

REQUEST FOR PROPOSALS

DIGITAL INFORMATION KIOSKS

RFP # 269-2018-009



CHARLOTTESM

**CITY OF CHARLOTTE
NORTH CAROLINA**

DECEMBER 8, 2017

REQUEST FOR PROPOSALS
RFP # 269-2018-009
Digital Information Kiosks

December 8, 2017

Dear Sir or Madam:

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

A **Non-Mandatory** Pre-Proposal Conference for the purpose of reviewing the RFP and answering questions regarding the Services will be held on **January 5, 2018 at 2:00 p.m.**, at the Charlotte-Mecklenburg Government Center (CMGC), 600 East Fourth Street, Charlotte, North Carolina 28202, 9th Floor Large Conference Room 986 or via teleconference at 704-336-5483. Please bring a copy of the RFP with you at that time. All interested Companies should return a completed Request For Proposals Acknowledgement Form (see Section 6, Form 1) by the date stated in the schedule in Section 2.1 of this RFP.

An electronic copy of the RFP in Microsoft Word format may be obtained by contacting Amelia Beonde at abeonde@charlottenc.gov.

All Proposals are due to the Management and Financial Services, Procurement Management Division, 9th Floor, CMGC 600 East Fourth Street, Charlotte, North Carolina 28202, no later than **January 24, 2018 at 2:00 p.m.**

One (1) electronic copy of the Proposal on a CD or flash drive in a searchable format such as MS Word or Adobe Acrobat and one (1) original Proposal signed in ink by a company official authorized to make a legal and binding offer, plus seven (7) copies of your Proposal must be submitted in a sealed box or opaque envelope plainly marked with the Proposal number and service description as follows:

Request for Proposals
Attention: Amelia Beonde
[Name of Company Submitting Proposal]
Digital Information Kiosks
RFP # 269-2018-009

RFP questions must be directed to Amelia Beonde, Management and Financial Services, Procurement Management Division, per the enclosed instructions in Section 2.3. The City is an equal opportunity purchaser.

Sincerely,

Kay Elmore
Chief Procurement Officer

cc: RFP Project Team
RFP file

Checklist for submitting a Proposal:

Step 1-Read the document fully.

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

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

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

Proposal Copies - Please provide the specified number for each format

- 1 Copy on CD or flash drive
- 1 Copy marked "Original"
- 7 Copies marked "Copy"

Proposal Format - Proposals should be formatted as follows:

- Cover Letter per **Section 4.1.1**
- Proposed Solution per **Section 4.1.2, including required Chapters I-V**
- Section 6, Form 2, Addenda Receipt Confirmation**
- Section 6, Form 3, Proposal Submission**
- Section 6, Form 4, Pricing Worksheet**
- Section 6, Form 5, MWSBE Utilization**
- Section 6, Form 6, Company Background Response**
- Section 6, Form 7, References**
- Section 6, Form 8, Additional Company Questions**
- Section 6, Form 9, Environmental Purchasing Responses**
- 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).

The above items constitute all that must be included in the Proposal. If awarded a Contract, you will be required to provide an insurance certificate that meets or exceeds the requirements set forth in Exhibit A, Section 25.

It is the Company's responsibility to check www.ips.state.nc.us for any addenda or changes to this Project. Search for bid # 269-2018-009 to find if any documents or changes have been posted.

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Section 1

Introduction and General Information

1. INTRODUCTION.

1.1. Objective.

The objective of this RFP is to solicit Proposals that will enable the City to determine which Company and Proposed Solution will best meet the City's needs for Interactive Digital Information Kiosks as further detailed in Section 3.

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 in the Contract.

ADA: Refers to the Americans with Disabilities Act.

Affiliates: Refers to all departments or units of the City and all other governmental units, boards, committees or municipalities for which the City processes data or performs services.

ArcGIS: Refers to the version of GIS software required by the Company.

CDOT: Refers to the Charlotte Department of Transportation.

Charlotte Business Inclusion (CBI): Refers to the Charlotte Business Inclusion office of the City of Charlotte.

Charlotte Combined Statistical Area (CSA): Refers to the Charlotte-Gastonia-Salisbury Combined Statistical Area consisting of; (a) the North Carolina counties of Anson, Cabarrus, Cleveland, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, Stanly, and Union; and (b) the South Carolina counties of Chester, Lancaster, and York; a criteria used by Charlotte Business INclusion to determine eligibility to participate in the program.

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

City Project Manager: Refers to a specified City employee representing the City's best interests in this Project.

Commercial Advertising: Refers to advertisements with the sole purpose of selling or renting real estate or personal property for profit, or selling services for profit. It does not include advertising that both offers to sell property or services and also conveys information about matters of general interest, political issues, religious, moral, or environmental matters or issues, or other public matters or issues, or expresses or advocates opinions or positions upon any of the foregoing.

Company: During the solicitation process, refers to a company that has interest in providing the Services. After the solicitation process, refers to a company that has been selected by the City to provide the Services.

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<i>Company Project Manager:</i>	Refers to a specified Company employee representing the best interests of the Company for this Project.
<i>Contract:</i>	Refers to a written agreement executed by the City and Company for all or part of the Services.
<i>Deliverables:</i>	Refers to all tasks, reports, information, designs, plans, and other items that the Company is required to deliver to the City in connection with the Contract.
<i>Department:</i>	Refers to a department within the City of Charlotte.
<i>Documentation:</i>	Refers to all written, electronic, or recorded works that describe the use, functions, features, or purpose of the Deliverables or Services or any component thereof, and which are 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, and logic diagrams.
<i>Environmentally Preferable Products:</i>	Refers to products that have a lesser or reduced effect on human health and the environment when compared with competing products that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.
<i>Evaluation Committee:</i>	Refers to a City appointed committee that will evaluate Proposals and identify the Company(-ies) best meeting the needs of the City.
<i>GIS:</i>	Refers to Geographical Information System.
<i>Governmental Advertising:</i>	Refers to advertisements with the sole purpose of promoting or informing the public of a service, program, or activity of the advertising federal, state, or local governmental entity or agency.
<i>Minimum Guarantee/ MG:</i>	Refers to the Guaranteed Minimum payment to be made to the City by the Company on a monthly basis.
<i>Minority Business Enterprise/MBE:</i>	Refers to a business enterprise that: (a) is certified by the State of North Carolina as a Historically Underutilized Business (HUB) within the meaning of N.C. Gen. Stat. § 143-128.4; (b) is at least fifty-one percent (51%) owned by one or more persons who are members of one of the following groups: African American or Black, Hispanic, Asian, Native American or American Indian; and (c) is headquartered in the Charlotte Combined Statistical Area.
<i>MWSBE:</i>	Refers to SBEs, MBEs and WBEs, collectively.

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<i>MWSBE Goal:</i>	If an RFP or Contract has separate Subcontracting Goals for MBEs, WBEs, and/or SBEs, the term MWSBE is a shorthand way to refer collectively to all MBE, WBE, and SBE Goals set for the RFP. In some instances, the City may set one combined goal for MBEs, WBEs, and/or SBEs, in which event the term MWSBE Goal refers to that one, combined goal. In the latter instance, calculated as a percentage, the MWSBE Goal represents the total dollars spent with MBEs, WBEs, and SBEs as a portion of the total Proposal amount, including any contingency.
<i>Percentage Guarantee/ PG:</i>	Refers to the Percentage Guarantee, or the percentage (%) of advertising revenue to be shared with the City.
<i>Post-Consumer Recycled Material:</i>	Refers to material and by-products which have served their intended end-use by a consumer and have been recovered or diverted from solid waste. It does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.
<i>Project:</i>	Refers to the City's need for a service provider to provide Digital Information Kiosks 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 Company for the Services as outlined in this RFP.
<i>Public Right of Way:</i>	Public land or property, usually in interconnected corridors, that is acquired for or dedicated to transportation purposes.
<i>PROWAG:</i>	Refers to Public Rights-of-Way Accessibility Guidelines, as detailed at https://www.access-board.gov/guidelines-and-standards/streets-sidewalks/public-rights-of-way/proposed-rights-of-way-guidelines .
<i>Recyclability:</i>	Refers to products or materials that can be collected, separated or otherwise recovered from the solid waste stream for reuse, or used in the manufacture or assembly of another package or product, through an established recycling program. For products that are made of both recyclable and non-recyclable components, the recyclable claim should be adequately qualified to avoid consumer deception about which portions or components are recyclable.
<i>Recycled Material:</i>	Refers to material and by-products which have been recovered or diverted from solid waste for the purpose of recycling. It does not include those materials and by-

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	products generated from, and commonly reused within, an original manufacturing process.
<i>Services:</i>	Refers to the Digital Information Kiosks as requested in this RFP.
<i>Small Business Enterprise/SBE:</i>	Refers to a business enterprise that is certified by the City of Charlotte under Part E of the CBI Policy as meeting all of the requirements for SBE certification.
<i>Specifications and Requirements:</i>	Refers to all definitions, descriptions, requirements, criteria, warranties, and performance standards relating to the Deliverables and Services that are set forth or referenced in: (i) this RFP, including any addenda; (ii) the Documentation; and (iii) any functional and/or technical specifications that 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>Subcontracting Goals:</i>	Refers to the SBE, MBE, WBE, and MWSBE Goals established by the City for an RFP and resulting Contract.
<i>Trade Secrets:</i>	Information of the City or any of its suppliers, Contractors, or licensors: (a) that derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. See N.C. Gen. Stat. § 66-152 et seq. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.
<i>Women Business Enterprise (WBE):</i>	Refers to a business enterprise that: (a) is certified by the State of North Carolina as a Historically Underutilized Business (HUB) within the meaning of N.C. Gen. Stat. § 143-128.4; (b) is at least fifty-one percent (51%) owned by one or more persons who are female; and (c) is headquartered in the Charlotte Combined Statistical Area.
<i>Work Product:</i>	Refers to the Deliverables and all other programs, algorithms, reports, information, designs, plans and other items developed by the Company in connection with this RFP, and all partial, intermediate or preliminary versions of any of the foregoing.

1.3. Accuracy of RFP and Related Documents.

Each Company must independently evaluate all information provided by the City. The City makes no representations or warranties regarding any information presented in this RFP, or otherwise made available during this procurement process, and assumes no responsibility for conclusions or interpretations derived from such information. In addition, the City will not be bound by or be responsible for any

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Introduction and General Information

explanation or conclusions regarding this RFP or any related documents other than those provided by an addendum issued by the City. Companies may not rely on any oral statement by the City or its agents, advisors, or consultants.

If a Company identifies potential errors or omissions in this RFP or any other related documents, the Company should immediately notify the City of such potential discrepancy in writing. The City may issue a written addendum if the City determines clarification necessary. Each Company requesting an interpretation will be responsible for delivering such requests to the City's designated representative as directed in RFP Section 2.

1.4. City's Rights and Options.

The City reserves the right, at the City's sole discretion, 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, including:

- 1.4.1. To supplement, amend, substitute, or otherwise modify this RFP, including the schedule, or to cancel this RFP, at any time;
- 1.4.2. To require any Companies to supplement or clarify its Proposal or provide additional information relating to its Proposals;
- 1.4.3. To investigate the qualifications, experience, capabilities, and financial standing of each Company submitting a Proposal;
- 1.4.4. To waive any defect or irregularity in any Proposal received;
- 1.4.5. To reject any or all Proposals;
- 1.4.6. To share the Proposals with City employees and Contractors in addition to the Evaluation Committee as deemed necessary by the City;
- 1.4.7. To award all, none, or any part of the Services and enter into Contracts with one or more of the responding Companies deemed by the City to be in the best interest of the City, which may be done with or without re-solicitation;
- 1.4.8. To discuss and negotiate with any Company(-ies) their Proposal terms and conditions, including but not limited to financial terms; and
- 1.4.9. To terminate discussions and negotiations with any Company at any time and for any reason.

1.5. Expense of Submittal Preparation.

The City accepts no liability, and Companies will have no actionable claims, for reimbursement of any costs or expenses incurred in participating in this solicitation process. This includes expenses and costs related to Proposal submission, submission of written questions, attendance at pre-proposal meetings or evaluation interviews, Contract negotiations, or activities required for Contract execution.

1.6. Proposal Conditions.

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

- 1.6.1. RFP Not An Offer.
This RFP does not constitute an offer by the City. No binding Contract, obligation to negotiate, or any other obligation shall be created on the part

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of the City unless the City and the Company execute a Contract. No recommendations or conclusions from this RFP process concerning the Company shall constitute a right (property or otherwise) under the Constitution of the United States or under the Constitution, case law, or statutory law of North Carolina.

1.6.2. Trade Secrets and Personal Identification Information

Definition.

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

Instructions for Marking and Identifying Trade Secrets.

If any Proposal contains Trade Secrets or PII, such Trade Secrets and PII must specifically and clearly be identified in accordance with this Section 1.6.2 by clearly separating them from the rest of the Proposal. For hard copy documents, it must be submitted in a separate, sealed envelope, marked either “Personally Identifiable Information – Confidential” or “Trade Secret—Confidential and Proprietary Information.” For electronic submissions it must also be submitted on a separate CD or flash drive. In both hard copy or electronic format, the confidentiality caption stated above must appear on each page of the Trade Secret or PII materials.

Availability of Proposals to City Staff and Contractors.

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

Availability of Proposals via Public Records Requests.

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

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

- Entire Proposals may not be marked as Trade Secret
- Pricing may not be marked as Trade Secret

The City may disqualify and Company that designates its entire Proposal as a trade secret, or any portion thereof that clearly does not qualify under applicable law as a Trade Secret or PII. Each Company agrees to indemnify, defend, and hold harmless the City and each of its officers, employees, and agents from all costs, damages, and expenses incurred in

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connection with refusing to disclose any material that the Company has designated as a Trade Secret or PII. This includes an obligation on the part of the Company to defend any litigation brought by a party that has requested Proposals or other information that the Company has marked Trade Secret or PII.

- 1.6.3. Amendments to RFP.
If the City amends this RFP, addenda will be posted to the IPS website at www.ips.state.nc.us, bid# 269-2018-009. Companies are required to acknowledge receipt of each addendum by including the Addenda Receipt Confirmation Form (Section 6, Form 2) with their Proposals.
- 1.6.4. Proposal Terms Firm and Irreversible.
The signed Proposal shall be considered a firm offer on the part of the Company. The City reserves the right to negotiate price and other terms. All Proposal elements (including all statements, claims, declarations, prices, and specifications) shall be considered firm and irrevocable for purposes of future Contract negotiations unless specifically waived in writing by the City. The Company 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.
- 1.6.5. Proposal Binding for 270 Days.
Section 6, Form 3 contains a statement to the effect that the Proposal is a firm offer for two-hundred-seventy (270) calendar day period from the date of the opening. This statement must be signed by an individual authorized to bind the Company. 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.
- 1.6.6. Charlotte Business INclusion Program.
Pursuant to Charlotte City Council's adoption of the Charlotte Business INclusion (CBI) Policy, the CBI program promotes diversity, inclusion, and local business opportunities in the City's Contracting and procurement process for Minority, Women, and Small Business Enterprises (MWSBEs) headquartered in the Charlotte Combined Statistical Area (CSA). The CBI Policy is posted at: www.charlottebusinessinclusion.com.

The City is committed to promoting opportunities for maximum participation of certified MWSBEs on City funded Contracts at both the Prime and SubContract level. For MWSBE participation to count towards a Goal, MWSBEs must meet both the certification and geographic requirements as detailed throughout this solicitation and in the CBI Policy.

The City intends to negotiate utilization of MWSBE(s). The Company is required to submit Section 6, Form 6 attached herein. Failure to submit this form with the Proposal shall render the Proposal non-responsive.
- 1.6.7. Subcontracting.
The Company given Contract award shall be the prime Contractor and shall be solely responsible for Contractual performance. In the event of a subcontracting relationship, the Company shall remain the prime Contractor and will assume all responsibility for the performance of the

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Services that are supplied by all subcontractors. The City retains the right to approve all subcontractors.

- 1.6.8. Equal Opportunity.
The City has an equal opportunity purchasing policy. The City seeks to ensure that all segments of the business community have access to supplying the goods and services needed by City programs. The City provides equal opportunity for all businesses and does not discriminate against any Companies regardless of race, color, religion, age, sex, and national origin or disability.
- 1.6.9. Use of City's Name.
No advertising, sales promotion, or other materials of the Company or its agents or representatives may identify or reference the City in any manner absent the prior written consent of the City.
- 1.6.10. Withdrawal for Modification of Proposals.
Companies may change or withdraw a previously-submitted Proposal at any time prior to the Proposal due date. Only formal written requests addressed in the same manner as the Proposal and received by the City prior to the Proposal due date will be accepted. The request must be in a sealed envelope that is plainly marked "**Modifications to Proposal.**" No oral modifications will be allowed. If the Company complies with this Section, after the Proposal due date, the Proposal, will be withdrawn or corrected in accordance with the written request(s).
- 1.6.11. No Bribery.
In submitting a response to this RFP, each Company 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.
- 1.6.12. Exceptions to the RFP.
Other than exceptions that are stated in compliance with this Section and Section 4.1.4, 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 in Exhibit A. An "exception" is defined as the Company'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 in Exhibit A. All exceptions taken must be identified and explained in writing in your Proposal and must specifically reference the relevant section(s) of this RFP. If the Company 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 Company's solution, must be described in detail.
- 1.6.13. Fair Trade Certifications.
By submitting a Proposal, the Company certifies that:
- The prices in its Proposal have been arrived at independently, without consultation, communication, or agreement with anyone, as to any matter relating to such prices for the purpose of restricting competition;

Introduction and General Information

- Unless otherwise required by law, the prices quoted in its Proposal have not been knowingly disclosed by the Company and will not knowingly be so disclosed prior to the Proposal due date; and
- No attempt has been made or will be made by the Company to induce any other person or firm to submit or not to submit a Proposal for the purpose of restricting competition.

1.6.14. Companies' Obligation to Fully Inform Themselves.
Companies or their authorized representatives must fully inform themselves as to all conditions, requirements, and specifications of this RFP before submitting Proposals. Failure to do so will be at the Company's own risk.

1.6.15. Environmentally Preferable Purchasing.
The City promotes the practice of Environmentally Preferable Purchasing (EPP) in acquiring products or services. Applicable EPP attributes that may be taken into consideration as environmental criterion include the following:

Recycled content	Recyclability
Reduced Packaging	Pollution Prevention
Energy efficiency	

Companies able to supply products or services containing any of the applicable environmentally preferable attributes that meet performance requirements are encouraged to offer them in the Proposal. Companies must provide certification of environmental standards and other environmental claims, such as recycled content and emissions data or a formal statement signed by a senior company official.

Section 2

Procurement Process

2. PROCUREMENT PROCESS.

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

2.1. Schedule and Process.

The following chart shows the schedule of events for the conduct of this RFP. 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
DECEMBER 8, 2017	<i>Issuance of RFP.</i> The City issues this RFP.
DECEMBER 20, 2017	<i>Request for Proposals Acknowledgement.</i> Companies that intend to submit a Proposal shall submit the RFP Acknowledgement Form on this date per the instructions listed in Section 2.2.
DECEMBER 20, 2017	<i>Submission of Written Questions Prior to Pre-Proposal Conference.</i> Companies are permitted to submit written questions, for purposes of clarifying this RFP. All submissions must be pursuant to the instructions in Section 2.3 by 2:00 p.m.
JANUARY 5, 2018	<i>Non-Mandatory Pre-Proposal Conference</i> to be held at the location indicated in Section 2.4 at TIME4 p.m.
JANUARY 15, 2018	<i>Submission of Written Questions After the Pre-Proposal Conference.</i> Questions are due by TIME5 p.m.
JANUARY 24, 2018	<i>Proposal Submission.</i> Proposals are due by 2:00 p.m. at the Procurement Management Division, CMGC 9 th Floor.
JANUARY 24, 2018 – MARCH 7, 2018	<p><i>Evaluation.</i> The Evaluation Committee will assess each Proposal and conduct evaluation activities with Companies.</p> <p><i>Shortlisting.</i> The evaluation team will shortlist Companies for further consideration the week of January 29 – February 3.</p> <p><i>Company Demonstrations and Interviews.</i> Shortlisted Service Providers will be onsite for System Demonstrations and Interviews with the Evaluation team the week of February 12-15.</p>
APRIL 9, 2018	<i>Contract Award by Council.</i>
JULY 1, 2018	<i>Services commence.</i> Company begins providing the Services.

2.2. Intent to Propose.

Please acknowledge receipt of this RFP via email or facsimile by **December 20, 2017** using the Request for Proposals Acknowledgement Form located in Section 6, Form 1. Complete the form in its entirety advising the City of your firm's intention to submit or not submit a Proposal. Email or fax a copy of the completed and signed

Section 2

Procurement Process

form to the email address or number below. The City strongly encourages Companies to submit this form prior to the Pre-Proposal conference but Companies shall not be precluded from submitting a Proposal if they fail to submit this form.

2.3. Interpretations and Addenda.

There are two (2) ways to ask questions about this RFP: (1) submit a question in writing to the Procurement Officer at the e-mail address listed below; or (2) ask a question at the Pre-Proposal Conference. Other than these permitted methods, Companies should refrain from contacting City staff prior to the Proposal deadline. **The City is not bound by any statements, representations or clarifications regarding this RFP other than those provided in writing by the Procurement Officer.**

Amelia Beonde
City of Charlotte
Procurement Management Division
600 East 4th Street, CMGC 9th Floor
Charlotte, NC 28202
RFP # 269-2018-009
Fax: 704-632-8268
E-mail: abeonde@charlottenc.gov

When submitting questions, please reference the RFP page and topic number. In order for questions to be addressed at the Pre-Proposal Conference, they must be submitted by **2:00 p.m. on December 20, 2017**.

After the Pre-Proposal Conference, questions must be submitted in writing by the deadline stated in Section 2.1. In the case of questions not submitted by the deadline, the Procurement Officer will, based on the availability of time to research and communicate an answer, decide whether an answer can be given before the Proposal deadline. When responding to Company questions or issuing addenda to the RFP, the City will post the answer or information to the Internet at <http://charlottenc.gov/DoingBusiness/pages/ContractOpportunities.aspx> and www.ips.state.nc.us, referencing solicitation # 269-2018-009. Companies are required to acknowledge their receipt of each addenda by including in the Proposal a completed Addenda Receipt Confirmation Form (Section 6, Form 2).

2.4. Pre-Proposal Conference.

A Non-Mandatory Pre-Proposal Conference will be conducted on **January 5, 2018 at 2:00 p.m.** The meeting will be held at the Charlotte-Mecklenburg Government Center (CMGC), 600 East Fourth Street, Charlotte, North Carolina 28202, 9th Floor Large Conference Room 986 or via teleconference by calling 704-336-5483.

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

2.5. Submission of Proposals.

Proposals must be in the format specified in Section 4 of this RFP. One (1) electronic copy on a CD or flash drive in a searchable format such as MS Word or Adobe Acrobat and one (1) original Proposal signed in ink by a company official authorized to make a legal and binding offer, plus seven (7) copies shall be submitted to the

Section 2

Procurement Process

address listed in Section 2.3 above by **January 24, 2018 on or before but no later than 2:00 p.m.** The original Proposal and each of the copies shall be complete and unabridged, and shall not refer to any other copy of the signed and sealed original for any references, clarifications, or additional information.

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

Due to security measures at the Charlotte-Mecklenburg Government Center (CMGC), your sealed box(es), including any portions marked as Confidential/Trade Secret, may be searched and thoroughly inspected prior to admittance. Please allow time for this search to take place and to re-seal the box if delivering your Proposal in person to the CMGC.

Do not arrive at the Procurement Management Division on the Proposal due date for the purposes of reviewing your competitors' Proposals. The Proposals will not be read aloud or made available to inspect or copy until any trade secret issues have been resolved. All Proposals will be time-stamped upon receipt and held in a secure place until opening.

2.6. Correction of Errors.

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

2.7. Evaluation.

As part of the evaluation process, the Evaluation Committee may engage in discussions with one or more Companies. Discussions might be held with individual Companies to determine in greater detail the Company's qualifications, to explore with the Company the scope and nature of the required Contractual Services, to learn the Company'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 Companies to make presentations to the Evaluation Committee or appear before the City and/or its representatives for an interview. During such interview, the Company 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. Companies will be notified in advance of the time and format of such meetings.

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

2.8. Contract Award by Council.

As soon as practical after opening the Proposals, the name of the apparent successful Company will be submitted to the Council for final approval of award and the Procurement Officer will provide Contract documents to the Company. In the event the Council approval is not received within one hundred eighty (180) calendar days

Section 2

Procurement Process

after opening of the Proposals, the Company may request that it be released from the Proposal.

2.9. Vendor Inclusion.

The City's vendor management philosophy supports a fair, open, and inclusive process that offers the same access and information to all Companies. Although Companies are not required to be registered in the City's vendor registration system prior to submitting a Proposal, in order to execute a Contract with the City and receive payment from the City, all Companies must register with the City's vendor registration system.

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 an SBE, MBE, or WBE. The link below will provide you with the opportunity to complete your registration on-line with the City.

<http://charlottenc.gov/vendors>

Section 3

Scope of Digital Information Kiosk Solution

3. SCOPE OF DIGITAL INFORMATION KIOSK SOLUTION.

3.1. General Scope.

The City of Charlotte (the “City”) is seeking proposals from qualified firm(s) for the design, fabrication, installation and operation of interactive digital kiosks (the “kiosks”) in the public right-of-way. The kiosks will be primarily located on sidewalks, and other public areas as approved by the City, and serve the following public purposes, at a minimum:

- a) Wayfinding – providing information to civic and cultural institutions, transit amenities, restaurants, retail and other business
- b) Transit information – providing information on transit routes and schedule options
- c) Public information and emergency messaging – serving as a central dissemination point for information
- d) Increased vibrancy and visual interest of City streets – promoting placemaking in Charlotte through City events and programming
- e) Create a supportive environment for retail and entertainment commerce – furthering economic development within our community
- f) Enhance visitor experience and brand perception of Charlotte – advancing Charlotte’s narrative and brand perception to residents and visitors alike
- g) Accessibility, usability and inclusion – creating a welcoming and inclusive technology for our community at large
- h) Act as the backbone to the City’s public-facing, smart city infrastructure, which would allow other technologies to be deployed (e.g. community connectivity through public Wi-Fi and environmental sensors). This may require the deployment of devices in addition to the digital kiosks, such as digital nodes on street lights in the public right of way.

While the City is flexible with respect to certain elements of the Digital Information Kiosks, the City has specific requirements and preferences for the Service delivery method.

3.2. Background.

The City of Charlotte is one of the fastest growing cities in the country, and the largest city in North Carolina. Today, there are an estimated 800,000 people living in Charlotte. By 2040, more than 1.2 million residents will call Charlotte home. This level of growth offers enormous opportunity for our community, while also challenging our infrastructure, environment, and quality of life.

The City is committed to strengthening its character as a leading city, and enhancing the quality of life for its residents. By putting into practice the 10 Traits of Winning Cities, including being creative, innovative, and accepting of new ideas, Charlotte will continue to grow as a destination for people to live and thrive in (<http://charlottenc.gov/AboutCharlotte/Pages/Government-101.aspx>). One way in which Charlotte can lead the way is by adopting principles of ‘smart’ cities to address some of the key challenges we are facing.

Section 3

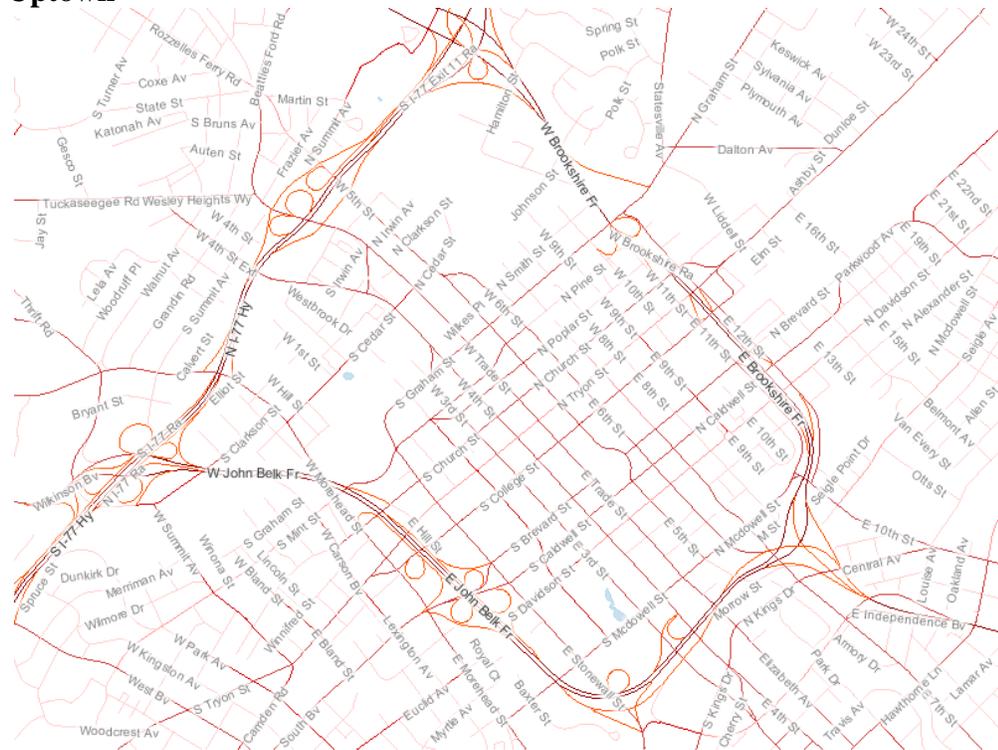
Scope of Digital Information Kiosk Solution

To Charlotte, a smart city is a platform on which we connect people, places, and things. Advances in technology and data can help us to build a better city by creating new systems for how we interact with our environment and each other. Interactive kiosks offer an opportunity to further promote collaboration and communication within our city, and utilize technology to improve the experience of residents and visitors within Charlotte.

3.3. Location.

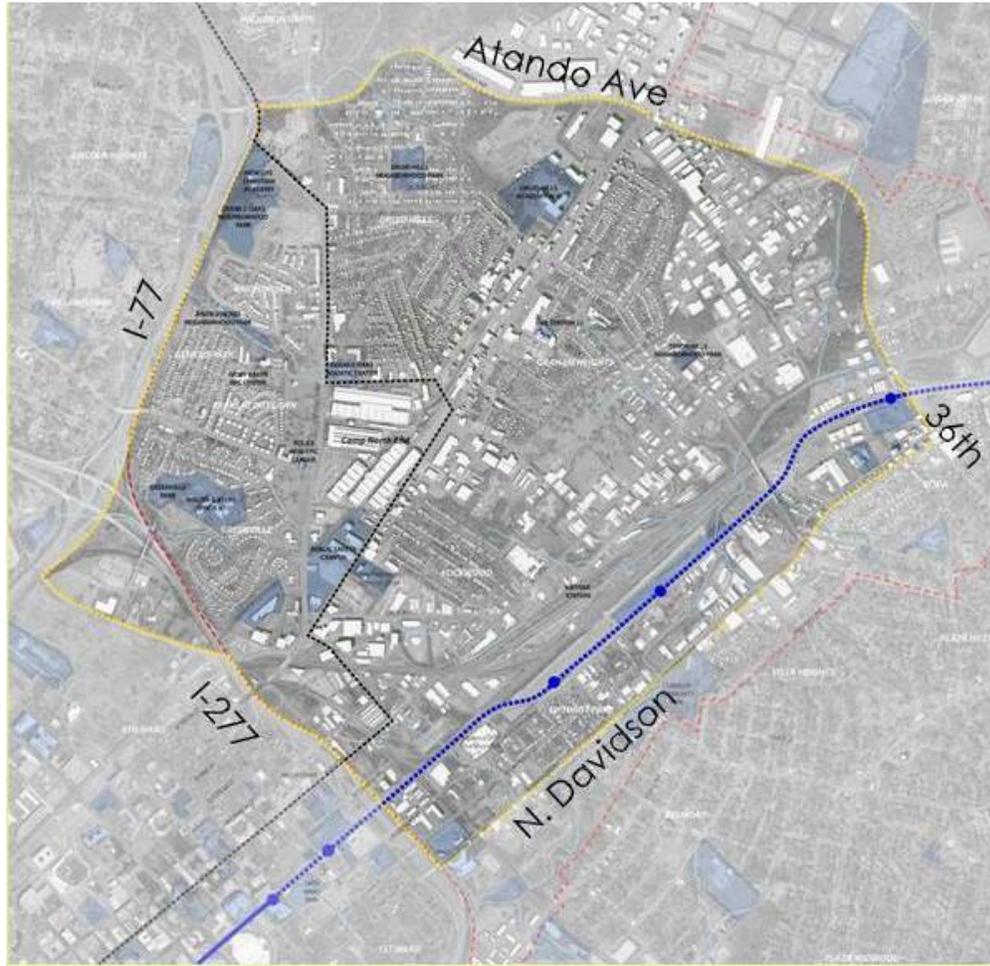
The City has identified the following three (3) prospective areas for implementation of the Digital Information Kiosks, including an initial Phase within the area of Charlotte bordered by the 277 interstate loop, commonly referred to as Uptown (“Uptown”), the North End Smart District (“NESD”), located between I-77, I-277, N. Davidson, 36th St., and Atando Ave., and the West Side area currently targeted for the City’s GoldLynx Phase 2 project, running from Gateway Station west to French St. Future phases may expand out within Uptown or into bordering areas or other areas deemed mutually appropriate by the Company and the City.

Uptown



Section 3 Scope of Digital Information Kiosk Solution

NESD



West Side/GoldLynx Phase 2



Companies shall include in their proposed solution specific location(s) for the initial Phase of Digital Information Kiosk implementation, as well as any suggestions for future Phases.

Section 3

Scope of Digital Information Kiosk Solution

3.4. Revenue Model.

Companies shall be fully responsible for all costs associated with the implementation, maintenance and support, ongoing operations, and training associated with the Digital Information Kiosks. The City expects a portion of the revenues collected by the Company and/or their subcontractor(s) to be provided to the City via a shared revenue model as detailed below:

3.4.1. Minimum Guarantee:

In consideration of the City executing an agreement and granting the rights provided in the agreement, the Company shall guarantee and pay to the City a monthly minimum fee to be paid on a quarterly basis (the "Minimum Guarantee"/"MG"). In the event that the City chooses to extend the term of the agreement for any renewal term(s), the MG may be increased in a manner to be negotiated between the City and successful Contractor.

3.4.2. Percent Guarantee:

The City reserves the right to negotiate with the selected Company a Percent Guarantee of revenue due to the City over the term of the Contract (the "Percentage Guarantee"/"PG"). If the annual PG amount is greater than the annual total MG, the selected Company shall pay to the City the difference between the annual MG amount and the annual PG amount within 30 days of the anniversary date of the Agreement. If the annual PG amount owed to the City is less than the sum of all minimum MG payments, no further payments will be required of the Contractor. Likewise, the City shall not reimburse the Contractor any portion of the MG.

3.5. Advertising.

To offset the costs of the kiosks and provide a source of revenue to the City, the selected Company may sell advertising on the kiosks. The City shall retain 25% of advertising availability (space and time) for its purpose and all advertising shall comply with the City's advertising guidelines as stipulated herein.

All advertising accepted for placement will comply with all applicable Federal, State, and local laws, rules, and regulations. The City will retain the right and ability to identify the quantity and location of any proposed advertising program. The City reserves the right to approve or disapprove of any advertising and can request that it be removed at any time.

Advertising displayed on kiosks shall be limited to Commercial Advertising or Governmental Advertising.

3.5.1. Additional Advertising Restrictions:

The Contractor shall neither accept for display, install, nor maintain any advertisement that falls within one (1) or more of the following categories:

- A. Advertising for cigars, cigarettes, pipe tobacco, chewing tobacco, or other tobacco products.
- B. Advertising for products or services related to human reproduction or sexuality, including but not limited to contraceptive products or services, other products or services related to sexual hygiene, and/or

Section 3

Scope of Digital Information Kiosk Solution

counseling with regard to pregnancy, abortion, and/or other sexual matters.

- C. Advertising for products, services, or entertainment directed to sexual stimulation.
- D. Advertising for political purposes. For this purpose, political advertising is defined as any of the following:
 - Any advertising that supports or opposes the election of any candidate or group of candidates for election to any federal, State, or local government office;
 - Any advertising that supports or opposes any referendum conducted by the federal or State government, or by any local government, such as referenda on constitutional amendments, bond issues, and/or local legislation; or
 - Any advertising that features any person whose prominence is based wholly or in part upon his or her past or present activity in political affairs, or that represents or implies any such person's approval or endorsement of the subject matter of the advertising.
- E. Advertising for firearms.
- F. Advertising for alcoholic beverages, including beer, wine, or distilled spirits, shall not be permitted within 250 feet of any school, day care, or house of worship.
- G. Advertising that is derogatory of any person or group because of race, national origin, ethnic background, religion, or gender.
- H. Advertising that in any way denigrates the City of Charlotte.

The City expects all advertising copy to be truthful. Advertising copy and illustrations should not be intentionally exaggerated, distorted, or deceptive. Medical products or treatments are to be detailed or displayed in a restrained and inoffensive manner. Testimonials are expected to be authentic, and advertisers using them will be required to indemnify the City of Charlotte against any action brought in connection with them. Advertising that promotes contests or giveaways is expected to comply with all applicable laws and regulations thereto.

The City of Charlotte reserves the right to market and promote its own image and services, including co-promotions with for-profit and other non-profit entities.

Use of the City's name, logo, slogans, or other graphic representations is subject to advance approval by the City. The City will not endorse or imply endorsement of any product or service.

3.6. Equipment.

3.6.1. Ownership.

The Company shall provide exclusive ownership of all Hardware to the City of Charlotte upon completion of the installation.

Section 3

Scope of Digital Information Kiosk Solution

- 3.6.2. **Installation.**
While the Company shall be responsible for all costs associated with the installation of the Equipment, the City shall assist in the coordination of necessary right of way permits or approvals.
- 3.6.3. **Equipment Maintenance.**
The Company shall be responsible for all Equipment Maintenance and Support during the Term of the Contract.
- 3.6.4. **Kiosk Design.**
The City is flexible in regards to the proposed Kiosk design. Your proposed solution should include a detailed representation of your proposed Kiosk Design Plan, including multiple graphic renderings of the Kiosk Design, including renderings of the proposed design(s) on the right of way. Companies are encouraged to submit multiple designs for consideration by the City.
- 3.6.5. **Planning.**
The Company's proposal should detail any information necessary for the Evaluation team to consider relative to the following:
- Scalability of the Kiosk solution to include future phase locations throughout the Charlotte area;
 - Equipment refresh and replacement during the term of the Agreement at no cost to the City;

- 3.7. **Reporting Requirements.**
The system must make reports available for the City to pull as required to show usage statistics and other information to guide the City's content strategy. Companies shall detail all existing reporting available, including the ability to customize ad-hoc reporting, in their response to Section 6, Form 8, Additional Company Questions.

- 3.8. **Training Plan.**
The Company shall provide on-site or web-based training to City-designated individuals as needed to support the Digital Kiosk solution.

The Company shall submit a preliminary Training Plan detailing all necessary training and available training documents to support the Digital Kiosk Solution. The Training Plan shall, at a minimum:

- Outline all subjects necessary to train City staff to fully understand and utilize the solution.
- Detail available training channels (e.g. onsite classroom training, scheduled web-based training, on-demand web based training, job aides, and/or other training documents).
- If classroom training is included in the proposal, include written description of the training classes that will be conducted, the number of persons that can be trained in each session, and the total number of hours required for each person to be trained.

All Training shall be provided at no additional cost to the City.

Scope of Digital Information Kiosk Solution

3.9. Environmental Purchasing Requirements.

The following are applicable items covered by the City’s Sustainable Purchasing Policy that must be accommodated by the Company:

Product or Service	Examples	Environmental Attributes
Electronics	Computers, phones, radios, printers, televisions, multifunction machines	Energy efficiency, lifecycle management
Records Management	Digital storage, recycling shredded paper, paper use reduction	Paper use reduction, secure record recycling

Companies are required to provide information with their Proposals regarding the environmental attributes in Section 6, Form 9.

Section 4

Proposal Content and Format

4. PROPOSAL CONTENT AND 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 Company's preference, the City requires strict adherence to the format. The Proposal will be in the format described below:

- a. Cover letter;
- b. Proposed Solution as outlined in Section 4.1.2 below, including required Chapters I-V;
- c. The "Addenda Receipt Confirmation" set forth in Section 6, Form 2;
- d. The "Proposal Submission" set forth in Section 6, Form 3;
- e. The "Pricing Worksheet" set forth in Section 6, Form 4;
- f. The "MWSBE Utilization" form set forth in Section 6, Form 5;
- g. The "Background and Experience" form set forth in Section 6, Form 6;
- h. The "References" set forth in Section 6, Form 7;
- i. The "Additional Company Questions" set forth in Section 6, Form 8;
- j. The "Environmental Purchasing Responses" set forth in Section 6, Form 9; and
- k. Exceptions to the Remainder of the RFP, including the Sample Contract in Exhibit A.

The City encourages Proposals to be compatible with the City's waste reduction goals and policies. Therefore, it is desired that all responses meet the following requirements:

- All Proposals be printed 8 1/2" x 11" format with all standard text no smaller than eleven (11) points;
- All copies be printed double-sided;
- All copies be printed on recycled paper (at least 30% post-consumer recovered material and at least 30% total recovered material);
- Unless necessary, all Proposal originals and copies should minimize or eliminate use of non-recyclable or non-reusable materials such as 3- ring binders, plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Glued materials, paper clips, and staples are acceptable; and
- Materials be submitted in a format that allows for easy removal and recycling.

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

Companies are required to organize the information requested in this RFP in accordance with the format and instructions outlined above and detailed below. Failure to do so may result in the City, at its sole discretion, deeming the Proposal non-responsive. The Company, 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. The cover letter shall provide the name, address, telephone and facsimile numbers of the Company along with the name, title, address, email address, telephone and facsimile numbers of the executive that has the authority to Contract with the City. The cover letter shall present the

Section 4

Proposal Content and Format

Company's understanding of the Project and a summary of the approach to perform the Services.

4.1.2. 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 and how your Proposed Solution complies as well as any additional information requested.** If you wish to add supplemental information, it shall be labeled "Supplemental Information."

Chapter I- Qualifications.

This Chapter shall include a brief description of the Company's and sub-Contractor's qualifications and previous experience on similar or related kiosks projects. Specifically discuss the following:

- A. Identify projects, currently in progress or completed in the past 5 years:
 - o List projects involving the key team members or subcontractors proposed for this Project. For each project listed, identify the key team member or sub-Contractor's role.
 - o List projects in date order with newest projects listed first and include the following:
 - Brief project description
 - Owner's representative including contact name, phone, email, address
 - Contract dollar amount and total time period involved
 - Discuss the methods, approach and controls used on the project in order to complete it in an effective, timely, economical and professional manner
 - o List a maximum of five (5) relevant projects
- B. Describe Company's specific experience with providing interactive digital kiosks to public entity clients, especially large municipalities.
- C. If Company is proposing to include sub-Contractors, describe the rationale for selecting the team and the extent to which the Company and subcontractors have worked together in the past.
- D. Please provide brief resumes for key personnel and subcontractors to include at a minimum the individual's name, title, and years of experience, description of current and prior experience, licenses, and certifications, and office locations of key personnel that would be assigned to the City's engagement. Also include an organizational chart to reflect assignments.

Chapter II - Proposed Interactive Digital Kiosk and Work Plan.

This Chapter should present a clear description of your interactive digital kiosk, as well as a well-conceived work plan. Please prepare and submit the following items.

Section 4

Proposal Content and Format

- A. Interactive Digital Kiosk – Describe and/or submit graphic designs of your outdoor freestanding kiosks. Please proposed customization for the City as well as listing, at the minimum, the following specifications:
 - i. Size of kiosk;
 - ii. LCD touch monitor/pad size;
 - iii. Display resolution;
 - iv. Described processor, hard drive, and operating system;
 - v. Number of usb ports;
 - vi. Audio capabilities;
 - vii. Power requirements;
 - viii. Wi-Fi features;
 - ix. Cellular service integration;
 - x. Cameras; and
 - xi. Emergency calling.
- B. Project Management Plan – Discuss the understanding of the project objectives and describe the proposed project approach to deliver the services in an effective, timely, economical and professional manner.
- C. Describe the preferred locations for the deployment of the kiosks. Please include a map and table of the locations.
- D. Provide a detailed project schedule and proposed deliverables. Please list any proposed phasing of kiosk installation.
- E. Describe how multi-language selection and support will be accomplished for these kiosks.
- F. Describe how kiosks will be accessible to persons with disabilities and adhere to ADA and specifically address how the system capability incorporates accessible technologies for the visually impaired.
- G. Describe if your proposed kiosk could handle and accept documents, web links, maps, images, and other content, provide the standard formats that support development of this content.
- H. Describe how your plan would ensure security measures and how protocols are achieved and administered for kiosk content to be protected against unauthorized access.
- I. Described how the proposed equipment meets or exceeds all applicable building code requirements, capability to resist graffiti, weatherproof, including ability to operate at high heat and humidity. Whether the hardware employed is proprietary (owned by Company). Describe relationship from which hardware will be purchased, as the respondent will be dependent on them to perform
- J. Provide a detailed plan on how the City can provide and manage kiosks content at no cost to the City, or provide a description describing the cost to the City.
- K. Describe any support needed from City staff in order to execute the Services.

Section 4

Proposal Content and Format

- L. Marketing Plan – provide a detailed plan for marketing and promoting these kiosks as advertising space to include engagement of local businesses. Include within the plan if there are any concerns related to the potential restrictions on kiosks without advertisements and the limits of content included within the scope of work.
- M. Provide your plan for the maintenance, repair, and replacement of machines during the Contract period. Include expected response times and the plan to notify businesses, customers and the City of any issues.
- N. Provide sample usage reports that your team has used for past project(s) that reflect statistics and other information for content strategy.
- O. Provide examples and a detailed plan for the City on how kiosks and their content would be integrated with a mobile app version that mirrors its intent. Explain how the app would display nearby locations/sites and information to the user. Explain how glitches or technical difficulties with the app will be managed.

Chapter III - Proposed Innovations.

The Company may also suggest technical or procedural innovations that have been used successfully on other engagements and which may provide the City with better service delivery. Detail any ideas, innovative approaches, or specific new concepts included in the Proposal that would provide benefit to the City.

If available, provide your technology road map for the next five (5) years.

Chapter IV- Marketing & Advertising.

Provide a detailed plan for marketing and promoting the kiosks as advertising space.

Chapter V – Maintenance & Operations Plan.

Please describe your proposed maintenance and operations plan. Please also describe your equipment and service warranty.

- 4.1.3. Required Forms.
To be deemed responsive to this RFP, Companies must complete, in detail, all Proposal Forms listed in this Section 4, items numbered c through j.
- 4.1.4. Exceptions to the RFP.
Exceptions must be submitted in accordance with Section 1.6.12 of this RFP. If exceptions are not identified in your Proposal they may not be considered during Contract negotiation and could result in Proposal being rejected from further consideration. If legal counsel needs to review the Sample City Contract prior to signature, reviews must be completed before your Proposal is submitted.

The City intends to enter into a City-drafted Contract with the successful Company that contains the terms and conditions set forth in Exhibit A (“Sample Terms”). The number and extent of any exceptions and proposed additions to the Sample Terms will be one of the City’s evaluation criteria.

Section 4

Proposal Content and Format

Accordingly, each Company must state specifically in its Proposal any exceptions to the Sample Terms, or any such exceptions will be waived. Any Company-proposed additional terms or conditions must also be included in the Proposal, and the City reserves the right to refuse consideration of any terms not so included. Any proposed changes to the Sample Terms after tentative Contract award may constitute a material change to the Company's Proposal and be grounds for revoking the award.

Notwithstanding the foregoing, the City reserves the right to modify the Sample Terms prior to or during Contract negotiations if it is in the City's best interest to do so.

Section 5

Evaluation Criteria

5. PROPOSAL EVALUATION CRITERIA.

Proposals will be evaluated based on the Company'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 Company to provide appropriate detail to demonstrate satisfaction of each criterion and compliance with the performance provisions outlined in this RFP. The Company'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 Company to submit information requested may result in the elimination of the Proposal from further evaluation.

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

- a. Qualifications and Experience;
- b. Project Approach and Proposed Solution;
- c. Financial Qualifications;
- d. Cost Effectiveness and Value;
- e. MWSBE inclusion efforts; and
- f. Acceptance of the Terms of the Contract

5.1. Qualifications and Experience

Companies will be evaluated on the background and experience information provided in Section 6, Form 6.

5.2. Project Approach / Proposed Solution.

Companies 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 Company's approach for the provision of the Services.

5.3. Financial Qualifications.

This criterion includes an evaluation of the financial qualifications of the Company. The evaluation will take into account the financial strength of the Company 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 Company based on any financial information submitted in accordance with this RFP.

5.4. Cost Effectiveness and Value.

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

5.5. MWSBE Subcontractor Utilization.

The City maintains a strong commitment to the inclusion of MWSBEs in the City's Contracting and procurement process. For the purposes of this RFP, the City will consider a Company's MWSBE certification and/or MWSBE subcontracting inclusion efforts. To count towards a Department MWSBE Goal, MWSBE certified Companies

Section 5

Evaluation Criteria

and/or their MWSBE subcontractors must meet the following certification criteria prior to Proposal submission:

- Be designated as a City certified SBE; and/or
- Be designated as a City registered MBE or WBE

MWSBE utilization is only one (1) criterion considered in the totality of all criteria listed in this Section 5.

5.6. 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 Exhibit A. Regardless of exceptions taken, Companies shall provide pricing based on the requirements and terms set forth in this RFP. Exceptions shall be identified in accordance with Sections 1.6.12 and 4.1.4 of this RFP.

Section 6
Required Forms

REQUIRED FORM 1 - REQUEST FOR PROPOSALS ACKNOWLEDGEMENT

RFP # 269-2018-009

Digital Information Kiosks

The Company hereby certifies receipt of the Request for Proposals for the City of Charlotte, North Carolina RFP #269-2018-009, Digital Information Kiosks. This form should be completed upon receipt of the City's Request for Proposals and faxed in time for the City to receive it by or before **December 20, 2017**. Failure to submit this form by the designated date shall not preclude the Company from submitting a proposal. Please fax or email the completed Request for Proposals Acknowledgement Form to the attention of:

Amelia Beonde
Procurement Management Division
Fax: 704-632-4263
Email: abeonde@charlottenc.gov

Date: _____

Authorized Signature: _____

Title: _____

Company Name: _____

Contact Name: _____

Contact E-mail address: _____

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

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

Indicate number of attendees: _____

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

Reason: _____

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

Reason: _____

Section 6
Required Forms

REQUIRED FORM 2 - ADDENDA RECEIPT CONFIRMATION

RFP # 269-2018-009

Digital Information Kiosks

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

ADDENDUM #:

**DATE ADDENDUM
DOWNLOADED FROM NC IPS:**

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

(Please Print Name)

Date

Authorized Signature

Title

Company Name

REQUIRED FORM 3 - PROPOSAL SUBMISSION FORM

RFP # 269-2018-009

Digital Information Kiosks

This Proposal is submitted by:

Company Name: _____

Representative (printed): _____

Address: _____

City/State/Zip: _____

Email address: _____

Telephone: _____

(Area Code) Telephone Number

Facsimile: _____

(Area Code) Fax Number

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

1. In preparing its Proposal, the Service Provider has considered all proposals submitted from qualified, potential subcontractors and suppliers; and has not engaged in or condoned prohibited discrimination.
2. For purposes of this Section, discrimination means discrimination in the solicitation, selection, or treatment of any subcontractor, vendor or supplier on the basis of race, ethnicity, gender, age or disability or any otherwise unlawful form of discrimination. Without limiting the foregoing, discrimination also includes retaliating against any person or other entity for reporting any incident of discrimination.
3. Without limiting any other provision of the solicitation for proposals on this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the City to reject the Proposal submitted by the Service Provider on this Project and to terminate any Contract awarded based on such Proposal.
4. As a condition of Contracting with the City, the Service Provider agrees to maintain documentation sufficient to demonstrate that it has not discriminated in its solicitation or selection of subcontractors. The Service Provider further agrees to promptly provide to the City all information and documentation that may be requested by the City from time to time regarding 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.

Section 6 Required Forms

5. As part of its Proposal, the Service Provider shall provide to the City a list of all instances within the past ten years where a complaint was filed or pending against Service Provider in a legal or administrative proceeding alleging that Service Provider discriminated against its subcontractors, vendors or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.
6. The information contained in this Proposal or any part thereof, including its Exhibits, Schedules, and other documents and instruments delivered or to be delivered to the City, is true, accurate, and complete. This Proposal includes all information necessary to ensure that the statements therein do not in whole or in part mislead the City as to any material facts.
7. It is understood by the Company that the City reserves the right to reject any and all Proposals, to make awards on all items or on any items according to the best interest of the City, to waive formalities, technicalities, to recover and re-bid this RFP.
8. This Proposal is valid for two hundred and seventy (270) calendar days from the Proposal due date.

I, the undersigned, hereby acknowledge that my company was given the opportunity to provide exceptions to the Sample Terms as included herein as Exhibit A. As such, I have elected to do the following:

Include exceptions to the sample Contract in the following section of my Proposal: _____

Not include any exceptions to the Sample Terms.

I, the undersigned, hereby acknowledge that my company was given the opportunity to indicate any Trade Secret materials or Personally Identifiable Information (“PII”) as detailed in Section 1.6.2. I understand that the City is legally obligated to provide my Proposal documents, excluding any appropriately marked Trade Secret information and PII, upon request by any member of the public. As such, my company has elected as follows:

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

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

Representative (signed): _____

Section 6
Required Forms

REQUIRED FORM 4 - PRICING WORKSHEET

RFP # 269-2018-009

Digital Information Kiosks

Regardless of exceptions taken, Companies 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, including equipment, installation, training, maintenance and support, and all associated hardware and software. Cost must be in United States dollars. **If there are additional costs associated with the Services, please add to this chart. Your Price Proposal must reflect all costs for which the City will be responsible for the duration of the Contract.**

For purposes of this RFP, assume an initial term of five (5) years, with the City having an option to renew for one (1) additional five (5) year term thereafter.

1. Minimum Guarantee.

The Company shall pay the City a Minimum Guarantee Payment, for the management of the Digital Information Kiosks. Companies shall detail below their proposed Minimum Guarantee, to be paid on a Quarterly basis to the City:

<u>Minimum Annual Guarantee Payment to the City</u>	\$
<u>Monthly Payment</u>	\$

2. Percentage Guarantee.

The Company shall also provide a share of all revenues associated with the System, as a Percentage Guarantee, to be paid on a Quarterly basis to the City. The Percentage Guarantee shall be for any revenues above and beyond the Minimum Guarantee. Companies shall detail below their proposed Percentage Guarantee, on an annual basis

If PG will inflate over the course of the Agreement term, such as on an annual basis, please indicate the timeline and specific increase %s in your Proposal.

<u>Contract Year</u>	<u>Revenue % Share for the City</u>	<u>Estimated Payment to City through Revenue Share</u>
<u>Year 1</u>	_____ %	\$
<u>Year 2</u>	_____ %	\$
<u>Year 3</u>	_____ %	\$
<u>Year 4</u>	_____ %	\$
<u>Year 5</u>	_____ %	\$
<u>Year 6</u>	_____ %	\$
<u>Year 7</u>	_____ %	\$
<u>Year 8</u>	_____ %	\$
<u>Year 9</u>	_____ %	\$
<u>Year 10</u>	_____ %	\$

3. Alternative Proposals.

Companies may choose to submit secondary or alternative Proposed Revenue models. Note that all Companies must include a proposal to items 1 and 2 above. Any alternative Proposals may be considered by the evaluation team only if they are included alongside the primary Proposal to the MG and PG. Companies wishing to submit an Alternative Proposal are encouraged to be creative in identifying opportunities for a mutually beneficial Revenue Model that best meets the City's needs while still ensuring a no cost solution to the City.

Section 6
Required Forms



REQUIRED FORM 5 – M/W/SBE UTILIZATION

RFP # 269-2018-009

Digital Information Kiosks

The City maintains a strong commitment to the inclusion of MWSBEs in the City’s Contracting and procurement process when there are viable subcontracting opportunities.

Companies must submit this form with their proposal outlining any supplies and/or services to be provided by each City certified Small Business Enterprise (SBE), and/or City registered Minority Business Enterprise (MBE) and Woman Business Enterprise (WBE) for the Contract. If the Company is a City-registered MWSBE, note that on this form.

The City recommends you exhaust all efforts when identifying potential MWSBEs to participate on this RFP.

Company Name:	
----------------------	--

Please indicate if **your company** is any of the following:

MBE WBE SBE None of the above

If your company has been certified with any of the agencies affiliated with the designations above, indicate which agency, the effective and expiration date of that certification below:

Agency Certifying: _____ Effective Date: _____ Expiration Date: _____

Identify outreach efforts that *were employed* by the firm to maximize inclusion of MWSBEs to be submitted with the firm’s proposal (attach additional sheets if needed):

Identify outreach efforts that *will be employed* by the firm to maximize inclusion during the Contract period of the Project (attach additional sheets if needed):

[Form continues on next page]

Section 6 Required Forms

List below all **MWSBEs** that you intend to subContract to while performing the Services:

Subcontractor Name	Description of work or materials	Indicate either "M", "S", and/or "W"	City Vendor #

Total MBE Utilization	%
Total WBE Utilization	%
Total SBE Utilization	%
Total MWSBE Utilization	%

Representative (signed): _____

Date

Representative Name

Estimated Total Contract Value

Section 6 Required Forms

REQUIRED FORM 6 – COMPANY’S BACKGROUND RESPONSE

RFP # 269-2018-009

Digital Information Kiosks

Companies shall complete and submit the form below as part of their response to this RFP. Additional pages may be attached as needed to present the information requested.

Question	Response
Company’s legal name	
Company Location (indicate corporate headquarters and location that will be providing the Services).	
How many years has your company been in business? How long has your company been providing the Services as described in Section 3?	
How many public sector (cities or counties) clients does your company have? How many are using the Services? Identify by name some of the clients similar to City (e.g., similar in size, complexity, location, type of organization).	
List any projects or services terminated by a government entity. Please disclose the government entity that terminated and explain the reason for the termination.	
List any litigation that your company has been involved with during the past two (2) years for Services similar to those in this RFP.	
Provide an overview and history of your company.	
If your company is a subsidiary, identify the number of employees in your company or division and the revenues of proposing company or division.	
Identify the percentage of revenue used for research and/or development by the proposing company or division.	
Identify any certifications held by your company if you are implementing or reselling another company's products or services. Include how long the partnership or certification has been effect.	
Describe your company’s complete corporate structure, including any parent companies, subsidiaries, affiliates and other related entities.	
Describe the ownership structure of your company, including any significant or controlling equity holders.	

Section 6 Required Forms

<p>Provide a management organization chart of your company's overall organization, including director and officer positions and names and the reporting structure.</p>	
<p>Describe the key individuals along with their qualifications, professional certifications and experience that would comprise your company's team for providing the Services.</p>	
<p>If the Proposal 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, please describe the relationship, to include the form of partnership, each team member's role, and the experience each company will bring to the relationship that qualifies it to fulfill its role. Provide descriptions and references for the projects on which team members have previously collaborated.</p>	
<p>Explain how your organization ensures that personnel performing the Services are qualified and proficient.</p>	
<p>Provide information regarding the level of staffing at your organization's facilities that will be providing the Services, as well as the level of staffing at subcontractors' facilities, if known or applicable.</p>	
<p>If your company has been the subject of a dispute or strike by organized labor within the last five (5) years, please describe the circumstances and the resolution of the dispute.</p>	
<p>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.</p>	

Section 6
Required Forms

REQUIRED FORM 7 – REFERENCES

RFP # 269-2018-009

Digital Information Kiosks

Companies shall complete the form below. The City's preference is for references from organizations of similar size or where the Company is performing similar services to those described herein. If such references are not available, individuals or companies that can speak to the Company's performance are adequate.

REFERENCE 1:

Name of Client: _____ Main Phone: _____

Address: _____

Primary Contact: _____ Title: _____

Phone: _____ E-mail address: _____

Service Dates: _____ Software Program/Version: _____

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

Contract Value: \$ _____ Number of Client Employees: _____

REFERENCE 2:

Name of Client: _____ Phone: _____

Address: _____

Primary Contact: _____ Title: _____

Phone: _____ E-mail address: _____

Service Dates: _____ Software Program/Version: _____

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

Operating Budget: \$ _____ Number of Employees: _____

Section 6
Required Forms

REFERENCE 3:

Name of Client: _____ Phone: _____

Address: _____

Primary Contact: _____ Title: _____

Phone: _____ E-mail address: _____

Service Dates: _____ Software Program/Version: _____

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

Operating Budget: \$ _____ Number of Employees: _____

REFERENCE 4:

Name of Client: _____ Phone: _____

Address: _____

Primary Contact: _____ Title: _____

Phone: _____ E-mail address: _____

Service Dates: _____ Software Program/Version: _____

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

Operating Budget: \$ _____ Number of Employees: _____

Section 6
Required Forms

REFERENCE 5:

Name of Client: _____ Phone: _____

Address: _____

Primary Contact: _____ Title: _____

Phone: _____ E-mail address: _____

Service Dates: _____ Software Program/Version: _____

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

Operating Budget: \$ _____ Number of Employees: _____

REQUIRED FORM 8 – ADDITIONAL COMPANY QUESTIONS

Companies shall include responses to the additional questions posed below. Responses may be provided on a separate sheet provided that such response clearly includes the question reference numbers.

General Questions:

1. What steps will your organization take to ensure that the implementation runs smoothly?
2. Prepare and submit a Project Plan to describe all times, tasks and resources associated with the installation and implementation of the Digital Kiosk Solution.
3. Describe the communications scheme that your organization will use to keep the City informed about the Digital Kiosk Solution both during and post implementation.
4. Describe the risks associated with this Contract. What contingencies have been built in to mitigate those risks?

Advertising:

1. What options are available for offering reduced advertising rates for nearby retailers?
2. Can the solution be configured to allow certain advertisements to run only during set time parameters (e.g. evenings only)?
3. Can the solution be configured to allow certain ads to run only when outside of a certain distance-based parameter of certain types of buildings (e.g. churches, schools, daycares, etc.)

Reporting:

1. Please provide a detailed list of all available reports and/or queries within the system.
2. What options are available to develop customized reports, if any?
3. List data/metrics typically generated through a solution similar to what you have proposed for the City.
4. Please suggest any reporting or data needs that you think would be most beneficial for the City.

Revenue Model:

1. Please list other public-private partnerships you currently have under Contract, the revenue model, and any challenges you have experienced and how you overcame them or if you have.

Transit:

1. Please list all municipal clients you currently provide and support real time transit arrival and departure information for within a Digital Kiosk solution.

Demonstrations:

1. Shortlisted Companies may be asked to demonstrate during the evaluation process the user experience by providing an actual fully functional kiosk (final design not necessary) and not solely a representation of what the technology will look like. Please provide a statement if you are able to fulfil this request, and state any support from Staff that is needed, i.e., electrical power, loading dock, etc.

Equipment:

1. Please detail the expected useful life of (each of) your proposed Kiosk Solution(s), including anticipated Equipment replacement timelines.
2. Please detail any technology offerings you have for environmental sensors or video technology. If available, please indicate how these could integrate with your proposed solution, and what, if any, impact their inclusion would have on the proposed revenue model.

REQUIRED FORM 9 – ENVIRONMENTAL PURCHASING RESPONSES

RFP # 269-2018-009

Digital Information Kiosks

Companies shall complete and submit the form below regarding the products or supplies required to perform the Services.

Question	Response
<p><u>Recycled Content.</u> Products must contain a certain percentage of recycled content. Please include the amount of recycled content, both pre- and post-consumer, included in your product.</p>	
<p><u>Recyclability.</u> Please include the types of materials included in your product, and if they are considered recyclable in typical municipal recycling streams.</p>	
<p><u>Energy Consumption.</u> Please include the total amount of energy consumed for product or service manufacture, use and disposal. Different sources of energy are associated with different environmental impacts.</p>	
<p><u>Energy Efficiency.</u> Products must meet or exceed the Department of Energy (DOE) and Environmental Protection Agency criteria for use of the ENERGY STAR trademark label; or is in the upper 25% of efficiency for all similar products as designated by the U.S. Department of Energy’s Federal Energy Management Program.</p>	
<p><u>Low VOCs.</u> Products should contain low or no volatile organic compounds (VOCs). Please indicate any VOC content in each applicable product offered in your proposal.</p>	
<p><u>Reduced Packaging.</u> Please include any efforts made to reduce the packaging of the products included in this proposal.</p>	
<p><u>End of Life Management.</u> Will the manufacturer or designee accept the product back at the end-of-life? (who pays for the transportation of the product may be situation-specific).</p>	

EXHIBIT A – SAMPLE CITY CONTRACT

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

MASTER CONTRACT FOR A
DIGITAL INFORMTION KIOSK SOLUTION

This Master Contract for A Digital Information Kiosk Solution (the “Contract”) is entered into as of this _____ day of [MONTH], [YEAR] (the “Effective Date”), by and between [COMPANY NAME], a [STATE OF INCORPORATION] corporation doing business in North Carolina (the “Company”), and the City of Charlotte, North Carolina (the "City").

RECITALS

WHEREAS, the City issued a Request For Proposals (RFP # 269-2018-009) for Digital Information Kiosks dated December 8, 2017. 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 Digital Information Kiosks (“Services”), and the Company desires to provide such Services; and

WHEREAS, the City and the Company have negotiated now desire to enter into an arrangement for the Company to design, supply, install, customize, configure, test, commission and maintain a Digital Information Kiosk Solution for the City, all in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which 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.

- Exhibit A: Price Schedule
- Exhibit B Scope of Implementation Services
- Exhibit C Project Schedule
- Exhibit D: Requirements
- Exhibit E: Mutual Confidentiality Agreement
- Exhibit F: Cloud Technology Requirements

Each reference to the Contract shall be deemed to include all Exhibits and Appendices. With the exception of Exhibit J (Cloud Technology Requirements), any conflict between language in an Exhibit or Appendix to this Contract and the main body of this Contract shall be resolved in favor of the main body of this Contract. Notwithstanding anything contained in this Contract or any Exhibit to the contrary, in the event of a conflict between the language of Exhibit J and the main body of this Contract or any other Exhibit to this Contract, the language of Exhibit J shall prevail. Each reference to [COMPANY NICKNAME] in the Exhibits and Appendices shall be deemed to mean the Company.

2. **DEFINITIONS.** This section may include, but not be limited to, terms defined in Section 1 of the RFP.
- 2.1. **“Affiliates”** means all departments or units of the City and all other governmental units, towns, boards, committees or municipalities for which the City processes data or performs Services that involve the System.
 - 2.2. **“Cloud Services”** means the services through which the Company will make the Software accessible to the City over the Internet, and all other services, data import / export, monitoring, support, backup and recovery, change management, technology upgrades, and training necessary for the City’s productive use thereof. .
 - 2.3. **“Cloud Services”** means the services through which the Company will make the Software accessible to the City over the Internet, and all other services, data import / export, monitoring, support, backup and recovery, change management, technology upgrades, and training necessary for the City’s productive use thereof. .
 - 2.4. **“Company Software”** and **“[COMPANY NICKNAME] Software”** shall be used interchangeably to mean all the _____ software application provided by the which the Company provides or is required to provide under this Contract (including but not limited to customizations, the platform software and any Third Party Software), and all modifications, updates, New Releases and New Versions of the foregoing, other than software that the Contract specifically requires the City to license on its own.
 - 2.5. **“Contract Data”** means all data generated by, provided to or made available to Company or the Software in connection with this Contract, and all report structures in which such data are reported.
 - 2.6. **“Current Release”** means the latest version of the Software offered for general commercial distribution at a given point in time, including all New Releases.
 - 2.7. **“Customizations”** means all newly-developed software created by the Company and/or its subcontractors pursuant to this Contract, including but not limited to all interfaces between different components of the System and between the System and other systems. Customizations will not include New Releases and New Versions that become part of the company Software.
 - 2.8. **“Defect”** means any failure of the System or any component thereof to fully conform to the Specifications and Requirements. A non-conformity is not a Defect if it results directly from the City’s improper use or damage, unless it is reasonably likely that such non-conformity would have occurred on that or another occasion even without the City’s improper use or damage.
 - 2.9. **“Deliverables”** means all tasks, reports, information, designs, plans and other items that the Company is required to complete and deliver to the City in connection with this Contract, other than the Products.
 - 2.10. **“Documentation”** means all written, electronic, or recorded works, that describe the use, functions, features, or purpose of the System or any component thereof, and which are published or provided to the City by the Company or its subcontractors, including without limitation all end user manuals, training manuals, guides, program listings, data models, flow charts, logic diagrams, and other materials related to or for use with the System.
 - 2.11. **“Effective Date”** means the date stated in the first sentence of this Contract.
 - 2.12. **“Hardware”** means all hardware, equipment and materials that the Company actually provides or is required to provide under the terms of this Contract (whether now or in the future).
 - 2.13. **“Implementation Services”** means the Services described in **Exhibit C**.
 - 2.14. **“License”** means the license agreement attached to this Contract as **Exhibit F**.
 - 2.15. **“Maintenance Services”** means the Services described in **Exhibit E**.

- 2.16. **“New Version”** means any products, parts of products, improvements, additions or materials not included in the Products as of the Effective Date that significantly modify the Products to provide a function or feature not originally offered or an improvement in function. New Versions are typically identified by a new version number that changes the number left of the decimal point. For example, a change from Version 5.0 to Version 6.0 would likely represent a New Version.
- 2.17. **“New Release”** means any change issued by the Company or its subcontractors to the Products or the Documentation that is not a New Version. New Releases are typically identified by changing the number to the right of the decimal point (e.g., going from Version 5.1 to 5.2).
- 2.18. **“Project”** refers to the project for the Company to design, supply, install, configure, test, commission and maintain the System for the City in accordance with the terms and conditions in this Contract.
- 2.19. **“Project Plan”** means the detailed plan for implementation of the System as described in **Exhibit C**, in the form accepted in writing by the City.
- 2.20. **“Products”** means all Software and all Hardware (both as herein defined).
- 2.21. **“Project Schedule”** means the Project Schedule attached to this Contract mean **Exhibit D**.
- 2.22. **“Related Entity”** means any person or entity that is directly or indirectly in control of, controlled by, or under common control with the Company, including but not limited to any parent, subsidiary, and affiliate entities. The word, "control," as used in this context, shall mean ownership of a sufficient percentage (not necessarily a majority) of the outstanding voting interests in an entity so as to afford effective control of the management of the entity.
- 2.23. **“Services”** means all services that the Company provides or is required to provide under this Contract, including all Implementation Services and all Maintenance Services now or in the future.
- 2.24. **“Software”** means: (i) all Company Software; (ii) all Customizations; (iii) all Third Party Software; and (iv) all New Releases and New Versions of any of the foregoing.
- 2.25. **“Specifications and Requirements”** means all definitions, descriptions, requirements, criteria, warranties and performance standards relating to the Products or System which are set forth or referenced in: (i) this Contract, including the Appendix; (ii) the main body of this Contract; (iii) other Exhibits to this Contract; (iv) the Documentation; and (v) any functional and/or technical specifications which are published or provided by the Company or its licensors or suppliers from time to time with respect to all or any part of the Products or the System. Any conflict between the requirements or specifications referenced in subparts (i), (ii) (iii) (iv) or (v) of this definition shall be resolved in the order of priority in which they are listed; provided, however, that the City may, at its option, disregard the order of listing to resolve any such conflicts in a manner that takes advantage of new or enhanced functionality or features.
- 2.26. **“System”** means a Digital Information Kiosk System to be designed, supplied, installed, configured, tested, commissioned and maintained by the Company under this Contract, including but not limited to all Products.
- 2.27. **“System Acceptance”** means acceptance by the City of the complete System as provided in **Exhibit C** of this Contract.
- 2.28. **“Third Party Software”** means all software included within the System or required for the System to function in full compliance with the Specifications and Requirements that is provided by the Company under this Contract and was not manufactured, developed or otherwise created by the Company, any Related Entity of the Company, or any of the Company’s subcontractors.

- 2.29. **“Warranty Period”** means the twelve (12)-month period following System Acceptance by the City.
- 2.30. **“Workaround”** means a reasonable change in the procedures followed or data supplied to avoid a Defect that does not impair the performance of the System or increase the cost of using the System.
- 2.31. **“Work Product”** means the Deliverables and all other programs, algorithms, reports, information, designs, plans and other items developed by the Company in connection with this Contract, and all partial, intermediate or preliminary versions of any of the foregoing.

3. **GENERAL DESCRIPTION OF SERVICES.** The Company shall provide the Implementation Services described in **Exhibit C** and any other design, development, supply, installation, consulting, System integration, Software development, project management, training, technical and other Services necessary to deliver and implement the System so that it is in production at the City in full compliance with the Specifications and Requirements on or before **[PLANNED ACCEPTANCE DATE]**. The Company shall also provide the Maintenance Services described in **Exhibit E**. The Company shall perform the Implementation Services on site at various locations within the City or at the Company’s facility(ies), except as mutually agreed in writing in specific instances by the City.

4. **COMPENSATION.**

The Company shall remit to the City on a quarterly basis, the agreed upon Minimum Guarantee. Additionally, on a Quarterly basis, the Company shall remit to the City any additional revenues owed to the City based on the agreed upon Percentage Guarantee above and beyond the Minimum Guarantee. The City shall not remit payments to the Company for the performance of the Services, or any of the Hardware, Software, or other Equipment or services provided hereunder. [TO BE EDITED FOR FINAL AGREEMENT]. 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.

- 4.1. **NO EXPENSES CHARGEABLE.** The Company shall not be entitled to charge the City for any travel, mileage, meals, materials, or other costs or expenses associated with this Contract.
- 4.2. **EMPLOYMENT TAXES AND EMPLOYEE BENEFITS.** The Company represents and warrants that the employees 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 Company employee. The Company further represents, warrants and covenants that it will pay all withholding tax, social security, Medicare, unemployment tax, worker’s compensation and other payments and deductions that are required by law for each Company employee. The Company agrees that the Company employees are not employees of the City.
- 4.3. **RESERVED.**
- 4.4. **DUE DATE OF PAYMENTS.** Payment of invoices shall be due within thirty (30) days after receipt of an accurate, undisputed properly submitted invoice by the City.
- 4.5. **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.
- 4.6. **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.

- 4.7. **PRE-CONTRACT COSTS.** The City shall not be charged for any Services or other work performed by the Company prior to the Effective Date.
- 4.8. **AUDIT.** During the term of this Contract and for a period of two years after termination of this Contract, the City shall have the right to audit, either itself or through an independent auditor, all books and records and facilities of the Company necessary to evaluate Company's compliance with the terms and conditions of this Contract or the City's payment obligations. The City shall pay its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs of the Company. However, if non-compliance is found that would have cost the City in excess of \$10,000 but for the audit, then the Company shall be required to reimburse the City for the cost of the audit.
5. **RECORDS.** The Company shall be responsible for keeping a record that accurately states the revenues received. The City shall have the right to audit the Company's payments and other documents relating to the Services performed under the Contract. The Company shall make such documents available for inspection and copying by the City in Charlotte, North Carolina between the hours of 9:00 a.m. to 5:00 p.m. Monday through Friday, whenever requested by the City.
6. **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 B, 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.
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. **PRODUCT PURCHASE AND DELIVERY.**
 - 8.1. **COMPANY TO PROVIDE ALL HARDWARE AND SOFTWARE.** As part of the Services, the Company shall provide all Hardware, Software, labor, equipment, and materials required by the City in order for the Digital Information Kiosk Solution to perform in accordance with the Specifications and Requirements, except for those items that are specifically listed in **Exhibit C** as a City responsibility.
 - 8.2. **DELIVERY SCHEDULE.** The Company shall deliver the Products by the delivery dates set forth in the Project Schedule, as may be modified by the parties' mutual consent in the Project Plan. Delivery shall be to various City specified locations unless otherwise agreed in writing by the City.
 - 8.3. **TITLE / RISK OF LOSS.** Except for loss or damage occurring in connection with the Company's performance of services under this Contract, title and risk of loss of all Hardware shall pass to the City upon delivery of the Hardware to the City's premises.
 - 8.4. **DELIVERY AND INSTALLATION COSTS.** All delivery and installation costs associated with the Hardware and the Software shall be borne by the Company.
 - 8.5. **SOFTWARE LICENSE FOR EMBEDDED SOFTWARE.** The Company grants to the City the right to use all software which is embedded in or included with the Hardware ("Embedded Software") to the full extent necessary for the City to use the Hardware in the manner

contemplated by this Contract. The City agrees to be bound by the terms and limitations of any licenses for Embedded Software which have been: (i) provided to the City in writing preceding delivery of such Hardware; and (ii) accepted by the City in writing. Notwithstanding the foregoing, in no event shall any terms or conditions of such licenses restrict the City from using the Hardware in the manner contemplated by this Contract, nor shall such terms or conditions in any way modify the City's rights under the License.

8.6. **TRANSFER OF WARRANTIES.** Without limiting the Company's obligations to provide warranty Services or the Maintenance Services, the Company hereby assigns and transfers to the City all of the Company's warranties from the Company's suppliers covering the Hardware, the Embedded Software and Third Party Software. The Company will provide copies of such warranties to the City with delivery of the applicable Hardware or Software. While the Company shall be entitled to make arrangements to have such warranty work performed by the supplier, nothing herein shall relieve the Company of its obligation to correct Defects in the Hardware or the Software or to meet the time deadlines provided in this Contract for the correction of such Defects.

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

9. **PROGRESS REPORTS.** During implementation, the Company shall prepare and submit to the City bi-weekly (or at such other times as may be agreed in Exhibit B) written progress reports, which accomplish each of the following:

9.1. Update the project schedule set forth in Exhibit B, indicating progress for each task and Deliverable.

9.2. 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.

9.3. Identify and report the status of all tasks and Deliverables that have fallen behind schedule.

9.4. Identify and summarize all risks and problems identified by the Company, which may affect the performance of the Services.

9.5. For each risk and problem, identify the action and person(s) responsible for mitigating the risk and resolving the problem.

9.6. For each risk and problem identified, state the impact on the project schedule.

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

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

excused from performance under the terms of this Section, the Company will only be excused for delays that occur after it has given notice to the City Department Director of the City's failure.

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

11.1. The City will have the right to require the removal and replacement of any personnel of the Company or the Company's subcontractors who are assigned to provide Services to the City based on experience, qualifications, performance, conduct, compatibility, and violation of City policy or any other reasonable grounds. The addition or promotion of any personnel to key positions within the Project must be approved by the City in writing. The Company will replace any personnel that leave the Project, including but not limited to Key Personnel, with persons having at least equivalent qualifications who are approved by the City in writing. As used in this Contract, the "personnel" includes all staff provided by the Company or its subcontractors, including but not limited to Key Personnel.

11.2. Unless approved by the City in writing, the Company's personnel set forth in Exhibit B (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. BACKGROUND CHECKS. Prior to starting work under this Contract, the Company is required to conduct a background check on each Company employee assigned to work under this Contract, and shall require its subcontractors (if any) to perform a background check on each of their employees assigned to work under this Contract (collectively, the "Background Checks"). Each Background Check must include: (a) the person's criminal conviction record from the states and counties where the person lives or has lived in the past seven (7) years; and (b) a reference check.

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

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

- If the job duties require driving: A motor vehicle records check.
- If the job duties include responsibility for initiating or affecting financial transactions: A credit history check.

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

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

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

13. ACCEPTANCE OF TASKS AND DELIVERABLES. Within a reasonable time after a particular Deliverable has been completed (or such specific time as may be set forth in Exhibit B), 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) has 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 (and shall be entitled to terminate this Contract for default if the Company does not meet this time frame).

14. **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.
15. **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.
16. **REPRESENTATIONS AND WARRANTIES OF COMPANY.**

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

- (a) For a period of twelve (12) months after System Acceptance (the “Warranty Period”), the System will fully comply with the Specifications and Requirements, and all federal, state and local laws, regulations, codes and guidelines that apply to it (including any changes to such laws, etc.).
- (b) All Products and Services delivered after System Acceptance shall fully conform to the Specifications and Requirements for a period of one year after acceptance of such Product or Service by the City.
- (c) For as long as the City exercises its options to purchase Extended Maintenance Services, the System will fully comply with the Specifications and Requirements, and all federal, state and local laws, regulations, codes and guidelines that apply to it (including changes to such laws, etc.).
- (d) All Software provided by the Company or its subcontractors is and will be free of viruses, worms and Trojan horses, and any code designed to disable the Software because of the passage of time, alleged failure to make payments due, or otherwise (except for documented security measures such as password expiration functions);
- (e) Cloud Technology Requirements. In providing the Services, the Company shall comply with the City of Charlotte Cloud Technology Requirements set forth in Exhibit **J** which is attached and incorporated into this Contract by reference.
- (f) In accordance with the North Carolina electronic data-processing records law N.C.G.S. §132-6-1:
 - All Software and Documentation provided by the Company or its subcontractors will have sufficient information and capabilities to enable the City to permit the public inspection and examination and to provide electronic copies of public records stored, manipulated or retrieved by the System; and

- All Software and Documentation provided by the Company or its subcontractors will have sufficient information to enable the City to create an index containing the following information with respect to each database used by the System without extraordinary commitments of staff or resources: (i) annotated list of data fields: name, description, and restricted field indicator; (ii) description of the format or record layout; (iii) frequency with which the database is updated; (iv) list of any data fields to which public access is restricted; (v) description of each form in which the database can be copied or reproduced; (vi) title of the database; (vii) owner of the data; (viii) narrative description of the database; (ix) person creating the index; and (x) purpose of the database. The Company agrees that the City may copy and disclose the information listed above in response to requests for database information under the North Carolina General Statutes.
- (g) All Documentation for the Products and the System is and will be in all material respects complete and accurate, and will enable data processing professionals and other City employees with ordinary skills and experience to utilize the Products and the System for the expressed purpose for which they are being acquired by the City;
- (h) All work performed by the Company and/or its subcontractors pursuant to this Contract shall meet the highest industry standards and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;
- (i) Neither the Services, nor the Products nor any Deliverables provided by the Company under this Contract will violate, infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party, or any other third party rights (including without limitation non-compete agreements); and
- (j) All Hardware shall be delivered and shall remain free and clear of all liens and encumbrances. The Company shall not place or allow to be placed on the Software any third party lien or encumbrance of any kind at any time which could conceivably interfere with the City's use of the Software or the Company's maintenance of the Software.

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

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

- 16.2. **ADDITIONAL WARRANTIES.** The Company further represents and warrants that:
- 16.2.1. 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;
 - 16.2.2. It has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Contract;
 - 16.2.3. The execution, delivery, and performance of this Contract have been duly authorized by the Company;
 - 16.2.4. 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;
 - 16.2.5. 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

- 16.2.6. The performance of this Contract by the Company and each Company employee 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).

17. OTHER OBLIGATIONS OF THE COMPANY.

- 17.1. **WORK ON CITY'S PREMISES.** The Company and all their employees will, whenever on the City's premises, obey all instructions and City policies that are provided to them with respect to performing Services on the City's premises.
- 17.2. **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.
- 17.3. **REPAIR OR REPLACEMENT OF DAMAGED 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.
- 17.4. **REGENERATION OF LOST OR DAMAGED DATA.** With respect to any data that the Company or any Company employees 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.
- 17.5. **E-VERIFY.** The Company shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and shall require each of its subcontractors to do so as well.
- 17.6. **IRAN DIVESTMENT ACT.** The Company certifies that: (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 147-86.58; (ii) it will not take any action causing it to appear on any such list during the term of this Contract; and (iii) it will not utilize any subcontractor that is identified on any such list to provide goods or services hereunder.

18. REMEDIES.

- 18.1. **RIGHT TO COVER.** If the Company fails to meet any completion date or resolution time set forth in this Contract (including the Exhibits) or the Project Plan, the City may take any of the following actions with or without terminating this Contract, and in addition to and without limiting any other remedies it may have:
- a. Employ such means as it may deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and the Company is again able to resume performance under this Contract; and
 - b. Deduct any and all expenses incurred by the City in obtaining or performing the Services from any money then due or to become due the Company and, should the City's cost of obtaining or performing the services exceed the amount due the Company, collect the amount due from the Company.
- 18.2. **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.

- 18.3. **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.
- 18.4. **SETOFF.** Each party shall be entitled to setoff and deduct from any amounts owed to the other party pursuant to this Contract all damages and expenses incurred or reasonably anticipated as a result of the other party's breach of this Contract.
- 18.5. **OTHER REMEDIES.** Upon breach of this Contract, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.
- 18.6. **LIQUIDATED DAMAGES.** The City and the Company acknowledge and agree that the City will incur costs if the Company fails to meet one or more of the time frames for delivering Services and Products under this Contract and the Project Plan, including all completion dates, response times and resolution times (the "Completion Dates"). The parties further acknowledge and agree that the costs that the City might reasonably be anticipated to accrue as a result of such failures are difficult to ascertain due to their indefiniteness and uncertainty.

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

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

19. TERMINATION.

- 19.1. **TERM.** Unless terminated in accordance with its terms, this Contract shall commence on the Effective Date, and shall continue for a term of five (5) years, with the City having the right to renew for one (1) five (5) year renewal term thereafter..
- 19.2. **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, the Company shall submit a statement to the City showing in detail the Services performed under this Contract through the date of termination. The foregoing payment obligation is contingent upon: (i) the Company having fully complied with Section 19.10; and (ii) the Company having provided the City with written documentation reasonably adequate to verify the number of hours of Services rendered by each Company employee through the termination date and the percentage of completion of each task.
- 19.3. **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.

- 19.4. **ADDITIONAL GROUNDS FOR DEFAULT TERMINATION BY THE CITY.** By giving written notice to the Company, the City may also terminate this Contract upon the occurrence of one or more of the following events (which shall each constitute grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):
- (a) Failure of the Company to complete and deliver a particular Product, Deliverable or Service by the completion date set forth in this Contract (including the Exhibits) or the Project Plan;
 - (b) Failure of the Company to correct all Defects and deficiencies identified by the City with respect to a Deliverable within the time period set forth in **Exhibit C**;
 - (c) Failure of the Company to correct all items identified in a Rejection Notice within the time period specified in **Exhibit C**;
 - (d) Failure of the Company to resolve a problem within the time set forth in **Exhibit E** regarding Maintenance Services (whether during the Warranty Period or during Extended Maintenance Services);
 - (e) The Company makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Contract, Company's Proposal, or any covenant, agreement, obligation, term or condition contained in this Contract; or
 - (f) The Company takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Contract, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Contract, or failure to provide the proof of insurance as required by this Contract.
- 19.5. **TERMINATION FOR FAILURE TO AGREE ON PROJECT PLAN.** If the parties have not finalized and agreed upon the Project Plan by the date set forth in the Project Schedule, the City shall be entitled to terminate this Contract and receive a refund of all amounts paid to the Company.
- 19.6. **CROSS TERMINATION.** A default by the City under **Exhibit E** shall constitute grounds for terminating the Maintenance Services if not cured as provided above, but shall not constitute a

basis for the Company to terminate the License or any other obligations the Company may have under this Contract. A default by the City under **Exhibit C** shall constitute grounds for terminating the Implementation Services if not cured as provided above, but shall not constitute a basis for the Company to terminate the License, the Maintenance Services or any other obligations the Company may have under this Contract. Otherwise, a default by either party under any Exhibit or Attachment of this Contract, or the main body of this Contract, shall be regarded as a default under the entire Contract

- 19.7. **NO SUSPENSION.** In the event that the City disputes in good faith an allegation of default by the Company, notwithstanding anything to the contrary in this Contract, the Company agrees that it will not terminate this Contract or suspend or limit the delivery of Products or Services or any warranties or repossess, disable or render unusable any Software supplied by the Company, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.
- 19.8. **AUTHORITY TO TERMINATE.** The following persons are authorized to terminate this Contract on behalf of the City: (a) the City Manager, any Assistant City Manager or any designee of the City Manager; (b) the Department Director of the City Department responsible for administering this Contract.
- 19.9. **OBLIGATIONS UPON EXPIRATION OR TERMINATION.** Upon expiration or termination of this Contract, the Company shall promptly (a) return to the City all computer programs, files, documentation, data, media, related material and any other material and equipment that is owned by the City; (b) deliver to the City all Work Product; (c) allow the City or a new service provider access to the systems, software, infrastructure, or processes of the Company that are necessary to mitigate the Services to a new service provider; and (d) refund to the City all pre-paid Maintenance Fees based on a pro-rata as determined by the City.
- 19.10. **TRANSITION OF CONTRACT DATA.** Upon expiration or termination of this Contract for any reason, The Company shall at no cost to the City provide such services as are reasonably requested by the City to transition the Contract Data to the City or to another service provider, including without limitation providing information regarding data fields and data format and responding to questions. Data will be transitioned in a format in which the City can use, search, copy and access.

13. Transition Assistance Services. Upon termination or expiration of this Contract, the Company shall, at no cost to the City, cooperate with the City to assist with the orderly transfer of the Services, including the Cloud Services, functions and operations provided by the Company, in whole or in part, hereunder to another provider selected by the City (such supplier shall be known as the “Successor Service Provider”) or to the City as determined by the City in its sole discretion. The transition services that the Company shall perform if requested by the City include but are not limited to:

- 19.11. Working with the City to jointly develop a mutually agreed upon transition services plan to facilitate the termination of the Services; and
- 19.12. Notifying all affected service providers and subcontractors of the Company of transition activities;
- 19.13. providing reasonable training to City staff or the Successor Service Provider in the performance of the Cloud Services then being performed by the Successor Service Provider;
- 19.14. using commercially reasonable efforts to assist the City in acquiring any necessary rights to legally and physically access and use any third party technologies and documentation then being used by the Company in connection with the Cloud Services;
- 19.15. using commercially reasonable efforts to make available to the City, pursuant to mutually agreeable terms and conditions, any third party services then being used by the Company in connection with the Cloud Services; and,

- 19.16. Performing the transition service plan activities;
- 19.17. Answering questions on an as-needed basis; and
- 19.18. Providing such other reasonable services needed to effectuate an orderly transition to a new system.

The provisions of this Section shall survive the termination of this Contract.

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

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

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

21. INTELLECTUAL PROPERTY.

- 21.1. **COMPANY OWNERSHIP.** The Company shall have exclusive ownership of intellectual property rights in all Company Software and related Documentation, including but not limited to all copyrights, patents and trade secrets (collectively “Company Intellectual Property”). The Company grants the City a perpetual, royalty-free, non-exclusive license to use and copy the Company Intellectual Property for all purposes of the City and the Affiliates in accordance with the terms of the License.
- 21.2. **CITY OWNERSHIP.** The City shall have exclusive ownership of all intellectual property rights in all Customizations, Deliverables and other Work Product created by the Company or its subcontractors in connection with this Contract, including all modifications, Updates, Enhancements and Documentation relating thereto, and including but not limited to all copyrights, patents and trade secrets (collectively “City Intellectual Property”). The Company hereby assigns and transfers all rights in the City Intellectual Property to the City. The Company further agrees to execute and deliver such assignments and other documents as the City may later require to perfect, maintain and enforce the City’s rights as sole owner of the City Intellectual Property, including all rights under patent and copyright law. The Company hereby appoints the City as attorney in fact to execute all such assignments and instruments and agree that its appointment of the City as an attorney in fact is coupled with an interest and is irrevocable.

The City Intellectual Property shall not include Deliverables created by the Company for other customers prior to the date of this Contract, provided that the Company shall notify the City in writing of any Deliverables that are not City Intellectual Property at the time it submits such Deliverables. The City grants the Company a royalty-free, non-exclusive license to use and copy the City Intellectual Property to the extent necessary to perform this Contract. The Company shall not be entitled to use the City Intellectual Property for other purposes without

the City's prior written consent, and shall treat the City Intellectual Property as "Confidential Information" under the Confidentially Contract.

22. OTHER OBLIGATIONS OF COMPANY.

- 22.1. **WORK ON CITY'S PREMISES.** The Company will ensure that its employees and agents shall, whenever on the City's premises, obey all instructions and directions issued by the City with respect to rules, regulations, policies and security procedures applicable to work on the City's premises. The Company agrees that its personnel and the personnel of its subcontractors will comply with all such rules, regulations and security procedures when on the City's premises.
- 22.2. **DAMAGE TO EQUIPMENT OR FACILITIES.** The Company shall be responsible for any damage to or loss of the City's equipment or facilities arising out of the negligent or willful act or omission of the Company or its subcontractors.
- 22.3. **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.
- 22.4. **E-VERIFY.** Company shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and shall require each of its subcontractors to do so as well.
- 22.5. **IRAN DIVESTMENT ACT.** Company certifies that: (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 147-86.58; (ii) it will not take any action causing it to appear on any such list during the term of this Contract; and (iii) it will not utilize any subcontractor that is identified on any such list to provide goods or services hereunder.

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

- 23.1. The Company shall provide the City with prompt written notice of all upgrades, enhancements and modifications to the Products or Services that become available during the term of this agreement (the "New Technology").
- 23.2. Unless specified in writing by the City in a specific instance, all Products provided by the Company will be the latest, most recent version available as of the time of installation. The Company will schedule installation of all Products as late in the process as is reasonably practicable to meet the Project Plan deadlines. Unless specified in writing by the City in a specific instance, the Company will continually update the Software after installation at no additional cost and it shall be a condition of System Acceptance that all Software be the latest, most current version available as of the date of System Acceptance.
- 23.3. If the Company causes a delay in the Project of six months or more, it shall be a condition of System Acceptance (at the City's option) that the Hardware is the latest, most recent version available as of six months prior to the date of System Acceptance.
- 23.4. Notwithstanding anything contained in this Contract to the contrary, the City shall have the option to reject proposed New Technology and to accept less that the most current version of the Products by providing written notice to the Company.
- 23.5. The Company shall make the New Technology available to the City at no additional cost if required by this Contract, or if New Technology is generally commercially available to the Company's customers at no additional cost. Notwithstanding the foregoing, there shall be no additional charges for providing the most recent version of the Hardware as required by **Section 23.2 or 23.3.**

- 23.6. The Company shall provide additional details and estimated prices to the City at the request of the City, if the City wants to consider further the possible addition of the New Technology.
- 23.7. Notwithstanding anything contained herein to the contrary, neither the acceptance of proposed New Technology by the City nor the amendment of this Contract to incorporate New Technology shall relieve the Company from its obligations under this Contract to satisfy the Specifications and Requirements.

24. INDEMNIFICATION. To the fullest extent permitted by law, the Company shall indemnify, defend and hold harmless each of the “Indemnitees” (as defined below) from and against any and all “Charges” (as defined below) paid or incurred as a result of any claims, demands, lawsuits, actions, or proceedings: (i) alleging violation, misappropriation or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to the Services or any products or deliverables provided to the City pursuant to this Contract (“Infringement Claims”); (ii) seeking payment for labor or materials purchased or supplied by the Company or its subcontractors in connection with this Contract; (iii) arising from the Company’s failure to perform its obligations under this Contract, or from any act of negligence or willful misconduct by the Company or any of its agents, employees or subcontractors relating to this Contract, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible; 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 (30) days after the City is directed to cease use of a product or service, the Company shall promptly refund to the City all amounts paid under this Contract.

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

25. INSURANCE.

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

25.1.1. **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.

25.1.2. **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 and advertising injury, and Contractual liability, assumed under the indemnity provision of this Contract.

- 25.1.3. 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.
- 25.1.4. Errors & Omissions - Insurance with a limit of not less than \$1,000,000 per claim, \$1,000,000 aggregate as shall protect the Contractor and the Contractor's employees for negligent acts, errors or omissions in performing the professional services under this Contract.

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.

25.2. OTHER INSURANCE REQUIREMENTS.

- 25.2.1. 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.
- 25.2.2. The City of Charlotte shall be named as an additional insured for operations or services rendered under the 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.
- 25.2.3. 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.
- 25.2.4. 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.
- 25.2.5. 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.

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

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

In the event the Company fails to maintain the Performance Bond as required by this Contract, the City may terminate this Contract for default and, without limiting any other remedies it may have,

obtain a refund of all amounts paid to the Company under this Contract.

27. SECURITY.

27.1. DATA SECURITY AND PRIVACY

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

27.1.2. **General Requirements.** With respect to Contract Data, the Company shall:

- a) Establish and maintain safeguards against the destruction, loss, unauthorized alteration of, or unauthorized access to the Contract Data;
- b) Comply with all laws and regulations that may apply to the Contract Data, including without limitation all laws relating to identity theft;
- c) Store all Contract Data in accordance with Peripheral Component Interconnect (or successor) standards then in effect (“PCI Standards”);
- d) Encrypt all personally identifiable information, credit card data that is transmitted to or from the Company’s systems in connection with this Contract;
- e) Ensure that Contract Data storage complies with all relevant laws, regulations and standards, including but not limited to states laws, and applicable regulatory and professional standards; and
- f) Ensure that transmission of Contract Data to and from the Company’s system is secure.

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

27.1.4. **Preventing Unauthorized Access.** The Company shall identify in writing a security administrator to coordinate with the City. The Company shall take appropriate measures to protect against the misuse of and/or unauthorized access to the Contract Data, including the use of passwords and validated user identification for Company employees. The Company will take appropriate measures to address any such misuse or unauthorized access.

27.1.5. **If Unauthorized Access is suspected.** The Company shall promptly investigate any suspicion or allegation of misuse or unauthorized access to Contract Data. If the Company learns or has reason to believe that Contract Data has been disclosed or accessed by an unauthorized party, the Company shall notify the City immediately and shall take at the Company’s expense all remedial action required by law or as reasonably requested by the City to remedy such disclosure or unauthorized access. All remediation for third party software security vulnerabilities that are clearly identified as such by the Company are the responsibility of the third party to provide. This in no way limits the Company’s responsibility for notifying the City of the identified vulnerability.

27.1.6. **City’s Right to Obtain Contract Data.** The Company shall provide the City with prompt access to Contract Data when requested (subject to the authentication requirements referenced herein), which such access shall in any event be within three

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

- 27.1.7. **Contract Data to Remain in the U.S.** The Company will ensure that all Contract Data remains within the confines of the United States including any backup data, replication sites, and disaster recovery sites.
- 27.1.8. **Right of Audit by City.** The City shall have the right to review the Company's information security program prior to the commencement of Cloud Services and from time to time during the term of this Agreement. During the performance of the Cloud Services, on an ongoing basis from time to time and without notice, the City, at its own expense, shall be entitled to perform, or to have performed, an on-site audit of the Company's information security program. In lieu of an on-site audit, upon request by the City, the Company agrees to complete, within 45 days of receipt, an audit questionnaire provided by Customer regarding Service Provider's information security program.
- 27.2. **Other Security Constraints.** In order to assist the Company to comply with the City's requirements regarding security under the Contract, Company's security strategy will be to protect Contract Data at multiple levels, which includes data security, data integrity, and data privacy.
- 27.2.1. **Hosting Facility Security.** All servers and network equipment are housed in locked cabinets at the hosting facility which provides 24x7 security. To access the cabinets there must be several levels of security that must be passed where each entry point provides state of the art card readers, scanners, and other access devices.
- 27.2.2. **Network Security.** Company's network must be protected by redundant firewalls and monitored for unauthorized access. City access will be configured through a dedicated VLAN. Firewall logs must be constantly monitored, and the logs reviewed on a regular basis. Leading-edge firewall equipment must be provided by the Company to protect the network. The network must be architected to be highly reliable and redundant. If a router, load balancer, or firewall should fail, there must be redundancy built in that would allow failover to take place, without causing a loss of service to our customers. Company shall use ssh encryption via RSA (sshl) and DSA (ssh2) public keys for communication between servers.
- a) Firewall Management within the Company data centers. The Company shall complete the following activities:
- Monitoring and management of firewall appliances, and VPN connectivity to the Company data centers;
 - VPN City connectivity to the City's on-premise firewall;
 - Management of firewall firmware upgrades;

- Get approval from the City before making any Changes to the firewall configuration;
- Logging for the firewall and servers shall be sent to the City SIEM solution at the City discretion;
- In the event Company identifies a suspected security breach, Company will notify the City of the breach immediately; and
- Provide Check Point Firewall, IPS, and Web Security logs via an OPSEC integration with the hosted Check Point SmartCenter.
- Restrict database users to a controlled list; individual activities to be restricted, logged and monitored.

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

a) **Anti-Virus.** The Company shall complete the following activities:

- Install anti-virus software on Company managed servers;
- Maintain all anti-virus and anti-spam systems with the latest patches, engines and heuristics; and
- Scan, quarantine, and clean all in-bound and out-bound files (including email attachments) for viruses.

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

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

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

28. **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.

29. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties established by this Contract is solely that of independent Contractors, and nothing contained in this Contract shall be construed to (i) give any party the power to direct or control the day-to-day activities

of the other; (ii) constitute such parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking; (iii) make either party an agent of the other for any purpose whatsoever, or (iv) give either party the authority to act for, bind, or otherwise create or assume any obligation on behalf of the other. Nothing herein shall be deemed to eliminate any fiduciary duty on the part of the Company to the City that may arise under law or under the terms of this Contract.

- 30. SUBCONTRACTING.** The Company shall not subContract any of its obligations under this Contract, or assign or transfer any of its rights or obligations under this Contract, without the City's prior written consent and any attempt to do so shall be void and without further effect. In the event the City does consent in writing to a subcontracting arrangement, Company shall be the prime Contractor and shall remain fully responsible for performance of all obligations which it is required to perform under this Contract and the Company shall indemnify and hold the City harmless from any payment required to be paid to any such subcontractors. Any subContract entered into by Company shall name the City as a third party beneficiary.
- 15. CONFIDENTIALITY AGREEMENT.** The parties acknowledge that they have executed and entered into a Confidentiality Agreement prior to the execution of this Contract (the "Confidentiality Agreement"), and that they are bound by all terms contained in the Confidentiality Agreement with respect to any Confidential Information which either of them obtains access to in connection with this Contract.
- 31. COMMERCIAL NON-DISCRIMINATION.** As a condition of entering into this Contract, the Company represents and warrants that it will fully comply with the City's Commercial Non-Discrimination Policy, as described in Section 2, Article V of the Charlotte City Code, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the Company shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, age or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors or suppliers in connection with a City Contract or Contract solicitation process, nor shall the Company retaliate against any person or entity for reporting instances of such discrimination. The Company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on City Contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace. The Company understands and agrees that a violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of the Company from participating in City Contracts or other sanctions.

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

32. RESERVED.

33. NOTICES. Any notice, consent or other communication required or contemplated by this Contract shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by telefax to the intended recipient at the address set forth below. Notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by telefax or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier. Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.

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

For the Company:

PHONE: _____

FAX: _____

E-MAIL: _____

With Copy To (Company):

PHONE: _____

EMAIL: _____

For the City:

Kay Elmore
City of Charlotte
M&FS Procurement Management
600 East Fourth Street, CMGC 9th Floor
Charlotte, NC 28202-2850

PHONE: 704-336-2524

FAX: 704-632-8252

kelmore@charlottenc.gov

With Copy To:

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

PHONE: 704-336-5803

jkay@ci.charlotte.nc.us

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

34. MISCELLANEOUS.

34.1. 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.

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

34.3. 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.

- 34.4. **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.
- 34.5. **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.
- 34.6. ***FORCE MAJEURE PRIOR TO SYSTEM ACCEPTANCE.*** The following force majeure provisions shall apply to the Company prior to System Acceptance and to the City at all times. Neither party shall be liable for any failure or delay in the performance of its obligations pursuant to this Contract, and such failure or delay shall not be deemed a default of this Contract or grounds for termination hereunder if all of the following conditions are satisfied:
- (a) if such failure or delay:
 - 1. could not have been prevented by reasonable precaution;
 - 2. cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and
 - 3. if, and to the extent, such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions or court order.
 - (b) An event which satisfies all of the conditions set forth above shall be referred to as a "Force Majeure Event." Upon the occurrence of a Force Majeure Event, the affected party shall be excused from any further performance of those of its obligations which are affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) the affected party continues to use reasonable efforts to recommence performance whenever and to whatever extent possible without delay.
 - (c) Upon the occurrence of a Force Majeure Event, the affected party shall promptly notify the other by telephone (to be confirmed by written notice within five (5) days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents the Company from performing its obligations for more than fifteen (15) days, the City shall have the right to terminate this Contract by written notice to the Company.
 - (d) Notwithstanding anything contained herein to the contrary, strikes, slow-downs, walkouts, lockouts, and industrial disputes of the Company or its subcontractors shall not constitute "Force Majeure Events" and are not excused under this provision. The parties expressly acknowledge that Year 2000-related interruptions in operations or in the supply of the products or services of the Company or its not excused under this provision. Nothing in the preceding Force Majeure provisions shall relieve the Company of any obligation it may have regarding disaster recovery, whether under this Contract or at law.

- 34.7. *FORCE MAJEURE AFTER SYSTEM ACCEPTANCE.* The following force majeure provisions shall apply to the Company after System Acceptance. After System Acceptance, the Company shall not be excused from performance under this Contract by virtue of force Majeure events. The Company shall take precautions sufficient to ensure that force Majeure events (including but not limited to fire, flood, earthquake, hurricane, elements of nature, strikes, labor disputes, terrorism and acts of God) do not result in any failure or delay in the performance of the Company's obligations pursuant to this Contract. Failure to comply with this provision will constitute a default under this Contract, and grounds for immediate termination.
- 34.8. *SEVERABILITY.* The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Contract shall not affect the validity of the remaining portion of 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.
- 34.9. *NO PUBLICITY.* No advertising, sales promotion or other materials of the Company or its agents or representations may identify or reference this Contract or the City in any manner absent the written consent of the City.
- 34.10. *APPROVALS.* All approvals or consents required under this Contract must be in writing.
- 34.11. *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.
- 34.12. *SURVIVAL OF PROVISIONS.* Those Sections of this Contract and the Exhibits which by their nature would reasonably be expected to continue after the termination of this Contract shall survive the termination of this Contract, including but not limited all definitions and each of the following:
- | | |
|-------------|--|
| Section 1.2 | Definitions |
| Section 4.2 | "Employment Taxes and Employee Benefits" |
| Section 4.6 | Audit |
| Section 8.5 | Software License for Embedded Software |
| Section 8.6 | Transfer of Warranties |
| Section 8.7 | Replacement Equipment |
| Section 16 | Representations and Warranties |
| Section 19 | Termination |
| Section 21 | Intellectual Property |
| Section 24 | Indemnification |
| Section 25 | "Insurance" |
| Section 31 | Commercial Non-Discrimination |
| Section 33 | Notices |
| Section 34 | Miscellaneous |
- 34.13. *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.

- 34.14. **DRAFTER’S PROTECTION.** Each of the Parties has agreed to the use of the particular language of the provisions of this Contract and any questions of doubtful interpretation shall not be resolved by any rule or interpretation against the drafters, but rather in accordance with the fair meaning thereof, having due regard to the benefits and rights intended to be conferred upon the Parties hereto and the limitations and restrictions upon such rights and benefits intended to be provided.
- 34.15. **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.
- 34.16. **CONFLICT OF INTEREST.** The Company covenants that its officers, employees and shareholders have no interest and shall not acquire any interest, direct or indirect that would conflict in any manner or degree with the performance of Services required to be performed under the Contract.
- 34.17. **NO BRIBERY.** The Company 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.
- 34.18. **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.
- 34.19. **TRAVEL UPGRADES.** The City has no obligation to reimburse the Company for any travel or other expenses incurred in connection with this Contract.
- 34.20. **TAXES.** Except as specifically stated elsewhere in this Contract, the Company shall pay all applicable federal, state and local taxes which may be chargeable against the performance of the Services. The Company consents to and authorizes the City to collect any and all delinquent taxes and related interest, fines, or penalties of the Company by reducing any payment, whether monthly, quarterly, semi-annually, annually, or otherwise, made by the City to the Company pursuant to this Contract for an amount equal to any and all taxes and related interest, fines, or penalties owed by the Company to the City. The Company hereby waives any requirements for notice under North Carolina law for each and every instance that the City collects delinquent taxes pursuant to this paragraph. This paragraph shall not be construed to prevent the Company from filing an appeal of the assessment of the delinquent tax if such appeal is within the time prescribed by law.
- 34.21. **COUNTERPARTS.** This Contract may be executed in any number of counterparts, all of which taken together shall constitute one single agreement between the parties.

[Signature Page Follows]

IN WITNESS WHEREOF, and in acknowledgement that the parties hereto have read and understood each and every provision hereof, the parties have caused this Contract to be executed as of the date first written above.

[INSERT COMPANY NAME]

BY: _____
(signature)

PRINT NAME: _____

TITLE: _____

DATE: _____

**CITY OF CHARLOTTE:
INSURANCE AND RISK MANAGEMENT**

BY: _____
(signature)

PRINT NAME: _____

TITLE: _____

DATE: _____

**CITY OF CHARLOTTE:
CITY MANAGER'S OFFICE**

BY: _____
(signature)

PRINT NAME: _____

TITLE: _____

DATE: _____

Sample City Contract Exhibit A
PRICE SCHEDULE

Sample City Contract Exhibit B

SCOPE OF IMPLEMENTATION SERVICES

(To be negotiated in final contract)

This Scope of Implementation Services is incorporated into and made a part of the Master Contract for System Integration (“CONTRACT”) between the City of Charlotte (the “City”) and **[INSERT COMPANY NAME]** (the “Company”). Unless otherwise defined herein, capitalized terms in this Scope of Implementation Services shall have the same meanings as are assigned to such terms in the main body of the CONTRACT. Each reference to the CONTRACT includes this Scope of Implementation Services and all other Exhibits and Appendices to the CONTRACT. The Services described in this Exhibit are collectively referred to as the Implementation Services.

Sample City Contract Exhibit C

PROJECT SCHEDULE

This Exhibit is incorporated into and made a part of the Master Contract for System Integration (“CONTRACT”) between the City of Charlotte (the “City”) and [INSERT COMPANY NAME] (the “Company”). Unless otherwise defined herein, capitalized terms in this Exhibit shall have the same meanings as are assigned to such terms in the main body of the Contract.

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

Sample City Contract Exhibit D

REQUIREMENTS

These Requirements are incorporated into and made a part of the Agreement between the City of Charlotte (the “City”) and **[INSERT COMPANY NAME]** (the “Company”). Unless otherwise defined herein, capitalized terms in this Exhibit shall have the same meanings as are assigned to such terms in the main body of the MASI.

Sample City Contract Exhibit E

MUTUAL CONFIDENTIALITY AGREEMENT

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

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

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

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

1. **CONFIDENTIAL INFORMATION.** "Confidential Information" means any information, in any medium (whether written, oral or electronic), obtained from the City or the Company or any of their respective suppliers, Contractors or licensors which falls within any of the following general categories:
 - 1.1. *Trade secrets.* For purposes of this Agreement, trade secrets consist of information of the City or the Company or any of their respective suppliers, Contractors or licensors: (a) that derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.
 - 1.2. *Information marked "Confidential" or "Proprietary."*
 - 1.3. *Information relating to criminal investigations conducted by the City, and records of criminal intelligence information compiled by the City.*
 - 1.4. *Any attorney / client privileged information disclosed by either party.*
 - 1.5. *Information contained in the City's personnel files, as defined by N.C. Gen. Stat. 160A-168. This consists of all information gathered by the City about employees, except for that information which is a matter of public record under North Carolina law.*
 - 1.6. *Personal identifying information about individuals that the City is prohibited from disclosing by law, including:*
 - (a) Social security or employer taxpayer identification numbers.
 - (b) Drivers license (drivers license numbers are not included if the number appears on law enforcement records), State identification card, or passport numbers.
 - (c) Checking account numbers.
 - (d) Savings account numbers.
 - (e) Credit card numbers.
 - (f) Debit card numbers.
 - (g) Personal Identification (PIN) Code as defined in G.S. 14-113.8(6).

- (h) Digital signatures.
 - (i) Any other numbers or information that can be used to access a person's financial resources.
 - (j) Biometric data.
 - (k) Fingerprints.
 - (l) Passwords.
- 1.7. *The security features of the City's electronic data processing systems, information technology systems, telecommunications networks, and electronic security systems, including passwords, security standards, security logs, procedures, processes, configurations, software and codes.*
 - 1.8. *Local tax records of the City that contain information about a taxpayer's income or receipts.*
 - 1.9. *Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.*
 - 1.10. *Building plans of City-owned buildings or structures, as well as specific details of public security plans.*
 - 1.11. *Billing information of customers compiled and maintained in connection with the City providing utility services.*
 - 1.12. *Plans to prevent or respond to terrorist activity, including vulnerability and risk assessments, potential targets, specific tactics or specific security or emergency procedures, the disclosure of which would jeopardize the safety of government personnel or the general public or the security of any governmental facility, structure or information storage system(s).*
 - 1.13. *Other information that is exempt from disclosure under the North Carolina public records laws.*

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

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

Agreement as well as information disclosed after execution.

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

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

- 2.1. Neither party shall copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information, except as authorized by written agreement of the parties or by the written consent of the other party.
- 2.2. Neither party shall, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information of the other to any third party, other than an agent, subcontractor or vendor of the City or the Company who: (a) has a need to know such Confidential Information for purposes contemplated by this Agreement, and (b) has executed a confidentiality agreement incorporating substantially the form of this Agreement.

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

Exhibit A – Sample City Contract

- 3.5. Was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, Recipient shall first give to the other party notice of such requirement or request;
- 3.6. Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the Recipient shall take reasonable steps to obtain an agreement or protective order providing that this Agreement will be applicable to all disclosures under the court order or subpoena.

4. **DATA.** The Company will treat as Confidential Information all data provided by the City or processed for the City or for citizens under this Agreement (including metadata). Such data shall remain the exclusive property of the City. The Company will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the City in any manner except that contemplated by this Contract.

5. **PUBLIC RECORDS.** Notwithstanding anything contained herein to the contrary, the parties recognize and acknowledge that the City is a subdivision of the State of North Carolina and is, therefore, subject to the North Carolina Public Records Act (the "Act") at N.C. Gen. Stat. 132-1 et seq. The parties further acknowledge that any Confidential Information that is a public record under North Carolina law may be released and disclosed by the City pursuant to the Act, and that any such release or disclosure shall not in any way constitute a breach of this Agreement, nor shall the City be liable to the Company for such release or disclosure.

In the event the City receives a request for disclosure of Confidential Information which the Company has specifically marked "Confidential" or "Proprietary" the City shall give the Company written notice of such request (the "Notice of Request for Disclosure"). In the event the Company has a reasonable basis for contending that the disclosure of such Confidential Information is not required by the Act, the Company shall within ten days after receipt of the Notice of Request for Disclosure notify the City in writing of its objection to disclosure and the basis therefor. The Company shall indemnify, defend and hold harmless the City from and against all losses, damages, liabilities, costs, obligations and expenses (including reasonable attorneys' fees) incurred by the City in connection with any refusal by the City to disclose Confidential Information after receiving an objection to disclosure from the Company. If the City receives no written objection from the Company within ten days after the Company's receipt of a Notice of Request for Disclosure, the City shall disclose the Confidential Information referenced in the Notice of Request for Disclosure.

Notwithstanding the foregoing, the parties agree that the computer database information that the City is required to disclose under N.C. Gen. Stat. §132-6.1 shall not be deemed Confidential Information, and that the City shall be entitled to disclose such information without notice to the Company.

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

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

For the Company:

For the City of Charlotte:
 Kay Elmore
 Chief Procurement Officer

Exhibit A – Sample City Contract

PHONE: _____
FAX: _____
E-MAIL: _____

City of Charlotte
600 East Fourth Street, 9th Floor
Charlotte, NC 28203
PHONE: 704.336.2524
FAX: 704.632.8252
E-MAIL: keltmore@ci.charlotte.nc.us

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

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

For the Company:

PHONE: _____
E-MAIL: _____

For the City of Charlotte:

Cindy White
Office of the City Attorney
600 East Fourth Street, 15th Floor
Charlotte, NC 28203-2841
PHONE: 704.336.5803
E-MAIL: jkay@ci.charlotte.nc.us

us

8. MISCELLANEOUS.

- 8.1. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties with respect to protection and disclosure of the Confidential Information. There are no other representations, understandings of agreements between the parties with respect to such subject matter. On the subject matter of this Agreement, it supersedes all prior agreements, negotiations, representations and proposals, written or oral.
- 8.2. AMENDMENT. No amendment or change to this Agreement shall be valid unless in writing and signed by both Parties to this Agreement.
- 8.3. GOVERNING LAW AND JURISDICTION. North Carolina law shall govern the interpretation and enforcement of this Agreement, and all other matters relating to this Agreement (all without regard North Carolina conflicts of laws principles). Any and all legal actions or proceedings relating to this Agreement shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By execution of this Agreement, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections which they may have with respect to venue in any of the above courts.
- 8.4. BINDING NATURE AND ASSIGNMENT. This Agreement shall bind the parties and their successors and permitted assigns. Neither party may assign this Agreement without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void.
- 8.5. SEVERABILITY. The invalidity of one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of the Agreement can be determined and effectuated. If any provision of this Agreement is held to be unenforceable, then both parties

Exhibit A – Sample City Contract

shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

- 8.6. **WAIVER.** No delay or omission by either party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this Agreement shall not constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party waiving the rights.
- 8.7. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one single agreement between the parties.
- 8.8. **TITLES OF SECTIONS.** The section headings inserted herein are for convenience only and are not intended to be used as aids to interpretation and are not binding on the parties.

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

IN WITNESS WHEREOF, and in acknowledgment that the parties hereto have read and understood each and every provision hereof, the parties have caused this Agreement to be executed on the date first written above.

[INSERT COMPANY NAME]

CITY OF CHARLOTTE:

BY: _____

BY: _____

PRINT NAME: _____

PRINT NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

Exhibit F

Cloud Technology Requirements

(to be negotiated pending final solution)

This Exhibit is attached and incorporated into the Digital information Kiosk Solution Contract (the “Contract”) between the City of Charlotte and [INSERT COMPANY’S NAME] (“Company”). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract.

1. CLOUD SERVICES. This Contract sets forth the terms and conditions under which Company agrees to provide the Cloud Services. Company will complete the following tasks as part of day to day management of these Cloud Services on all environments (dev, test, prod, etc.). For all Cloud Services the Company will be responsible for any third party support required.

1.1. OPERATIONS.

1.1.1. Company will be fully responsible for all infrastructure and Software implementation and maintenance. The City's responsibilities will be limited to end-user administration of the Cloud Services.

1.1.2. Company will provide a Cloud Services configuration that provides average City on site response time of 1 second to any end user inquiry or submission. Maximum response time to any end user inquiry or submission will be 5 seconds. Extended deviations from these performance targets will be treated as priority two or priority one incidents according to language established in the Service Level Agreement section.

1.1.3. Communications between Company and any other hosted vendor services will be routed through the City's network rather than directly connecting from vendor to vendor. The City is responsible for network integrations to all third party products.

1.2. BACKUP AND RECOVERY.

1.2.1. As a part of the Cloud Services, Company is responsible for maintaining a backup of Contract Data, for an orderly and timely recovery of such data in the event that the Cloud Services may be interrupted.

1.2.2. Company shall maintain a contemporaneous backup of Contract Data that can be recovered within 2 hours at any point in time.

1.2.3. Backup strategy shall ensure that the City will never have any more than 15 minutes of data loss in the event of a required recovery or failover to the disaster recovery installation.

1.2.4. Company will acquire City authorization before performing any recovery operation that will result in any Contract Data loss

1.2.5. Additionally, Company shall store a backup of Contract Data in a remote facility (physically separate from the production facility) no less than daily, maintaining the security of Contract Data, the security requirements of which are further described herein.

1.3. MAINTENANCE AND UPGRADES.

1.3.1. **SCOPE.** Company maintenance and upgrade responsibilities include all Company-delivered customizations, modifications, integrations, and configurations.

- 1.3.2. **SCHEDULED MAINTENANCE.** Company will conduct regular maintenance and upgrades only during scheduled times. The agreed upon scheduled time for maintenance and upgrades is Saturday nights from 11pm to Sunday mornings 11:00am EST (the “Scheduled Maintenance Window”). Company must receive authorization from the City before performing any scheduled maintenance.
- 1.3.3. **UNSCHEDULED MAINTENANCE.** In the event that Company determines that any unscheduled maintenance is necessary, Company must contact the City to get authorization before performing the unscheduled maintenance.
- 1.3.4. **RELEASE UPGRADES.** Unless the City directs otherwise in writing, Company will upgrade to new releases within 1 year of release. Company will closely coordinate these upgrades with the City, including scheduled time and expected duration. Maintenance activities will be completed within the Scheduled Maintenance Window defined above.

2. LICENSE GRANT.

- 2.1. The Company grants the City and its Affiliates a royalty free, non-exclusive, perpetual license to use and access the Software through the Cloud Services.
- 2.2. Pursuant to this license, the City and its Affiliates may:
 - 2.2.1. Use the Software and the Documentation for all purposes set forth or referenced in this Contract or the City’s RFP or the Company’s Proposal, including but not limited to: (a) the operation and use of the System, (b) internal training and testing, (c) development, (d) disaster recovery, backup, archive and restore testing and implementation purposes and (e) any other purpose related to the above;
 - 2.2.2. Allow direct and remote access to the Software and Documentation by an unlimited number of users and departments of: (a) the City; (b) any Affiliate, (c) any other entity to which the City provides services through use of the System; and (d) any other person or entity to which the City needs to allow access in order to provide services to any of the above through the System; and
 - 2.2.3. Integrate the Software and the Documentation using its own resources or through a third party.
- 2.3. **RESTRICTIONS ON USE.** The City shall not use, copy, disclose or distribute the Software except as permitted by this License.
- 2.4. **THIRD PARTY ACCESS.** The City may allow access to the Software and Documentation by third party Contractors to modify, improve, enhance, update, integrate and make derivative works of the Software and the Documentation,; provided that such third parties execute an agreement containing provisions substantially similar to those set forth in the Confidentiality Agreement
- 2.5. **DELIVERY, TESTING AND ACCEPTANCE.**
 - 2.5.1. **DELIVERY.** The Company shall cause the Software to be delivered, configured and integrated at the times set forth in Exhibit C, the Project Schedule and the Project Plan. Any breach by the Company under the Contract shall constitute a breach of this License.
 - 2.5.2. **ACCEPTANCE.** The Software shall not be deemed to have been accepted by the City until System Acceptance has occurred

- 2.6. Any configurations and/or integrations created by Company shall become part of the Software. Licensing of the Software shall remain subject to the terms of the Contract and any software license that may be included in the Contract at all times, provided that such license terms shall not restrict the City's ability to use the Cloud Services as provided in this Exhibit.
- 2.7. As these Cloud Services are hosted by the Company, licensing of the Software to the City includes licensing and maintenance for any and all necessary components required for the Company to provide the Cloud Services (hardware, Platform Software, etc.)
3. **LICENSE FROM THE CITY.** The City grants Company the non-exclusive, non-transferable, license to copy, store, record, transmit, maintain, display, view, print or otherwise use Contract Data solely to the extent necessary to provide the Cloud Services to the City and its Affiliates.
4. **ON PREMISE THIRD-PARTY SOFTWARE.** The City agrees to use the following software produced by third parties to access the Cloud Services; "browser" software that supports a data security protocol compatible with the protocol used by the Company. The Company is responsible for notifying the City of any upgrades, fixes or enhancements to any such third party software required to access services provided by the Company.
5. **MODIFICATION TO OR DISCONTINUATION OF SERVICES.** The City acknowledges that the Company may periodically, with written authorization from the City, need to modify, temporarily or permanently, the Cloud Services (or any part thereof). In the event that Company modifies the Cloud Services in a manner that removes or disables a feature or functionality on which the City materially relies, the Company, at the City's request, shall use commercially reasonable efforts to substantially restore such functionality to the City.

Without limiting any other rights the City has to terminate the Contract, in the event that Company is unable to substantially restore such functionality, the City shall have the right, at its option, to either (i) terminate the Cloud Services and receive a pro-rata refund of the fees paid for use of the Cloud Services which was paid for by the City, but not yet furnished by Company as of the date of such termination, or (ii) terminate the Cloud Services as provided in the preceding subpart (i) and terminate the Contract as provided in Section 11 of the Contract. The City also acknowledges that Company reserves the right to discontinue offering the Services. However, because moving to another solution may be a substantial effort for the City, the Company agrees to give the City as much written notice as possible, but not less than 180 days, before discontinuing the Services.

6. SERVICE LEVEL AGREEMENT.

- 6.1. **AVAILABILITY.** Outside of Scheduled Maintenance, the Company guarantees 99.9% or greater uptime. Availability will be calculated per month, as follows:
- $$\frac{(\text{Service Time} - \text{Non-excluded Downtime} - \text{Excluded Downtime})}{(\text{Service Time} - \text{Excluded Downtime})} * 100$$
- 6.1.1. "Service Time" is the total minutes for a given calendar month
- 6.1.2. "Excluded Downtime" is all unavailability caused by (1) scheduled or mutually agreed upon downtime; (2) downtime on non-production systems; (3) failure of City's Internet access or City-managed connectivity components; or (4) equipment or software managed by the City
- 6.1.3. "Non-excluded Downtime" is all downtime that is not Excluded Downtime
- 6.2. **OTHER SERVICE LEVEL DEFINITIONS.**
- 6.2.1. "Resolution" means the problem was completely repaired and that no further actions are necessary

- 6.2.2. “Workaround” means a temporary repair established to allow the City to continue use of the Cloud Services, until a permanent Resolution can be implemented
- 6.3. **SERVICE LEVEL REPORTS.** Service Provider will provide monthly Service Level Reports, which will include performance and availability statistics. Company will perform the performance and availability calculations, but will provide the source data to the City on request, in the event that the City would like to validate the results.
- 6.4. **SERVICE LEVELS REVIEWS.** Service Provider and Customer will meet as often as shall be reasonably requested by the City, but no more than monthly, to review the performance of the Company as it relates to the Service Levels further described below.
- 6.5. Company will monitor all aspects of Cloud Services availability and will notify the City of any outage within 30 minutes of discovery via telephone and email for any Priority 1 outage, and by email for any Priority 2 or below outage.
- 6.6. The City shall assign an initial priority level for each problem reported, either verbally or in writing, based on the conditions described below. The Company will work with the City to upgrade or downgrade the level of a particular problem to a different priority level, if after examining the problem there is reason to do so. Notwithstanding the foregoing, the Company shall not upgrade or reduce the level of priority of a particular error to a different priority without the City's consent, which consent may not be unreasonably withheld or delayed.
- 6.7. **REMEDIES FOR FAILURE TO MEET RESOLUTION AND WORKAROUND TIMES.** The City shall be entitled to invoke the following remedies for the Company’s failure to meet the Workaround times or Resolution times stated below. Such amounts shall be in the form of a refund for amounts paid, or, at the Company’s option, service credit for amounts payable during the year in question, provided that if there are no amounts payable during the year in question, the Company shall provide the City with a refund of amounts paid for such year. Workarounds and resolutions must be agreed to by the City to be considered valid. The requirements set forth in the following chart apply to Cloud Services in the production environment, and not to testing or development environments.

Exhibit A – Sample Contract

Priority One: Critical	<p>Priority One applies if the problem results in:</p> <ul style="list-style-type: none"> • Cloud Service down with no workaround or performance degraded by more than 0.1% from performance standards set forth in the Contract (measured end-to-end) for more than 15 minutes and multiple users are impacted, OR • Loss of data or data corruption, OR • Jeopardized safety or security.
Service Level	<ul style="list-style-type: none"> • Immediate email escalation to Technical Support, followed by warm handoff • Resolution Time: 8 Hours • Workaround Time: 1 Hour • Target Updates: Every 30 minutes until Resolution
Service Level Credit	<ul style="list-style-type: none"> • Six percent (6%) of the annual Cloud Services Fees paid or payable by the City for each instance where the Company fails to address a Priority One problem within the Resolution and Workaround times specified above. • For each twenty-four hour period that a Priority One Defect continues beyond the Resolution or Workaround times stated above, an additional six percent (6%) of the annual Cloud Services Fees paid or payable by the City.
Termination Trigger	<p>Without limiting any other rights the City has to terminate the Contract, the City may exercise the right to terminate this Contract immediately for default upon written notice to the Company in the event that a Priority One problem continues in duration without either a Resolution or Workaround for more than 24 hours after it is first reported by the City.</p>

Priority Two: High	<p>Priority Two applies if the problem results in:</p> <ul style="list-style-type: none"> • Production Service is severely impaired making use of the Service difficult, complicated, cumbersome, or slow and multiple users or records are impacted, OR • The Service is at risk because of a known vulnerability.
Service Level	<ul style="list-style-type: none"> • Immediate email escalation to Technical Support, followed by warm handoff • Resolution Time: 24 Hours • Workaround Time: 2 Hours • Target Updates: Every hour until Resolution
Service Level Credit	<ul style="list-style-type: none"> • Six percent (6%) of the annual Cloud Services Fees paid or payable by the City for each instance where the Company fails to address a Priority Two problem within the Resolution and Workaround times specified above. • For each forty-eight hour period that a Priority Two Defect continues beyond the Resolution or Workaround times stated above, an additional six percent (6%) of the annual Cloud Services Fees paid or payable by the City.
Termination Trigger	<p>Without limiting any other rights the City has to terminate the Contract, the City may exercise the right to terminate this Contract immediately for default upon written notice to the Company in the event that a Priority Two problem continues in duration without either a Resolution or Workaround for more</p>

Exhibit A – Sample Contract

	than 120 hours after it is first reported by the City.
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Priority Three: Medium	<p>Priority Three applies if the problem results in:</p> <ul style="list-style-type: none"> • Small maintenance issues, non-critical bug fix with workaround, no immediate impact, single user or record impact.
Service Level	<ul style="list-style-type: none"> • Notification upon awareness of the incident. Begin resolution within 4 hours. • Target Resolution Time: 96 Hours or Planned Release • Target Workaround Time: 8 Hours • Target Updates: Every 24 hours until Resolution

Priority Four: Low	<p>Any problem related to the Service which does not fall within Priority One, Two, or Three and results in:</p> <ul style="list-style-type: none"> • Enhancement Requests • Cosmetic Changes
Service Level	<ul style="list-style-type: none"> • Notification upon awareness of the incident. Begin resolution within 1 Business Day. • Target Resolution Time: 5 Business Days or Planned Release • Target Workaround Time: 5 Business Days • Target Updates: Every 10 Business Days until Resolution