GROUNDS FOR DEFAULT TERMINATION BY THE CITY.**
By giving written notice to the Company, the City may also terminate the Contract upon the occurrence of one or more of the following events (which shall each constitute grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):

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

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

- 20.6. **CANCELLATION OF ORDERS AND SUBCONTRACTS.**
In the event this Contract is terminated by the City for any reason prior to the end of the term, the Company shall upon termination immediately discontinue all service in connection with this Contract and promptly cancel all existing orders and subcontracts, which are chargeable to this Contract. As soon as practicable after receipt of notice of termination, the Company shall submit a statement to the City showing in detail the Services performed under this Contract to the date of termination.
- 20.7. **AUTHORITY TO TERMINATE**
The following persons are authorized to terminate this Contract on behalf of the City: (a) the City Manager, or any designee of the City Manager.
- 20.8. **OBLIGATIONS UPON EXPIRATION OR TERMINATION.**
Upon expiration or termination of this Contract, the Company shall promptly return to the City (i) all computer programs, files, documentation, media, related material and any other material and equipment that is owned by the City; (ii) all Deliverables that have been completed or that are in process as of the date of termination; and (ii) a written statement describing in detail all work performed with respect to Deliverables which are in process as of the date of termination. The expiration or termination of this Contract shall not relieve either party of its obligations regarding “Confidential Information”, as defined in this Contract.
- 20.9. **NO EFFECT ON TAXES, FEES, CHARGES OR REPORTS.**
Any termination of this Contract shall not relieve the Company of the obligation to pay any fees, taxes or other charges then due to the City, nor relieve the Company of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve the Company from any claim for damages previously accrued or then accruing against the Company.
- 20.10. **OTHER REMEDIES.**
The remedies set forth in this Section and **Section 20** shall be deemed cumulative and not exclusive, and may be exercised successively or concurrently, in addition to any other remedies available under this Contract or at law or in equity.
21. **TRANSITION SERVICES UPON TERMINATION.**
Upon termination or expiration of this Contract, the Company shall cooperate with the City to assist with the orderly transfer of the Services provided by the Company to the City. Prior to termination or expiration of this Contract, the City may require the Company to perform and, if so required, the Company shall perform certain transition services, necessary to shift the Services of the Company to another provider or to the City itself as described below (the “Transition Services”). Transition Services may include but shall not be limited to the following:
- Working with the City to jointly develop a mutually agreed upon Transition Services Plan to facilitate the termination of the Services;
 - Notifying all affected service providers and subcontractors of the Company;
 - Performing the Transition Service Plan activities;
 - Answering questions regarding the Services on an as-needed basis; and

- Providing such other reasonable services needed to effectuate an orderly transition to a new service provider.

22. CHANGES.

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

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

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

23. CITY OWNERSHIP OF WORK PRODUCT.

- 23.1. The parties agree that the City shall have exclusive ownership of all reports, documents, designs, ideas, materials, reports, concepts, plans, creative works, and other work product developed for or provided to the City in connection with this Contract, and all patent rights, copyrights, trade secret rights and other intellectual property rights relating thereto (collectively “the Intellectual Property”). The Company hereby assigns and transfers all rights in the Intellectual Property to the City. The Company further agrees to execute and deliver such assignments and other documents as the City may later require to perfect, maintain and enforce the City’s rights as sole owner of the Intellectual Property, including all rights under patent and copyright law. The Company hereby appoints the City as attorney in fact to execute all such assignments and instruments and agree that its appointment of the City as an attorney in fact is coupled with an interest and is irrevocable.
- 23.2. 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” under the Confidentiality Contract.
- 23.3. 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.

24. LICENSING.

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

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

25. RELATIONSHIP OF THE PARTIES.

The relationship of the parties established by this Contract is solely that of independent contractors, and nothing contained in this Contract shall be construed to (i) give any party the power to direct or control the day-to-day administrative activities of the other; or (ii) constitute such parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking; or (iii) make either party an agent of the other, or any Consultant an agent or employee of the 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.

26. INDEMNIFICATION.

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

If an Infringement Claim occurs, the Company shall either: (i) procure for the City the right to continue using the affected product or service; or (ii) repair or replace the

infringing product or service so that it becomes non-infringing, provided that the performance of the overall product(s) and service(s) provided to the City shall not be adversely affected by such replacement or modification. If the Company is unable to comply with the preceding sentence within thirty days after the City is directed to cease use of a product or service, the Company shall promptly refund to the City all amounts paid under this Contract.

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

27. SUBCONTRACTING.

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

28. CONFIDENTIAL INFORMATION.

28.1. CONFIDENTIAL INFORMATION.

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

- 28.1.1. *Trade secrets.* For purposes of this Contract, trade secrets consist of *information* of the City or any of its suppliers, contractors or licensors: (a) that derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.
- 28.1.2. *Information of the City or its suppliers, contractors or licensors marked "Confidential" or "Proprietary."*
- 28.1.3. *Information relating to criminal investigations conducted by the City, and records of criminal intelligence information compiled by the City.*
- 28.1.4. *Information contained in the City's personnel files, as defined by N.C. Gen. Stat. 153A-98.* This consists of all information gathered and/or maintained by the City about employees, except for that information which is a matter of public record under North Carolina law.
- 28.1.5. *Citizen or employee social security numbers collected by the City.*
- 28.1.6. *Computer security information of the City,* including all security features of electronic data processing, or information technology systems, telecommunications networks and electronic security systems. This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software and codes.
- 28.1.7. *Local tax records of the City that contains information about a taxpayer's income or receipts.*
- 28.1.8. *Any attorney / City privileged information disclosed by either party.*

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- 28.1.9. *Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.*
- 28.1.10. *The name or address of individual homeowners who, based on their income, have received a rehabilitation grant to repair their home.*
- 28.1.11. *Building plans of city-owned buildings or structures, as well as any detailed security plans.*
- 28.1.12. *Billing information of customers compiled and maintained in connection with the City providing utility services.*
- 28.1.13. *Other information that is exempt from disclosure under the North Carolina public records laws.*

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

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

28.2. RESTRICTIONS.

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

- 28.2.1. It shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information.
- 28.2.2. It shall not, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information of the other to any third party or to any individual employed by the Company, other than an employee, agent, subcontractor or vendor of the City or Company who: (i) has a need to know such Confidential Information, and (ii) has executed a confidentiality agreement incorporating substantially the form of this Section of the Contract and containing all protections set forth herein.
- 28.2.3. It shall not use any Confidential Information of the City for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written agreements between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.
- 28.2.4. It shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information of the other.

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- 28.2.5. The Company shall use its best efforts to enforce the proprietary rights of the City and the City's vendors, licensors and suppliers (including but not limited to seeking injunctive relief where reasonably necessary) against any person who has possession of or discloses Confidential Information in a manner not permitted by this Contract.
- 28.2.6. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, the Company shall assert this Contract as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.
- 28.2.7. All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to the City or destroyed upon satisfaction of the purpose of the disclosure of such information.
- 28.3. **EXCEPTIONS.** The parties agree that the Company shall have no obligation with respect to any Confidential Information which the Company can establish:
 - 28.3.1. Was already known to the Company prior to being disclosed by the disclosing party;
 - 28.3.2. Was or becomes publicly known through no wrongful act of the Company;
 - 28.3.3. Was rightfully obtained by the Company from a third party without similar restriction and without breach hereof;
 - 28.3.4. Was used or disclosed by the Company with the prior written authorization of the City;
 - 28.3.5. Was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, the Company shall first give to the City notice of such requirement or request;
 - 28.3.6. Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the Company shall take use its best efforts to obtain an agreement or protective order providing that, to the greatest possible extent possible, this Contract will be applicable to all disclosures under the court order or subpoena.
- 28.4. **UNINTENTIONAL DISCLOSURE.** Notwithstanding anything contained herein 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.
- 28.5. **REMEDIES.**

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

29. INSURANCE.

29.1. TYPES OF INSURANCE.

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

- 29.1.1. Automobile Liability - Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit - bodily injury and property damage.
- 29.1.2. Commercial General Liability - Bodily injury and property damage liability as shall protect the Company and any subcontractor performing Services under this Contract, from claims of bodily injury or property damage which arise from performance of this Contract, whether such operations are performed by the Company, any subcontractor, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate, or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, operations, personal injury liability and contractual liability, assumed under the indemnity provision of this Contract.
- 29.1.3. Workers' Compensation and Employers Liability - meeting the statutory requirements of the State of North Carolina, \$500,000 per accident limit, \$500,000 disease per policy limit, \$500,000 disease each employee limit.
- 29.1.4. Professional Liability, including Cyber Liability-Professional Liability as shall protect the Company and Company's employees for negligent acts, errors or omissions in performing the services under this contract. Cyber Liability as shall protect the Company and its employees from claims alleging from the failure: (1) to provide the service specified under this Contract; (2) to provide adequate electronic security to safeguard against intrusion or breach; or, (3) to protect private information obtained by the City. This policy shall be specific to the performance of this Contract and shall provide combined single limit each occurrence/aggregate of \$3,000,000

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

29.2. **OTHER INSURANCE REQUIREMENTS.**

- 29.2.1. The City shall be exempt from, and in no way liable for any sums of money, which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Company and/or subcontractor providing such insurance.
- 29.2.2. City of Charlotte shall be named as an additional insured for operations or services rendered under the automobile and general liability coverage. The Company's insurance shall be primary of any self-funding and/or insurance otherwise carried by the City for all loss or damages arising from the Company's operations under this agreement.
- 29.2.3. Certificates of such insurance will be furnished to the City and shall contain the provision that the City be given thirty (30) days' written notice of any intent to amend coverage reductions or material changes or terminate by either the insured or the insuring Company.
- 29.2.4. Should any or all of the required insurance coverage be self-funded/self-insured, a copy of the Certificate of Self-Insurance or other documentation from the North Carolina Department of Insurance shall be furnished to the City.
- 29.2.5. 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.

30. **COMMERCIAL NON-DISCRIMINATION.**

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

As a condition of entering into this Contract, the Company agrees to: (a) promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation, selection, treatment and payment of subcontractors in connection with this Contract; and (b) if requested, provide to the City within sixty days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Company has used on City contracts in the past five years, including the total dollar amount paid by 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, disqualification of the Company from participating in City contracts and other sanctions.

31. DRUG-FREE WORKPLACE.

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

- 31.1. 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;
- 31.2. 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;
- 31.3. Notifying each employee that as a condition of employment, the employee will (i) abide by the terms of the prohibition outlined in (a) above, and (ii) notify the Company of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction;
- 31.4. 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;
- 31.5. Imposing a sanction on, or requiring the satisfactory participation in a drug counseling, rehabilitation or abuse program by, an employee convicted of drug crime;
- 31.6. Making a good faith effort to continue to maintain a drug-free workplace for employees; and
- 31.7. Requiring any party to which it subcontracts any portion of the Services under the Contract to comply with the provisions of 31.1 through 31.6.

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

32. NOTICES AND PRINCIPAL CONTACTS.

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

For the Company:

For the City:

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.

33. MISCELLANEOUS.

33.1. 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.

33.2. AMENDMENT.

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

33.3. 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.

33.4. 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.

33.5. 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.

33.6. **FORCE MAJEURE.**

33.6.1. 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.

33.6.2. 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.

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

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

33.7. **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.

33.8. **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.

33.9. **APPROVALS.**

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

33.10. **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.

33.11. **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”

33.12. **CHANGE IN CONTROL.**

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

33.13. **DRAFTERS PROTECTION.**

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

33.14. **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.

33.15. **CONFLICT OF INTEREST.**

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

33.16. 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.

33.17. 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.

33.18. 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.

33.19. TAXES.

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

***CONFIDENTIALITY AND NON-DISCLOSURE CONTRACT
AND ASSIGNMENT OF PROPERTY RIGHTS***

THIS CONFIDENTIALITY AND NONDISCLOSURE CONTRACT AND ASSIGNMENT OF PROPERTY RIGHTS (the "Contract ") is made and entered into as of this ____ day of ____, 20__ (the "Effective Date"), by and between _____, a corporation doing business in North Carolina (the "Company"), and _____, an employee of the Company ("Employee").

WHEREAS, the City of Charlotte (the "City") and Company are contemplating certain business relationships, pursuant to which Employee will work on a temporary assignment at the City; and

WHEREAS, The City owns or licenses certain computer software, other technology and business information which are trade secrets of and/or are proprietary to the City or its vendors; and

WHEREAS, the Company and Employee anticipate that Employee may need to obtain confidential information from the City in connection with such relationship, and

WHEREAS, as a condition of accepting Employee for the assignment, the City requires that Employee execute this Contract to protect the confidentiality of such information and assign to the City all rights in works created by the Employee in connection with this Contract , and

WHEREAS, the Employee desires to accept the assignment at the City and the Company and Employee desire to enter into this Contract to enable Employee to accept the temporary assignment at the City.

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

C O N T R A C T

1. CONFIDENTIAL INFORMATION.

1.1. **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:

- 1.1.1. *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.
- 1.1.2. *Information of the City or its suppliers, contractors or licensors marked "Confidential" or "Proprietary."*
- 1.1.3. *Information relating to criminal investigations conducted by the City, and records of criminal intelligence information compiled by the City.*
- 1.1.4. *Information contained in the City's personnel files, as defined by N.C. Gen. Stat. 160A-168.* This consists all information gathered by the City about employees, except for that information which is a matter of public record under North Carolina law.
- 1.1.5. *Citizen or employee social security numbers collected by the City.*
- 1.1.6. *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.
- 1.1.7. *Local tax records of the City that contain information about a taxpayer's income or receipts.*
- 1.1.8. *Any attorney / client privileged information disclosed by either party.*
- 1.1.9. *Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.*
- 1.1.10. *The name or address of individual home owners who, based on their income, have received a rehabilitation grant to repair their home.*
- 1.1.11. *Plans to prevent or respond to terrorist activity,* including vulnerability and risk assessments, potential targets, specific tactics or specific

security or emergency procedures, the disclosure of which would jeopardize the safety of government personnel or the general public or the security of any governmental facility, structure or information storage system(s).

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

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

Categories 1.1.3 through 1.1.13 above constitute “Highly Restricted Information,” as well as Confidential Information. The Employee acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Contract, and agrees that: (a) all provisions in this Contract applicable to Confidential Information shall apply to Highly Restricted Information; and (b) the Employee 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.

1.2. STANDARD OF PROTECTION. Employee agrees to keep the Confidential Information in the strictest confidence, in the manner set forth below:

1.2.1. Employee shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information or anything containing or embodying Confidential Information and shall not, directly or indirectly, disclose, divulge, reveal, report or transfer such Confidential Information to any third party or to any individual employed by the City, other than an employee of the City having a need to know such Confidential Information and who has executed a confidentiality Contract in substantially the form hereof.

1.2.2. Employee shall not use any Confidential Information or the concepts therein for its own benefit or for the benefit of a third party or for any purpose other than the purpose for which such Confidential Information is being disclosed.

1.2.3. Employee shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information.

1.2.4. Employee shall take appropriate action with respect to each and every person permitted access to any Confidential Information to ensure that each person complies with the confidentiality provisions hereof.

1.2.5. Any materials which are, or which relate to or derive from any, Confidential Information, shall be kept confidential and all such materials shall be returned to the City upon satisfaction of the purpose for the disclosure of such information.

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- 1.3. Employee shall have no obligation with respect to any information which Employee can, by legally sufficient evidence establish:
 - 1.3.1. was already known to the Employee; or
 - 1.3.2. was or becomes publicly known through no wrongful act of Employee; or
 - 1.3.3. was rightfully obtained by Employee from a party other than the City without similar restriction and without breach hereof; or
 - 1.3.4. was used or disclosed by Employee with the prior written authorization of The City; or
 - 1.3.5. was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, Employee shall first give to The City notice of such requirement or request; or
 - 1.3.6. was designated Confidential Information solely due to requirements of state or federal law, and such requirements have been lifted or no longer apply
2. **DISCLOSURE.** Notwithstanding anything contained herein to the contrary, in the event that it is unintentionally exposed to any Confidential Information, Employee 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.
3. **AUTHORITY AND INDEMNITY.** The Employee shall indemnify and hold harmless the City from any claims, demands, actions, damages, expenses, costs or other liability arising from or related to the disclosure of Confidential Information by Employee.
4. **PROPRIETARY CREATIONS; ASSIGNMENT.** Employee and Company shall promptly disclose to the City and hereby assign to the City all work product created in relation to the City's products and services or those of its vendors or licensors, including inventions, improvements, modifications, discoveries, methods and developments (hereinafter referred to as "Creations"), whether patentable, subject to copyright protection, trademark protection or not, made or conceived by Employee or under Employee's direction during work conducted in relation to the City's products and services or those of its vendors or licensors during the term of this Contract, whether or not made or conceived while working at or on the premises of the City. Employee and Company hereby transfer and assign to the City all intellectual property rights in all Creations. Employee and Company further agree to execute and deliver such other assignments, patents and applications, and other documents as may be necessary to effectuate the provisions of this Contract and to fully cooperate with the City to secure and patent or otherwise protect such Creations in any and all countries. This provision shall survive the termination of this Contract.
5. **MODIFICATION; WAIVER.** No modifications of this Contract or waiver of any of its terms will be effective unless set forth in a writing signed by the party against whom it is sought to be enforced.
6. **GOVERNING LAW.** This Contract shall be governed by and construed and enforced in accordance with the laws of the State of North Carolina without application of the

Section 8
Exhibit A

- principles of conflicts of laws. Any legal proceedings relating to this Contract shall be brought in Mecklenburg County North Carolina.
7. **REMEDIES.** Employee acknowledges that the unauthorized disclosure of the Confidential Information will diminish the value of the proprietary interests of the City or its vendors or licensors therein. Accordingly, it is agreed that if Employee breaches its obligations hereunder, the Company and the City shall be entitled to equitable relief to protect their interests, including but not limited to injunctive relief, as well as monetary damages.
 8. **THIRD PARTY BENEFICIARY.** The parties acknowledge that the City is a third party beneficiary to this Contract, and that the City shall have the right to enforce all of the Company's and the City's rights hereunder.
 9. **ASSIGNMENT.** Employee may not assign its rights or delegate its obligations hereunder.
 10. **SEVERABILITY.** The provisions of this Contract shall be deemed severable, and the invalidity or enforceability of any one or more of the provisions hereof shall not affect the validity and enforceability of the other provisions hereof.
 11. **COUNTERPARTS.** This Contract may be executed in counterparts, each of which will be deemed an original and all of which together will constitute one instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly executed on the day and year first above written.