

## Public Records Request #6121

The following materials have been gathered in response to public records request #6121. These materials include:

- Contract #201600319 – Agreement to Provide Background Investigation Services – Castle Branch, Inc.
- Contract #201600320 – Agreement to Provide Background Investigation Services – US ISS Agency, LLC
- Contract #2017001052 – Agreement to Provide Citywide Drug and Alcohol Testing Services – Wolfe, Inc.
- Invoice #22002568
- Pre-Employment Physical Pricing Worksheets

This information was provided as a response to a public records request on 9/20/21 and is current to that date. There is a possibility of more current information and/or documents related to the stated subject matter.

### Further Information

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For further information about this request or the Citywide Records Program, please contact:

Cheyenne Flotree  
Citywide Records Program Manager  
City of Charlotte/City Clerk's Office  
600 East 4<sup>th</sup> Street, 7<sup>th</sup> Floor  
Charlotte, NC 28202  
Cheyenne.Flotree@charlottenc.gov

Amelia Knight  
Public Records Specialist  
City of Charlotte/City Clerk's Office  
600 East 4<sup>th</sup> Street, 7<sup>th</sup> Floor  
Charlotte, NC 28202  
Amelia.Knight@charlottenc.gov

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

AGREEMENT TO PROVIDE  
BACKGROUND INVESTIGATION SERVICES

THIS PROFESSIONAL SERVICES CONTRACT (the "Contract") is made and entered into as of this 28th day of October 2015 (the "Effective Date"), by and between Castle Branch, Inc., a corporation doing business in North Carolina (the "Company"), and the City of Charlotte, a North Carolina municipal corporation (the "City").

RECITALS

WHEREAS, the City issued a Request For Proposals (RFP # 269-2015-078) for Background Investigation Services dated June 9, 2015. 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 Background Investigation Services as described in the Scope of Work attached as Exhibit B to this Contract ("Services"), and the Company desires to provide such Services; and

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

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

CONTRACT

1. EXHIBITS.

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

- 1.1. EXHIBIT A: PRICE SCHEDULE
- 1.2. EXHIBIT B: SCOPE OF WORK

2. DEFINITIONS.

- 2.1. *AFFILIATES* – Refers to all departments or units of the City and all other governmental units, towns, boards, committees or municipalities for which the City processes data or performs services that involve the Deliverables or Services.
- 2.2. *CATS* - Refers to the Charlotte Area Transit System, a Department of the City of Charlotte.
- 2.3. *CHARLOTTE WATER* - Refers to the Charlotte Water Department of the City of Charlotte.
- 2.4. *CITY* - Refers to the City of Charlotte, North Carolina.
- 2.5. *CITY PROJECT MANAGER* - Refers to a specified City employee representing the best interests of the City for this Project.
- 2.6. *COMPANY* - Refers to Castle Branch, Inc.
- 2.7. *COMPANY PROJECT MANAGER* - Refers to a specified Company employee representing the best interests of the Company for this Project.
- 2.8. *CONSUMER* – Refers to the individual for whom a Report or MVR has been requested.

- 2.9. *CONTRACT* - Refers to this written agreement executed by the City and Company for the Services as outlined herein.
- 2.10. *DELIVERABLES* - Refers to all tasks, reports, information, designs, plans and other items, which the Company is required to complete and deliver to the City in connection with this Contract.
- 2.11. *DEPARTMENT*. Refers to a department within the City of Charlotte.
- 2.12. *DOCUMENTATION* - Refers to all written, electronic, or recorded works, that describe the use, functions, features, or purpose of the Deliverables or Services or any component thereof, and which are published or provided to the City by the Company or its subcontractors, including without limitation all end user manuals, training manuals, guides, program listings, data models, flow charts, logic diagrams, and other materials related to or for use with the Deliverables or Services.
- 2.13. *EFFECTIVE DATE* - Refers to the date set out above.
- 2.14. *ENGINEERING AND PROPERTY MANAGEMENT/E&PM* - Refers to the Engineering and Property Management Department of the City of Charlotte.
- 2.15. *FCRA* – Refers to the Fair Credit Reporting Act.
- 2.16. *MOTOR VEHICLE REPORT/MVR* - Refers to a motor vehicle report background investigation performed on job candidates.
- 2.17. *REPORT/SEARCH* - Refers to the background investigation or other investigation performed by the Company at the request of the City.
- 2.18. *SERVICES* - Refers to the Background Investigation Services as requested in this Contract and described in Exhibit B to this Contract.
- 2.19. *SPECIFICATIONS AND REQUIREMENTS* - Refers to all definitions, descriptions, requirements, criteria, warranties and performance standards relating to the Deliverables and Services which are set forth or referenced in: (i) this Contract; (ii) the Documentation; and (iii) any functional and/or technical specifications which are published or provided by the Company or its licensors or suppliers from time to time with respect to all or any part of the Deliverables or Services.
- 2.20. *WORK PRODUCT* - Refers to 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. DESCRIPTION OF SERVICES.**

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

**4. COMPENSATION.**

- 4.1. **TOTAL FEES AND CHARGES.**  
The City agrees to pay the Company on a unit cost basis. The City agrees to pay the Company for the Services at the rates set forth in Exhibit A, which shall remain firm for the duration of the Contract.
- 4.2. **NO EXPENSES CHARGEABLE.**  
The Company shall not be entitled to charge the City for any travel, mileage, meals, materials or other costs or expenses associated with this Contract.
- 4.3. **EMPLOYMENT TAXES AND EMPLOYEE BENEFITS.**  
The Company represents and warrants that the employees provided by the Company to perform the Services are actual employees of the Company, and that the Company shall be responsible for

providing all salary and other applicable benefits to each 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 employee. The Company agrees that the employees of the Company are not employees of the City.

4.4. **INVOICES.**

4.4.1. Each invoice sent by the Company shall detail all Services performed and delivered which are necessary to entitle the Company to the requested payment under the terms of this Contract. All invoices must include the City's Department-specific purchase order numbers for purchases made under the Contract. Purchase order numbers will be provided by the City Departments requesting Services.

The Company shall email all invoices to [cocap@charlottenc.gov](mailto:cocap@charlottenc.gov) with Accounts Payable (or AP) in the subject line.

Invoices that are addressed directly to City departments and not to Accounts Payable may not be handled as quickly as invoices that are addressed correctly.

4.5. **DUE DATE OF INVOICES.**

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

4.6. **PRE-CONTRACT COSTS.**

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

4.7. **AUDIT.**

During the term of this Contract and for a period of one (1) year after termination of this Contract, the City shall have the right, subject to the provisions of the Section of this Contract entitled "Confidential Information," 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.

**5. RECORDS.**

The Company shall be responsible for keeping a record that accurately states the type of Service performed. For the sole purpose of verifying that the Services invoiced actually were performed, the City shall have the right to audit the Company's invoices, expense reports and other documents necessary to verify that the invoiced Services actually were performed, and shall not be required to pay for Services which did not occur, or which occurred in breach of the Contract. The Company shall make such documents available for inspection and copying by the City in Charlotte, North Carolina between the hours of 9:00 a.m. to 5:00 p.m. Monday through Friday, whenever requested by the City.

**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 A, including all completion dates, response times and resolution times (the "Completion Dates"). Except as specifically stated in this Contract, there shall be no extensions of the Completion Dates. All references to days in this Contract (including the Exhibits) shall refer to business days rather than calendar 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. COMPANY PROJECT MANAGER.**

The Company shall be allowed to change staffing for the Company Project Manager position on one (1) business day's notice to the City. The duties of the Company Project Manager include, but are not limited to:

- 8.1. Coordination of Project schedules and the Company's resource assignment based upon the City's requirements and schedule constraints;
- 8.2. Management of the overall Project by monitoring and reporting on the status of the Project and actual versus projected progress, and by consulting with the City's Project Manager when deviations occur and by documenting all such deviations in accordance with agreed upon change control procedures;
- 8.3. Provision of consultation and advice to the City on matters related to Project implementation strategies, key decisions and approaches, and Project operational concerns/issues and acting as a conduit to the Company's specialist resources that may be needed to supplement the Company's normal implementation staff;
- 8.4. Acting as the Company's point of contact for all aspects of contract administration, including invoicing for Services, and status reporting;
- 8.5. Facilitation of review meetings and conferences between the City and the Company's executives when scheduled or requested by the City;
- 8.6. Communication among and between the City and the Company's staff;
- 8.7. Promptly responding to the City Project Manager when consulted in writing or by E-mail with respect to Project deviations and necessary documentation;
- 8.8. Identifying and providing the City with timely written notice of all issues that may threaten the Company's Services in the manner contemplated by the Contract (with "timely" meaning immediately after the Company becomes aware of them);
- 8.9. Ensuring that adequate quality assurance procedures are in place through the Project; and
- 8.10. Meeting with other service providers working on City projects that relate to this effort as necessary to resolve problems and coordinate the Services.

**9. CITY PROJECT MANAGER.**

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

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

The Company shall identify and request in writing from the City in a timely manner: (i) all information reasonably required by the Company to perform each task comprising the Services, (ii) the City's personnel whose presence or assistance reasonably may be required by the Company to perform each task comprising the Services, and (iii) any other equipment, facility or resource reasonably required by the Company to

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

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

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

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

**12. BACKGROUND CHECKS.**

The Company shall perform a background check on all prospective employees of the Company (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.

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.

**13. ACCEPTANCE OF TASKS AND DELIVERABLES.**

If the City Project Manager is not satisfied that a Report or MVR has not been delivered in a satisfactory manner, a notice of rejection shall be submitted to the Company by the City employee that requested a Report or MVR that specifies the nature and scope of the deficiencies that the City wants corrected. The Company shall act diligently and promptly to correct all deficiencies identified by the City employee. In the event the Company fails to correct all deficiencies identified by the City employee.

**14. NON-EXCLUSIVITY.**

The Company acknowledges that it is one of several providers of 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. GENERAL WARRANTIES.**

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

**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, other than the City, 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 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).

Except as specifically provided in this Section 16, the Company provides no representations or warranties regarding the Services, Deliverable, Report or any other matter under this Contract, and expressly disclaims all representations and warranties, expressed, legal, or implied, including, but not limited to, representations and warranties of merchantability, quality, performance, fitness or a particular purpose or accuracy.

**17. OTHER OBLIGATIONS OF THE COMPANY.**

17.1. WORK ON CITY'S PREMISES.

The Company and all 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 DAMAGE EQUIPMENT OR FACILITIES.

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

17.4. REGENERATION OF LOST OR DAMAGED DATA.

With respect to any data that the Company or any 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.

**18. REMEDIES.**

18.1. 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.

18.2. 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.

18.3. 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.

**19. TERM AND TERMINATION OF CONTRACT.**

19.1. TERM.

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

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, Company shall submit a statement to the City showing in detail the Services performed under this Contract through the date of termination.

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.

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, and the City shall continue paying the fees set out on Exhibit A for such Services, 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 the Contract upon the occurrence of one or more of the following events (which shall each constitute separate grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):

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

19.5. NO SUSPENSION.

In the event that the City disputes in good faith an allegation of default by the Company (except an allegation of a failure to timely pay any invoice from the Company or an allegation that the City has violated or is violating any applicable law including, without limitation, the FCRA), notwithstanding anything to the contrary in the Contract, the Company agrees that it will not terminate the Contract or suspend or limit the Services or any warranties or repossess, disable or render unusable any software supplied by the Company, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.

19.6. CANCELLATION OF ORDERS AND SUBCONTRACTS.

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

19.7. AUTHORITY TO TERMINATE.

The following persons are authorized to terminate this Contract on behalf of the City: (a) the City Manager, any Assistant City Manager, or any designee of the City Manager; or (b) the Department Director of the City Department responsible for administering this Contract.

19.8. **OBLIGATIONS UPON EXPIRATION OR TERMINATION.**

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

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

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

19.10. **OTHER REMEDIES.**

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

**20. TRANSITION SERVICES UPON TERMINATION.**

Upon termination or expiration of this Contract, the Company shall reasonably cooperate with the City to assist with the orderly transfer of the Services provided by the Company to the City. The City shall be responsible for any costs incurred or to be incurred by the Company with respect to any transition assistance requested by the City.

**21. CHANGES.**

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

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

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

**22. CITY OWNERSHIP OF WORK PRODUCT.**

22.1. The parties agree that the City shall have exclusive ownership of all reports, documents, and other work product developed for or provided to the City in connection with this Contract.

22.2. The Company will treat as Confidential Information pursuant to Section 27 all data in connection with the Contract. City data processed by the Company shall remain the exclusive property of the

City. The Company will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the City in any manner except that contemplated by the Contract.

**23. INTENTIONALLY OMITTED.**

**24. RELATIONSHIP OF THE PARTIES.**

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

**25. 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 (unless the employee or subcontractor actually is employed by 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).

This Section 25 shall remain in force despite termination of this Contract (whether by expiration of the term or otherwise).

**26. SUBCONTRACTING.**

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

**27. CONFIDENTIAL INFORMATION.**

**27.1. CONFIDENTIAL INFORMATION.**

Confidential Information includes any information, not generally known in the relevant trade or industry, obtained from the City, including any of the following information:

**27.1.1. Trade secrets.** For purposes of this Contract, trade secrets consist of *information* of the City and obtained from the City: (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.

- 27.1.2. *Information of the City and obtained from the City marked "Confidential" or "Proprietary."*
- 27.1.3. *Information relating to criminal investigations conducted by the City, and records of criminal intelligence information compiled by the City.*
- 27.1.4. *Information contained in the City's personnel files, as defined by N.C. Gen. Stat. 160A-168. This consists of all information gathered and/or maintained by the City about employees, except for that information which is a matter of public record under North Carolina law.*
- 27.1.5. *Citizen or employee social security numbers collected by the City.*
- 27.1.6. *Computer security information of the City, including all security features of electronic data processing, or information technology systems, telecommunications networks and electronic security systems. This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software and codes.*
- 27.1.7. *Local tax records of the City that contains information about a taxpayer's income or receipts.*
- 27.1.8. *Any attorney / City privileged information disclosed by either party.*
- 27.1.9. *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.*
- 27.1.10. *The name or address of individual homeowners who, based on their income, have received a rehabilitation grant to repair their home.*
- 27.1.11. *Building plans of city-owned buildings or structures, as well as any detailed security plans.*
- 27.1.12. *Billing information of customers compiled and maintained in connection with the City providing utility services.*
- 27.1.13. *Other information that is exempt from disclosure under the North Carolina public records laws.*

Categories 27.1.3 through 27.1.13 above constitute "Highly Restricted Information," as well as Confidential Information. The Company acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Contract, and agrees that all provisions in this Contract applicable to Confidential Information shall apply to Highly Restricted Information.

27.2. RESTRICTIONS.

Except as otherwise provided in this Contract, the Company shall keep the Confidential Information in the strictest confidence, in the manner set forth below:

- 27.2.1. It shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information.
- 27.2.2. It shall not, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information of the other to any third party or to any individual employed by the Company, other than an employee, agent, representative, subcontractor or vendor of the City or Company who: (i) has a need to know such Confidential Information, and (ii) who is bound by a contractual or ethical duty of confidentiality requiring such person or entity to retain the information in confidence.
- 27.2.3. It shall not use any Confidential Information of the City for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written agreements between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.

- 27.2.4. It shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information of the other.
- 27.2.5. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, the Company shall notify the City so that the City may, if necessary, seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.
- 27.2.6. All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to the City or destroyed upon satisfaction of the purpose of the disclosure of such information.

27.3. EXCEPTIONS.

Notwithstanding anything contained in this Contract to the contrary, the City agrees that the Company may retain, store, disclose, and use copies of all Confidential Information, Deliverables, Reports, Consumer reports, Consumer report information, and Work Product for accounting, legal, and regulatory purposes including, without limitation, for purposes of responding to disputes initiated by a Consumer and providing copies of information regarding a Consumer as may be requested by the Consumer or the Consumer's agent or representative; for purposes of complying with the FCRA and other federal, state, and local laws, rules, and regulations; for purposes of litigation, investigations, or proceedings; and for purposes of responding to requests for information or investigations of regulatory authorities including, without limitation, the Federal Trade Commission or the Consumer Financial Protection Bureau. Further, and notwithstanding anything contained in this Contract to the contrary, the parties agree that the Company shall have no obligation with respect to any Confidential Information which the Company can establish:

- 27.3.1. Was already known to the Company prior to being disclosed by the disclosing party;
- 27.3.2. Was or becomes publicly known through no wrongful act of the Company;
- 27.3.3. Was rightfully obtained by the Company from a third party without similar restriction and without breach hereof;
- 27.3.4. Was used or disclosed by the Company with the prior written authorization of the City or the Consumer with respect to whom the information relates;
- 27.3.5. Was disclosed pursuant to the requirement or request of a governmental agency, provided that, in such instance, the Company shall first give to the City notice of such requirement or request;
- 27.3.6. Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the City has first been advised of the order or subpoena, and provided further that the Company takes reasonable efforts to advise the court or agency of the confidential nature of the Confidential Information.
- 27.3.7. Notwithstanding anything contained in this Contract to the contrary, the Company may disclose, divulge, reveal, report, or transfer any information regarding an individual Consumer to that Consumer or the Consumer's agent or representative, even if the information would be considered Confidential Information under this Contract, including, but not limited to, any Consumer Report, Consumer Report information, and a copy of the entire file maintained by the Company regarding the Consumer.

27.4. UNINTENTIONAL DISCLOSURE.

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

Information to any person or entity or use such Confidential Information for any purpose whatsoever.

27.5. REMEDIES.

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

**28. INSURANCE.**

28.1. TYPES OF INSURANCE.

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

- 28.1.1. 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.
- 28.1.2. Commercial General Liability - Bodily injury and property damage liability as shall protect the Company and any subcontractor performing Services under this Contract, from claims of bodily injury or property damage which arise from performance of this Contract, whether such operations are performed by the Company, any subcontractor, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate, or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, operations, personal injury liability and contractual liability, assumed under the indemnity provision of this Contract.
- 28.1.3. 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.
- 28.1.4. Professional Errors & Omissions- insurance with a limit of not less than \$1,000,000 per claim occurrence as shall protect the Company and the Company's employees for negligent acts, errors or omissions in performing the 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.

28.2. OTHER INSURANCE REQUIREMENTS.

- 28.2.1. The City shall be exempt from, and in no way liable for any sums of money, which may represent a deductible in any Company insurance policy. The payment of such deductible shall be the sole responsibility of the Company and/or subcontractor providing such insurance.
- 28.2.2. City of Charlotte shall be named as an additional insured for operations or services rendered under the automobile and general liability coverage. The Company's insurance shall be primary of any self-funding and/or insurance otherwise carried by the City for all loss or damages arising from the Company's operations under this agreement.
- 28.2.3. Certificates of such insurance will be furnished to the City upon request 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.

- 28.2.4. 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.
- 28.2.5. 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.

**29. COMMERCIAL NON-DISCRIMINATION.**

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

As a condition of entering into this Contract, the Company agrees to: (a) promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation, selection, treatment and payment of subcontractors (except for the amounts of payments) in connection with this Contract; and (b) if requested, provide to the City within sixty (60) days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Company has used on City contracts in the past five (5) years. 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 understands and agrees that violation of this Commercial Non-Discrimination provision shall be considered a material breach of this Contract and may result in contract termination or disqualification of the Company from participating in City contracts and other sanctions.

**30. DRUG-FREE WORKPLACE.**

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

- 30.1. Notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the Company's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- 30.2. Notifying each employee that as a condition of employment, the employee will (i) abide by the terms of the prohibition outlined in (a) Section 30.1, and (ii) notify the Company of any criminal drug statute conviction for a violation occurring in the workplace not later than five (5) days after such conviction; and
- 30.3. Making a good faith effort to continue to maintain a drug-free workplace for employees.

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

**31. NOTICES AND PRINCIPAL CONTACTS.**

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

For the Company:

Lauren Henderson, CFO  
Castle Branch, Inc.  
1844 Sir Tyler Drive  
Wilmington, NC 28405

PHONE: 910-815-3880, ext. 7139  
E-MAIL: [laurenh@castlebranch.com](mailto:laurenh@castlebranch.com)

With Copy To (Company):

Richard J. Crow, General Counsel  
Castle Branch, Inc.  
1844 Sir Tyler Drive  
Wilmington, NC 28405

PHONE: 910-815-3880, ext. 7809  
EMAIL: [rjcrow@castlebranch.com](mailto:rjcrow@castlebranch.com)

For the City:

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

PHONE: 704-336-2524  
[kelmore@charlottenc.gov](mailto:kelmore@charlottenc.gov)

With Copy To (City):

Cindy White  
City of Charlotte  
City Attorney's Office  
600 East Fourth Street  
CMGC 15<sup>th</sup> Floor  
Charlotte, NC 28202  
PHONE: (704)336-3012  
[cwhite@charlottenc.gov](mailto:cwhite@charlottenc.gov)

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

**32. MISCELLANEOUS.**

32.1. 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.

32.2. AMENDMENT.

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

32.3. 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.

32.4. 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.

32.5. 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.

32.6. FORCE MAJEURE.

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

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

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

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

32.7. SEVERABILITY.

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

32.8. NO PUBLICITY.

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

32.9. APPROVALS.

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

32.10. WAIVER.

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

32.11. SURVIVAL OF PROVISIONS.

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

Section 4.3 "Employment Taxes and Employee Benefits"  
Section 16 "Representations and Warranties of Company"  
Section 19 "Term and Termination of Contract"  
Section 22 "City Ownership of Work Product"  
Section 25 "Indemnification"  
Section 27 "Confidential Information"  
Section 28 "Insurance"  
Section 31 "Notices and Principal Contacts"  
Section 32 "Miscellaneous"

32.12. CHANGE IN CONTROL.

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

32.13. DRAFTER'S PROTECTION.

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

32.14. FAMILIARITY AND COMPLIANCE WITH LAWS AND ORDINANCES.

The Company agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Services. The Company further agrees that it will at all times during the term of this Contract be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to, workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all OSHA regulations applicable to the Services.

32.15. CONFLICT OF INTEREST.

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

32.16. NO BRIBERY.

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

32.17. HARASSMENT.

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

32.18. TRAVEL UPGRADES.

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

32.19. TAXES.

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

32.20. COUNTERPARTS.

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

**33. FCRA AGREEMENTS AND CERTIFICATIONS.**

33.1. CONSUMER REPORTS.

The City acknowledges that the Services, Deliverables, information and Reports to be procured from the Company pursuant to this Contract constitute "Consumer reports" and may constitute "investigative Consumer reports" as such terms are used and defined in the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., and the regulations promulgated thereunder, as amended from time-to-time (collectively, the "FCRA"). The City acknowledges and agrees that it has received copies of the Notice to Users of Consumer Reports: Obligations of Users Under the FCRA and A Summary of Your Rights Under the Fair Credit Reporting Act. The City shall not request or obtain, or permit its employees, agents, contractors, or representatives to request or obtain, Consumer reports or investigative Consumer reports from the Company for resale to, transfer to, or use of any other individual, entity, association, or organization. Notwithstanding the foregoing, contractors of the City shall not be prevented from accessing Reports for purposes stated within this Contract. All Services, Deliverables, information, Consumer reports, investigative Consumer reports, and Reports provided by the Company are current only as of the date provided on the Report. The Company makes no guarantee, representation, or warranty regarding the accuracy of information obtained from third-party record repositories, agencies, entities, associations, or organizations, and the City agrees that the Company is not responsible or liable to the City or any other individual, entity, or organization for the record keeping practices of third parties, or errors or omissions in the records or information of third parties, including, but not limited to, the department of motor vehicles; county, state and federal courts; state repositories; state and regional prisons; local police stations; federal bankruptcy courts; federal civil courts; state medical boards; drug testing facilities or specimen collection sites; professional licensing organizations; and other local, state, and federal organizations and agencies. The limitation from the previous sentence does not limit the Company's liability for breach of Contract, negligence or intentional misconduct in the performance of this Contract.

33.2. CERTIFICATIONS.

The City represents, warrants, and certifies to the Company that it is obtaining and using Consumer reports and investigative Consumer reports from the Company pursuant to this Contract for

employment purposes (as such phrase is defined in the FCRA) only, and for no other purpose. In the event that the City desires to procure a Consumer report or investigative Consumer report for a purpose other than employment purposes, it must contact the Company separately to procure such Consumer report or investigative Consumer report and must execute a new service agreement. With respect to each Consumer report or investigative Consumer report requested or obtained by the City for employment purposes, the City certifies and agrees, and shall certify and agree as requested by the Company, as follows: (a) no information from any Consumer report or investigative Consumer report will be used in violation of any applicable federal or state equal employment opportunity law or regulation; (b) the City made a clear and conspicuous disclosure in writing to the individual with respect to whom a Consumer report or investigative Consumer report is being procured, before the City procures or causes to be procured the Consumer report or investigative Consumer report, in a document that consists solely of the disclosure, (i) that a Consumer report and investigative Consumer report (including information as to the Consumer's character, general reputation, personal characteristics and mode of living, whichever are applicable), may be made and obtained by the City for employment purposes, and (ii) that the Consumer has a right to, within a reasonable period of time after the receipt by the Consumer of the disclosure, receive from the City a complete and accurate disclosure of the nature and scope of the investigation requested; (c) the City shall provided to the Consumer a copy of A Summary of Your Rights Under the Fair Credit Reporting Act; and (d) the Consumer has authorized in writing the procurement of the Consumer report and investigative Consumer report by the City. The City shall comply with all applicable laws, rules, and regulations regarding the procurement, request, use, storage, disclosure, and destruction of personally identifiable information, publically available information, Consumer reports, and investigative Consumer reports, specifically including all applicable requirements of the FCRA including, without limitation, (i) providing preliminary adverse action notice to the applicant, along with a copy of the applicant's Consumer report and a copy of the FTC prescribed notice entitled A Summary of Your Rights Under the Fair Credit Reporting Act; (ii) allowing applicants a reasonable period of time to dispute information provided in the Consumer report before making any final adverse employment decision; (iii) provide the applicant with the Company's name and contact information; and (iv) provide a final adverse action notice to the applicant if a final adverse employment decision is made.

33.3. CONFIDENTIAL TREATMENT.

The City agrees that (a) only authorized employees of the City whose employment duties involve the procurement or use of Consumer reports and investigative Consumer reports will order Consumer reports or investigative Consumer reports from the Company for use by the City; and (b) all Consumer reports or investigative Consumer reports obtained by the City will be treated as Confidential Information.

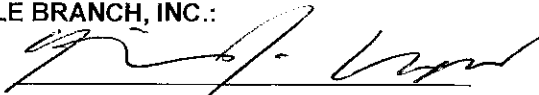
33.4. AUDIT RIGHTS.

The City agrees that the Company may, but shall not be obligated to, request copies of any and all available written disclosures provided by the City to any Consumer(s) and written authorizations executed by any Consumer(s) with respect to the procurement by the City from the Company of a Consumer report or investigative Consumer report regarding such Consumer(s). As soon as reasonably practicable following such request the City shall provide to the Company copies of all available requested disclosures and authorizations. This requirement shall not require the City to produce any documentation that it is prohibited from disclosing pursuant to any law or City policy.

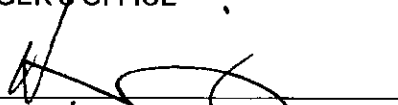
*[Signature Page Follows]*

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


CASTLE BRANCH, INC.:

BY:   
PRINT NAME: Richard J. Crow  
TITLE: General Counsel  
DATE: 10-20-15

CITY OF CHARLOTTE:  
CITY MANAGER'S OFFICE

BY:   
PRINT NAME: HYONG  
TITLE: ACM  
DATE: 10.23.15

CITY OF CHARLOTTE:  
RISK MANAGEMENT DIVISION

BY:   
PRINT NAME: Christee Gibson  
TITLE: Ins Mgr  
DATE: 10/23/15

**EXHIBIT A**

**PRICE SCHEDULE**

This Price Schedule is an Exhibit to and is incorporated into the Services Contract between the City of Charlotte and Castle Branch, Inc. (the "Contract"). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract.

**1. Base Pricing.**

The Company shall charge the City according to the following unit pricing structure:

<b>Report or Search Type</b>	<b>Unit Cost</b>	<b>Pricing Notes and Additional Fees</b>
Social Security Verification	\$0.60	
National Federal Criminal Record Search	\$2.80	
Multi-State Criminal Record Search	\$6.40	
North Carolina Criminal Record Search	\$3.90	
State Sex Offender Registry	\$3.00	
Multi-State Sex Offender Registry	\$3.00	
Credit History Search	\$4.00	\$75.00 one-time set up fee for the City
NC Motor Vehicle Report	\$9.70	
Motor Vehicle Record for all other states	\$1.70	Plus MVR state fees listed below
Employment Verification	\$4.80	Additional fees may apply from the organization being verified
Education Verification	\$4.80	Additional fees may apply from the institution being verified
Professional License Verification	\$4.80	Additional fees may apply from the organization being verified
Civil Court Search	\$8.00	
Personal References Verification	\$4.80	Additional fees may apply from the organization being verified
Internet Social Network Search	\$27.50	
Charlotte Water Special Package per Section 3.3.1	\$49.70	Plus MVR state fees and statewide criminal search fees listed below; additional fees may apply from the organization or institution being verified
Management & Financial Services Special Package per Section 3.3.2	\$13.30	Plus MVR state fees and statewide criminal search fees listed below
Engineering and Property Management Special Package per Section 3.3.3	\$15.00	Plus MVR state fees and statewide criminal search fees listed below
CATS Special Package per Section 3.3.4	\$21.00	Plus MVR state fees listed below; additional fees may apply from the organization or institution being verified

**2. MVR State Fees.**

The Company shall charge the City the following rates per state in addition to the base cost of MVRs of one dollar and seventy cents (\$1.70):

State	MVR Fee	State	MVR Fee
Alabama	\$7.75	Alaska	\$5.00
Arizona	\$8.00	Arkansas	\$8.50
California	\$2.00	Colorado	\$2.00
Connecticut	\$15.00	Delaware	\$15.00
Florida	\$10.02	Georgia	\$8.00
Hawaii	\$22.64	Idaho	\$9.00
Illinois	\$12.00	Indiana	\$7.50
Iowa	\$8.50	Kansas	\$6.60
Kentucky	\$5.00	Louisiana	\$6.00
Maine	\$12.00	Maryland	\$9.00
Massachusetts	\$8.00	Michigan	\$7.00
Minnesota	\$5.00	Mississippi	\$14.00
Missouri	\$2.50	Montana	\$7.25
Nebraska	\$3.00	Nevada	\$8.00
New Hampshire	\$12.00	New Jersey	\$12.00
New Mexico	\$6.50	New York	\$7.00
North Carolina	\$8.00	North Dakota	\$3.00
Ohio	\$5.00	Oklahoma	\$13.25
Oregon	\$2.00	Pennsylvania	\$13.00
Rhode Island	\$20.00	South Carolina	\$7.25
South Dakota	\$5.00	Tennessee	\$7.00
Texas	\$6.50	Vermont	\$15.00
Utah	\$9.00	Washington	\$10.00
Virginia	\$7.00	Wisconsin	\$5.00
West Virginia	\$9.00	Washington, DC	\$13.00
Wyoming	\$5.00	Puerto Rico	\$10.00

**3. Statewide Criminal Search Fees.**

The Company shall charge the City the following rates per state in addition to the base costs listed above:

State	MVR Fee	State	MVR Fee
Alabama	\$1.25	Alaska	\$17.00
Arizona	\$13.00	Arkansas	\$5.00
California	N/A	Colorado	\$5.30
Connecticut	\$5.00	Delaware	\$9.00
Florida	\$24.00	Georgia	\$5.00
Hawaii	\$13.00	Idaho	\$10.00
Illinois	\$10.00	Indiana	\$15.00
Iowa	\$15.00	Kansas	\$17.50
Kentucky	\$15.00	Louisiana	\$5.5
Maine	\$31.00	Maryland	N/A
Massachusetts	\$15.00	Michigan	\$10.00
Minnesota	N/A	Mississippi	N/A
Missouri	\$13.50	Montana	\$15.00
Nebraska	N/A	Nevada	\$5.50
New Hampshire	\$25.00	New Jersey	\$9.00
New Mexico	N/A	New York	\$65.00
North Carolina	N/A	North Dakota	\$25.00
Ohio	\$12.50	Oklahoma	\$15.00
Oregon	\$2.25	Pennsylvania	\$10.00

Rhode Island	\$7.00	South Carolina	\$25.00
South Dakota	\$15.00	Tennessee	\$12.00
Texas	\$3.15	Utah	N/A
Vermont	\$30.00	Virginia	\$6.00
Washington	\$12.00	West Virginia	N/A
Wisconsin	N/A	Wyoming	N/A
Washington, DC	N/A		



## EXHIBIT B

### SCOPE OF WORK

This Scope of Work is an Exhibit to and is incorporated into the Services Contract between the City of Charlotte and Castle Branch, Inc. (the "Contract"). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract.

#### 1. General Scope.

The City requires background investigations and comprehensive Reports on all final job candidates pursuing City employment, as well employees seeking transfer or promotion. All City Departments may utilize the Services. While the City is flexible with respect to certain elements of its proposed relationship with the Background Investigation Services Provider, the City has certain preferences for that relationship and has developed the following proposed model for that relationship.

#### 2. Company Responsibilities.

The Company shall provide background investigation Reports as well as other additional Search types as outlined below. All requests from the City for any Report shall be provided within forty-eight (48) business hours from submission of the request. If the Company is not able to comply with the forty-eight (48) hour turnaround requirement for reasons out of their control, they must notify the City immediately and provide an estimated delivery time. The Company shall establish policies and procedures for handling and processing the City requests, while submitting management reports and providing training on procedures. The Company shall provide quarterly utilization reports to the City Project Manager to reflect a breakdown of utilization and cost by Department.

##### 2.1. Basic Background Investigation Reports.

Background investigation Reports shall include, but may not be limited to, the following:

- Social security verification;
- National federal criminal record search;
- National multi-state criminal record search;
- North Carolina criminal record search; and
- Search of the criminal records of any known state of residence to include those states reflected by the social security verification and on the application. Any driving offenses that qualify as criminal charges must also be included in this type of Report.

##### 2.2. Motor Vehicle Report (MVR).

The Company shall provide Motor Vehicle Reports (MVR) which shall be for a minimum of seven (7) years of driving history. MVRs shall include all states the candidate has lived in for the past seven (7) years. Any driving offenses that are criminal must be reported in the MVR as well as the Basic Report.

##### 2.3. Additional Searches.

Additional Searches as requested by the Departments may include:

- Sex offender registry search;
- Credit history;
- Employment verification;
- Education verification;
  - Note: CATS requires high school or equivalent verification.
- Professional license verification;
- Civil Court search;
- Personal references verification; and/or
- Internet social media search.

2.4. Additional and Unforeseen Reports.

The City reserves the right to request additional services not detailed in the statement of work provided, however, the City shall be required as a condition to receiving any such additional services to execute and deliver to the Company such documents, agreements, and certifications as may reasonably be required by the Company to perform such services. The City agrees to compensate the Company at an agreed upon fee for any additional services requested by the City.

2.5. Online Portal.

The Company shall host and maintain an online portal which allows City users to perform the following:

- Request new Reports and MVRs;
- View the status of pending requested Reports and MVRs;
- Add users with Departments and divisions with varying access to view, edit and print Reports and MVRs; and
- Store Reports and MVRs for the term of the Contract.

**3. Special Report Packages.**

The City has certain routine and commonly used sets of Reports, known as Special Packages. Below are Special Packages that are required by various Departments:

3.1. Charlotte Water Special Package.

Charlotte Water requires a Special Package that shall include:

- Social security verification
- National federal criminal record search;
- National multi-state criminal record search;
- North Carolina criminal record search;
- South Carolina criminal record search;
- Search of the criminal records of any known state of residence to include those states reflected by the social security verification and on the application. Any driving offenses that qualify as criminal charges must also be included in this type of Report;
- Education verification;
- MVR; and
- Sex offender registry search.

3.2. Management & Financial Services Special Package.

The Management & Financial Services Department requires a Special Package that shall include:

- Social security verification;
- Sex offender registry search;
- National federal criminal record search;
- National multi-state criminal record search;
- North Carolina criminal record search; and
- Search of the criminal records of any known state of residence to include those states reflected by the social security verification and on the application. Any driving offenses that qualify as criminal charges must also be included in this type of Report.

3.3. Engineering and Property Management Special Package:

The E&PM Department requires a Special Package that shall include:

- National federal criminal record search;
- National multi-state criminal record search;
- North Carolina criminal record search;
- MVR;

- Sex offender registry search; and
- Search of the criminal records of any known state of residence to include those states reflected by the social security verification and on the application. Any driving offenses that qualify as criminal charges must also be included in this type of Report.

3.4. CATS Special Package:

CATS requires a Special Package that shall include:

- Education verification;
- Sex offender registry search;
- National federal criminal record search;
- MVR;
- North Carolina criminal record search; and
- Employment verification.

**4. Reporting and Invoicing.**

The Company shall establish policies and procedures for handling and processing the Services for multiple Departments while submitting management reports, and providing training on procedures. Management reports shall include a quarterly breakdown of utilization and cost by Department.

The Company shall establish account(s) per each Department's billing requirements. Said accounting procedures shall be consistent with the accounting practices used by the City.

**STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG**

**AGREEMENT TO PROVIDE  
BACKGROUND INVESTIGATION SERVICES**

THIS PROFESSIONAL SERVICES CONTRACT (the "Contract") is made and entered into as of this 28th day of October 2015 (the "Effective Date"), by and between US ISS Agency, LLC, a limited liability corporation doing business in North Carolina (the "Company"), and the City of Charlotte, a North Carolina municipal corporation (the "City").

**RECITALS**

**WHEREAS**, the City issued a Request For Proposals (RFP # 269-2015-078) for Background Investigation Services dated June 9, 2015. 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 Background Investigation Services ("Services"), and the Company desires to provide such Services; and

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

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

**CONTRACT**

**1. EXHIBITS.**

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

- 1.1. EXHIBIT A: PRICE SCHEDULE
- 1.2. EXHIBIT B: SCOPE OF WORK

**2. DEFINITIONS.**

- 2.1. *ACCEPTANCE* – Refers to the receipt and approval by the City of a Deliverable or Service in accordance with the acceptance process and criteria set forth in this Contract.
- 2.2. *AFFILIATES* – Refers to all departments or units of the City and all other governmental units, towns, boards, committees or municipalities for which the City processes data or performs services that involve the Deliverables or Services.
- 2.3. *CATS* - Refers to the Charlotte Area Transit System, a Department of the City of Charlotte.
- 2.4. *CHARLOTTE WATER* - Refers to the Charlotte Water Department of the City of Charlotte.
- 2.5. *CITY* - Refers to the City of Charlotte, North Carolina.
- 2.6. *CITY PROJECT MANAGER* - Refers to a specified City employee representing the best interests of the City for this Project.
- 2.7. *COMPANY* - Refers to US ISS Agency, LLC.
- 2.8. *COMPANY PROJECT MANAGER* - Refers to a specified Company employee representing the best interests of the Company for this Project.

- 2.9. *CONTRACT* - Refers to this written agreement executed by the City and Company for the Services as outlined herein.
- 2.10. *DELIVERABLES* - Refers to all tasks, reports, information, designs, plans and other items, which the Company is required to complete and deliver to the City in connection with this Contract.
- 2.11. *DEPARTMENT*. Refers to a department within the City of Charlotte.
- 2.12. *DOCUMENTATION* - Refers to all written, electronic, or recorded works, that describe the use, functions, features, or purpose of the Deliverables or Services or any component thereof, and which are published or provided to the City by the Company or its subcontractors, including without limitation all end user manuals, training manuals, guides, program listings, data models, flow charts, logic diagrams, and other materials related to or for use with the Deliverables or Services.
- 2.13. *EFFECTIVE DATE* - Refers to the date this Contract is fully executed by all parties to the Contract.
- 2.14. *ENGINEERING AND PROPERTY MANAGEMENT/E&PM* - Refers to the Engineering and Property Management Department of the City of Charlotte.
- 2.15. *MOTOR VEHICLE REPORT/MVR* - Refers to a motor vehicle report background investigation performed on job candidates.
- 2.16. *REPORT/SEARCH* - Refers to the background investigation or other investigation performed by the Company at the request of the City.
- 2.17. *SERVICES* - Refers to the Background Investigation Services as requested in this Contract.
- 2.18. *SPECIFICATIONS AND REQUIREMENTS* - Refers to all definitions, descriptions, requirements, criteria, warranties and performance standards relating to the Deliverables and Services which are set forth or referenced in: (i) this Contract; (ii) the Documentation; and (iii) any functional and/or technical specifications which are published or provided by the Company or its licensors or suppliers from time to time with respect to all or any part of the Deliverables or Services.
- 2.19. *WORK PRODUCT* - Refers to 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. DESCRIPTION OF SERVICES.**

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

**4. COMPENSATION.**

**4.1. TOTAL FEES AND CHARGES.**

The City agrees to pay the Company on a unit cost basis. The City agrees to pay the Company for the Services at the rates set forth in Exhibit A, which shall remain firm for the duration of the Contract.

**4.2. NO EXPENSES CHARGEABLE.**

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

**4.3. EMPLOYMENT TAXES AND EMPLOYEE BENEFITS.**

The Company represents and warrants that the employees provided by the Company to perform the Services are actual employees of the Company, and that the Company shall be responsible for providing all salary and other applicable benefits to each 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 employee. The Company agrees that the employees are not employees of the City.

4.4. **INVOICES.**

4.4.1. Each invoice sent by the Company shall detail all Services performed and delivered which are necessary to entitle the Company to the requested payment under the terms of this Contract. All invoices must include the City's Department-specific purchase order numbers for purchases made under the Contract. Purchase order numbers will be provided by the City Departments requesting Services.

The Company shall email all invoices to [cocap@charlottenc.gov](mailto:cocap@charlottenc.gov) with Accounts Payable (or AP) in the subject line.

Invoices that are addressed directly to City departments and not to Accounts Payable may not be handled as quickly as invoices that are addressed correctly.

4.5. **DUE DATE OF INVOICES.**

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

4.6. **PRE-CONTRACT COSTS.**

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

4.7. **AUDIT.**

During the term of this Contract and for a period of one (1) year after termination of this Contract, the City shall have the right to audit, either itself or through an independent auditor, all books and records and facilities of the Company necessary to evaluate Company's compliance with the terms and conditions of this Contract or the City's payment obligations. The City shall pay its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs of the Company. However, if non-compliance is found that would have cost the City in excess of \$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 type of Service performed. The City shall have the right to audit the Company's invoices, expense reports and other documents relating to the Services performed under the Contract, and shall not be required to pay for Services which did not occur, or which occurred in breach of the Contract. The Company shall make such documents available for inspection and copying by the City in Charlotte, North Carolina between the hours of 9:00 a.m. to 5:00 p.m. Monday through Friday, whenever requested by the City.

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 A, including all completion dates, response times and resolution times (the "Completion Dates"). Except as specifically stated in this Contract, there shall be no extensions of the Completion Dates. All references to days in this Contract (including the Exhibits) shall refer to calendar days rather than business days, unless this Contract provides otherwise for a specific situation.

7. **NON-APPROPRIATION OF FUNDS.**

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

**8. COMPANY PROJECT MANAGER.**

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

- 8.1. Coordination of Project schedules and the Company's resource assignment based upon the City's requirements and schedule constraints;
- 8.2. Management of the overall Project by monitoring and reporting on the status of the Project and actual versus projected progress, and by consulting with the City's Project Manager when deviations occur and by documenting all such deviations in accordance with agreed upon change control procedures;
- 8.3. Provision of consultation and advice to the City on matters related to Project implementation strategies, key decisions and approaches, and Project operational concerns/issues and acting as a conduit to the Company's specialist resources that may be needed to supplement the Company's normal implementation staff;
- 8.4. Acting as the Company's point of contact for all aspects of contract administration, including invoicing for Services, and status reporting;
- 8.5. Facilitation of review meetings and conferences between the City and the Company's executives when scheduled or requested by the City;
- 8.6. Communication among and between the City and the Company's staff;
- 8.7. Promptly responding to the City Project Manager when consulted in writing or by E-mail with respect to Project deviations and necessary documentation;
- 8.8. Identifying and providing the City with timely written notice of all issues that may threaten the Company's Services in the manner contemplated by the Contract (with "timely" meaning immediately after the Company becomes aware of them);
- 8.9. Ensuring that adequate quality assurance procedures are in place through the Project; and
- 8.10. Meeting with other service providers working on City projects that relate to this effort as necessary to resolve problems and coordinate the Services.

**9. CITY PROJECT MANAGER.**

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

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

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

under this Section, the Company shall notify the City in writing immediately in accordance with the notice provision of this Contract. Failure to do so shall constitute a waiver by Company of any claim or defense it may otherwise have based on the City's failure to provide such information, personnel, facility or resource.

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

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

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

**12. BACKGROUND CHECKS.**

Prior to starting work under this Contract, the Company is required to conduct a background check on each Company employee assigned to work under this Contract, and shall require its subcontractors (if any) to perform a background check on each of their employees assigned to work under this Contract (collectively, the "Background Checks"). Each Background Check 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 A), the Company shall submit a written notice to the City's Project Manager stating the Deliverable(s) that have been met. This notice shall include a signature page for sign-off by the City Project Manager indicating acceptance of such Deliverable(s).



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

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

**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. GENERAL WARRANTIES.**

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

**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 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 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 DAMAGE EQUIPMENT OR FACILITIES.**

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

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

With respect to any data that the Company or any 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.

**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.

**19. TERM AND TERMINATION OF CONTRACT.**

19.1. TERM.

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

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, Company shall submit a statement to the City showing in detail the Services performed under this Contract through the date of termination. The forgoing payment obligation is contingent upon: (i) the Company having fully complied with Section 19.8; and (ii) the Company having provided the City with written documentation reasonably adequate to verify the number of hours of Services rendered by each 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 the Contract upon the occurrence of one or more of the following events (which shall each constitute separate grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):

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

19.5. NO SUSPENSION.

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

19.6. CANCELLATION OF ORDERS AND SUBCONTRACTS.

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

19.7. AUTHORITY TO TERMINATE.

The following persons are authorized to terminate this Contract on behalf of the City: (a) the City Manager, any Assistant City Manager, or any designee of the City Manager; or (b) the Department Director of the City Department responsible for administering this Contract.

19.8. OBLIGATIONS UPON EXPIRATION OR TERMINATION.

Upon expiration or termination of this Contract, the Company shall promptly return to the City (i) all computer programs, files, documentation, media, related material and any other material and equipment that is owned by the City; (ii) all Deliverables that have been completed or that are in process as of the date of termination; and (iii) a written statement describing in detail all work

performed with respect to Deliverables which are in process as of the date of termination. The expiration or termination of this Contract shall not relieve either party of its obligations regarding "Confidential Information", as defined in this Contract.

19.9. NO EFFECT ON TAXES, FEES, CHARGES OR REPORTS.

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

19.10. OTHER REMEDIES.

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

**20. TRANSITION SERVICES UPON TERMINATION.**

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

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

**21. CHANGES.**

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

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

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

**22. CITY OWNERSHIP OF WORK PRODUCT.**

- 22.1. The parties agree that the City shall have exclusive ownership of all reports, documents, designs, ideas, materials, reports, concepts, plans, creative works, and other work product developed for or provided to the City in connection with this Contract, and all patent rights, copyrights, trade secret rights and other intellectual property rights relating thereto (collectively the "Intellectual Property"). The Company hereby assigns and transfers all rights in the Intellectual Property to the City. The Company further agrees to execute and deliver such assignments and other documents as the City may later require to perfect, maintain and enforce the City's rights as sole owner of the Intellectual Property, including all rights under patent and copyright law. The Company hereby appoints the City as attorney in fact to execute all such assignments and instruments and agree that its appointment of the City as an attorney in fact is coupled with an interest and is irrevocable.
- 22.2. The City grants the Company a royalty-free, non-exclusive license to use and copy the Intellectual Property to the extent necessary to perform this Contract. The Company shall not be entitled to use the Intellectual Property for other purposes without the City's prior written consent, and shall treat the Intellectual Property as "Confidential Information" pursuant to Section 27 of the Contract.
- 22.3. The Company will treat as Confidential Information under the Confidentiality and Non-Disclosure Contract all data in connection with the Contract. City data processed by the Company shall remain the exclusive property of the City. The Company will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the City in any manner except that contemplated by the Contract.

**23. 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.

**24. RELATIONSHIP OF THE PARTIES.**

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

**25. INDEMNIFICATION.**

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

including but not limited to claims relating to worker's compensation, failure to withhold taxes and the like. For purposes of this Section: (a) the term "Indemnitees" means the City and each of the City's officers, officials, employees, agents and independent contractors (excluding the Company); and (b) the term "Charges" means any and all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, royalties, interest charges and other liabilities (including settlement amounts).

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

This **Section 25** shall remain in force despite termination of this Contract (whether by expiration of the term or otherwise).

**26. SUBCONTRACTING.**

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

**27. CONFIDENTIAL INFORMATION.**

**27.1. CONFIDENTIAL INFORMATION.**

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

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

- 27.1.9. *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.*
- 27.1.10. *The name or address of individual homeowners who, based on their income, have received a rehabilitation grant to repair their home.*
- 27.1.11. *Building plans of city-owned buildings or structures, as well as any detailed security plans.*
- 27.1.12. *Billing information of customers compiled and maintained in connection with the City providing utility services.*
- 27.1.13. *Other information that is exempt from disclosure under the North Carolina public records laws.*

Categories 27.1.3 through 27.1.13 above constitute "Highly Restricted Information," as well as Confidential Information. The Company acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Contract, and agrees that: (a) all provisions in this Contract applicable to Confidential Information shall apply to Highly Restricted Information; and (b) the Company will also comply with any more restrictive instructions or written policies that may be provided by the City from time to time to protect the confidentiality of Highly Restricted Information.

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

## 27.2. RESTRICTIONS.

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

- 27.2.1. It shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information.
- 27.2.2. It shall not, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information of the other to any third party or to any individual employed by the Company, other than an employee, agent, subcontractor or vendor of the City or Company who: (i) has a need to know such Confidential Information, and (ii) has executed a confidentiality agreement incorporating substantially the form of this Section of the Contract and containing all protections set forth herein.
- 27.2.3. It shall not use any Confidential Information of the City for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written agreements between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.
- 27.2.4. It shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information of the other.
- 27.2.5. The Company shall use its best efforts to enforce the proprietary rights of the City and the City's vendors, licensors and suppliers (including but not limited to seeking injunctive relief where reasonably necessary) against any person who has possession of or discloses Confidential Information in a manner not permitted by this Contract.
- 27.2.6. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, the Company shall assert this Contract as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.



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

27.3. EXCEPTIONS.

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

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

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

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

27.3.4. Was used or disclosed by the Company with the prior written authorization of the City;

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

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

27.4. UNINTENTIONAL DISCLOSURE.

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

27.5. REMEDIES.

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

**28. INSURANCE.**

28.1. TYPES OF INSURANCE.

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

28.1.1. 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.

28.1.2. Commercial General Liability - Bodily injury and property damage liability as shall protect the Company and any subcontractor performing Services under this Contract, from claims of bodily injury or property damage which arise from performance of this Contract, whether such operations are performed by the Company, any subcontractor, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate, or \$1,000,000 bodily injury and property damage combined single

limits each occurrence/aggregate. This insurance shall include coverage for products, operations, personal injury liability and contractual liability, assumed under the indemnity provision of this Contract.

- 28.1.3. 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.
- 28.1.4. Professional Errors & Omissions- insurance with a limit of not less than \$1,000,000 per claim occurrence as shall protect the Company and the Company's employees for negligent acts, errors or omissions in performing the 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.

**28.2. OTHER INSURANCE REQUIREMENTS.**

- 28.2.1. 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.
- 28.2.2. City of Charlotte shall be named as an additional insured for operations or services rendered under the automobile and general liability coverage. The Company's insurance shall be primary of any self-funding and/or insurance otherwise carried by the City for all loss or damages arising from the Company's operations under this agreement.
- 28.2.3. 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.
- 28.2.4. 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.
- 28.2.5. 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.

**29. COMMERCIAL NON-DISCRIMINATION.**

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

As a condition of entering into this Contract, the Company agrees to: (a) promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation, selection, treatment and payment of subcontractors in connection with this Contract; and (b) if

requested, provide to the City within sixty (60) days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Company has used on City contracts in the past five (5) years, including the total dollar amount paid by Company on each subcontract or supply contract. The Company further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Non-Discrimination Policy, to provide any documents relevant to such investigation that are requested by the City, and to be bound by the award of any arbitration conducted under such Policy.

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

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

**30. DRUG-FREE WORKPLACE.**

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

- 30.1. Notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the Company's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- 30.2. Establishing a drug-free awareness program to inform employees about (i) the dangers of drug abuse in the workplace, (ii) the Company's policy of maintaining a drug-free workplace, (iii) any available drug counseling, rehabilitation, and employee assistance programs, and (iv) the penalties that may be imposed upon employees for drug abuse violations;
- 30.3. Notifying each employee that as a condition of employment, the employee will (i) abide by the terms of the prohibition outlined in (a) Section 30.1, and (ii) notify the Company of any criminal drug statute conviction for a violation occurring in the workplace not later than five (5) days after such conviction;
- 30.4. Notifying the City within ten days after receiving from an employee a notice of a criminal drug statute conviction or after otherwise receiving actual notice of such conviction;
- 30.5. Imposing a sanction on, or requiring the satisfactory participation in a drug counseling, rehabilitation or abuse program by, an employee convicted of drug crime;
- 30.6. Making a good faith effort to continue to maintain a drug-free workplace for employees; and
- 30.7. Requiring any party to which it subcontracts any portion of the Services under the Contract to comply with the provisions of 30.1 through 30.6.

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

**31. NOTICES AND PRINCIPAL CONTACTS.**

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

For the Company:

Robert L. Schurmeier  
US ISS Agency LLC  
13801 Reese Boulevard West  
Suite #180  
Huntersville, NC 28078

For the City:

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

PHONE: (704) 525-5221  
FAX: (704) 248-5680  
E-MAIL: [rschurmeier@isecureus.com](mailto:rschurmeier@isecureus.com)

PHONE: 704-336-2524  
FAX: 704-336-2258  
[keltmore@charlottenc.gov](mailto:keltmore@charlottenc.gov)

With Copy To (Company):  
David L. Graham  
US ISS Agency LLC  
13801 Reese Boulevard West  
Suite #180  
Huntersville, NC 28078

With Copy To (City):  
Cindy White  
City of Charlotte  
City Attorney's Office  
600 East Fourth Street  
CMGC 15<sup>th</sup> Floor  
Charlotte, NC 28202

PHONE: (704) 248-5674  
EMAIL: [dgraham@isecureus.com](mailto:dgraham@isecureus.com)

PHONE: (704)336-3012  
[cwhite@charlottenc.gov](mailto:cwhite@charlottenc.gov)

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

### 32. MISCELLANEOUS.

#### 32.1. 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.

#### 32.2. AMENDMENT.

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

#### 32.3. 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.

#### 32.4. 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.

#### 32.5. 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.

32.6. FORCE MAJEURE.

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

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

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

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

32.7. SEVERABILITY.

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

32.8. NO PUBLICITY.

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

32.9. APPROVALS.

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

32.10. WAIVER.

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

32.11. SURVIVAL OF PROVISIONS.

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

Section 4.3 "Employment Taxes and Employee Benefits"

- Section 16 "Representations and Warranties of Company"
- Section 19 "Term and Termination of Contract"
- Section 22 "City Ownership of Work Product"
- Section 25 "Indemnification"
- Section 27 "Confidential Information"
- Section 28 "Insurance"
- Section 31 "Notices and Principal Contacts"
- Section 32 "Miscellaneous"

- 32.12. CHANGE IN CONTROL.  
In the event of a change in "Control" of the Company (as defined below), the City shall have the option of terminating this Contract by written notice to the Company. The Company shall notify the City within ten (10) days of the occurrence of a change in control. As used in this Contract, the term "Control" shall mean the possession, direct or indirect, of either (i) the ownership of or ability to direct the voting of, as the case may be fifty-one percent (51%) or more of the equity interests, value or voting power in the Company or (ii) the power to direct or cause the direction of the management and policies of the Company whether through the ownership of voting securities, by contract or otherwise.
- 32.13. DRAFTER'S PROTECTION.  
Each of the Parties has agreed to the use of the particular language of the provisions of this Contract and any questions of doubtful interpretation shall not be resolved by any rule or interpretation against the drafters, but rather in accordance with the fair meaning thereof, having due regard to the benefits and rights intended to be conferred upon the Parties hereto and the limitations and restrictions upon such rights and benefits intended to be provided.
- 32.14. FAMILIARITY AND COMPLIANCE WITH LAWS AND ORDINANCES.  
The Company agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Services. The Company further agrees that it will at all times during the term of this Contract be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to, workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all OSHA regulations applicable to the Services.
- 32.15. CONFLICT OF INTEREST.  
The Company covenants that its officers, employees and shareholders have no interest and shall not acquire any interest, direct or indirect that would conflict in any manner or degree with the performance of Services required to be performed under the Contract.
- 32.16. NO BRIBERY.  
The Company certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the forgoing has bribed or attempted to bribe an officer or employee of the City in connection with the Contract.
- 32.17. HARASSMENT.  
The Company agrees to make itself aware of and comply with the City's Harassment Policy. The City will not tolerate or condone acts of harassment based upon race, sex, religion, national origin, color, age, or disability. Violators of this policy will be subject to termination.
- 32.18. TRAVEL UPGRADES.  
The City has no obligation to reimburse the Company for any travel or other expenses incurred in connection with this Contract unless this Contract specifically requires reimbursement. If this Contract requires reimbursement by the City: (a) the City will only pay coach/economy rate airline fares, and (b) the Company's invoices shall include sufficient detail of travel expenses to

demonstrate that fares were at coach/economy rates. Notwithstanding the forgoing, nothing in this provision shall preclude complimentary upgrades to first class or business class seating, mileage, points, or credits based upgrades, or upgrades paid for by the contractor so long as the City is not charged for or asked to reimburse the upgrade charge or the value of the miles, points, or credits used.

32.19. TAXES.

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

32.20. COUNTERPARTS.

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

*[Signature Page Follows]*

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

US ISS AGENCY, LLC:

BY: Robert L. Schweitzer  
PRINT NAME: Robert L. Schweitzer  
TITLE: President  
DATE: 9/29/15

CITY OF CHARLOTTE:  
CITY MANAGER'S OFFICE

BY: [Signature]  
PRINT NAME: Hyong el  
TITLE: AcM  
DATE: 10.9.15

CITY OF CHARLOTTE:  
RISK MANAGEMENT DIVISION

BY: [Signature]  
PRINT NAME: Christee Gibson  
TITLE: As Mgr  
DATE: 10/8/15



**EXHIBIT A**

**PRICE SCHEDULE**

This Price Schedule is an Exhibit to and is incorporated into the Services Contract between the City of Charlotte and US ISS Agency, LLC (the "Contract"). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract.

**1. Base Pricing.**

The Company shall charge the City according to the following unit pricing structure:

<b>Report or Search Type</b>	<b>Unit Cost</b>	<b>Pricing Notes and Additional Fees</b>
Social Security Verification	\$5.25	
National Federal Criminal Record Search	\$10.50	Includes civil and bankruptcy listings at no additional charge
Multi-State Criminal Record Search	\$37.50	
North Carolina Criminal Record Search	\$10.50	
State Sex Offender Registry	\$5.00	
Multi-State Sex Offender Registry	\$5.50	
Credit History Search	\$13.25	
NC Motor Vehicle Report	\$11.75	
Motor Vehicle Record for all other states		See MVR state fees listed below
Employment Verification	\$16.50	Additional fees may apply from the organization being verified
Education Verification	\$22.00	
Professional License Verification	\$16.50	
Civil Court Search	\$20.00	
Personal References Verification	\$16.50	
Internet Social Network Search	\$10.50	
Charlotte Water Special Package per Section 3.3.1	\$137.50	See MVR state fees listed below; additional fees may apply from the organization being verified
Management & Financial Services Special Package per Section 3.3.2	\$69.00	See MVR state fees listed below; additional fees may apply from the organization being verified
Engineering and Property Management Special Package per Section 3.3.3	\$75.50	See MVR state fees listed below; additional fees may apply from the organization being verified
CATS Special Package per Section 3.3.4	\$76.50	See MVR state fees listed below; additional fees may apply from the organization being verified

**2. MVR State Fees.**

The Company shall charge the City the following rates per state for MVRs:

<b>State</b>	<b>MVR Fee</b>	<b>State</b>	<b>MVR Fee</b>
Alabama	\$13.50	Missouri	\$8.75
Alaska	\$7.75	Montana	\$10.50
Arizona	\$8.75	Nebraska	\$5.50
Arkansas (Driver)	\$4.00	Nevada	\$11.25
Arkansas (Commercial)	\$17.50	New Hampshire	\$17.75
California	\$4.00	New Jersey	\$16.25
Colorado	\$4.5	New Mexico	\$8.75

Connecticut	\$23.50	New York	\$10.25
Delaware	\$20.50	North Carolina	\$11.75
District of Columbia	\$17.75	North Dakota	\$5.50
Florida	\$14.00	Ohio	\$7.75
Georgia	\$11.75	Oklahoma	\$35.50
Hawaii	\$30.25	Oregon	\$14.50
Idaho	\$12.75	Pennsylvania	\$16.25
Illinois	\$16.25	Rhode Island	\$26.25
Indiana	\$10.75	South Carolina	\$10.50
Iowa	\$12.00	South Dakota	\$7.75
Kansas	\$12.25	Tennessee	\$10.25
Kentucky	\$8.25	Texas	\$10.75
Louisiana	\$21.25	Utah	\$12.75
Maine	\$10.25	Vermont	\$22.75
Maryland	\$16.25	Virginia	\$10.25
Massachusetts	\$11.75	Washington	\$17.75
Michigan	\$11.75	West Virginia	\$12.75
Minnesota	\$8.25	Wisconsin	\$10.25
Mississippi	\$18.75	Wyoming	\$7.75

**3. Statewide Criminal Search Fees.**

The Company shall charge the City the following rates per state in addition to the base costs listed above:

State	Search Fee	State	Search Fee
Alabama	\$19.00	Missouri	\$25.25
Alaska	\$37.75	Montana	\$27.00
Arizona	\$42.75	Nebraska	\$25.50
Arkansas	\$40.25	Nevada	\$31.50
California	N/A	New Hampshire	\$31.50
Colorado	\$21.50	New Jersey	\$47.50
Connecticut	\$75.00	New Mexico	\$21.50
Delaware	\$58.00	New York	\$94.00
District of Columbia	N/A	North Dakota	\$75.00
Florida	\$43.00	Ohio	\$40.25
Georgia	\$19.00	Oklahoma	\$31.50
Hawaii	\$21.50	Oregon	\$31.50
Idaho	\$25.25	Pennsylvania	\$25.25
Illinois	\$25.25	Rhode Island	\$19.25
Indiana	\$31.50	South Carolina	\$34.50
Iowa	\$31.50	South Dakota	\$38.00
Kansas	\$27.50	Tennessee	\$49.00
Kentucky	\$35.50	Texas	\$16.50
Louisiana	N/A	Utah	\$19.25
Maine	\$44.00	Vermont	N/A
Maryland	\$19.00	Virginia	\$31.50
Massachusetts	\$44.00	Washington	\$25.50
Michigan	\$25.25	West Virginia	\$49.00
Minnesota	\$19.00	Wisconsin	\$29.25
Mississippi	\$52.50	Wyoming	\$31.50

## EXHIBIT B

### SCOPE OF WORK

This Scope of Work is an Exhibit to and is incorporated into the Services Contract between the City of Charlotte and US ISS Agency, LLC (the "Contract"). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract.

#### 1. General Scope.

The City requires background investigations and comprehensive Reports on all final job candidates pursuing City employment, as well employees seeking transfer or promotion. All City Departments may utilize the Services. While the City is flexible with respect to certain elements of its proposed relationship with the Background Investigation Services Provider, the City has certain preferences for that relationship and has developed the following proposed model for that relationship.

#### 2. Company Responsibilities.

The Company shall provide background investigation Reports as well as other additional Search types as outlined below. All requests from the City for any Report shall be provided within forty-eight (48) business hours from submission of the request. If the Company is not able to comply with the forty-eight (48) hour turnaround requirement for reasons out of their control, they must notify the City immediately and provide an estimated delivery time. The Company shall establish policies and procedures for handling and processing the City requests, while submitting management reports and providing training on procedures. The Company shall provide quarterly utilization reports to the City Project Manager to reflect a breakdown of utilization and cost by Department.

##### 2.1. Basic Background Investigation Reports.

Background investigation Reports shall include, but may not be limited to, the following:

- Social security verification;
- National federal criminal record search;
- National multi-state criminal record search;
- North Carolina criminal record search; and
- Search of the criminal records of any known state of residence to include those states reflected by the social security verification and on the application. Any driving offenses that qualify as criminal charges must also be included in this type of Report.

##### 2.2. Motor Vehicle Report (MVR).

The Company shall provide Motor Vehicle Reports (MVR) which shall be for a minimum of seven (7) years of driving history. MVRs shall include all states the candidate has lived in for the past seven (7) years. Any driving offenses that are criminal must be reported in the MVR as well as the Basic Report.

##### 2.3. Additional Searches.

Additional Searches as requested by the Departments may include:

- Sex offender registry search;
- Credit history;
- Employment verification;
- Education verification;
  - Note: CATS requires high school or equivalent verification.
- Professional license verification;
- Civil Court search;
- Personal references verification; and/or
- Internet social media search.

2.4. Additional and Unforeseen Reports.

The City reserves the right to request additional services not detailed in the statement of work. The City agrees to compensate the Company at an agreed upon fee for any additional services requested by the City.

2.5. Online Portal.

The Company shall host and maintain an online portal which allows City users to perform the following:

- Request new Reports and MVRs;
- View the status of pending requested Reports and MVRs;
- Add users with Departments and divisions with varying access to view, edit and print Reports and MVRs; and
- Store Reports and MVRs indefinitely and make them available upon request from the City.

**3. Special Report Packages.**

The City has certain routine and commonly used sets of Reports, known as Special Packages. Below are Special Packages that are required by various Departments:

3.1. Charlotte Water Special Package.

Charlotte Water requires a Special Package that shall include:

- Social security verification
- National federal criminal record search;
- National multi-state criminal record search;
- North Carolina criminal record search;
- South Carolina criminal record search;
- Search of the criminal records of any known state of residence to include those states reflected by the social security verification and on the application. Any driving offenses that qualify as criminal charges must also be included in this type of Report;
- Education verification;
- MVR; and
- Sex offender registry search.

3.2. Management & Financial Services Special Package.

The Management & Financial Services Department requires a Special Package that shall include:

- Social security verification;
- Sex offender registry search;
- National federal criminal record search;
- National multi-state criminal record search;
- North Carolina criminal record search; and
- Search of the criminal records of any known state of residence to include those states reflected by the social security verification and on the application. Any driving offenses that qualify as criminal charges must also be included in this type of Report.

3.3. Engineering and Property Management Special Package:

The E&PM Department requires a Special Package that shall include:

- National federal criminal record search;
- National multi-state criminal record search;
- North Carolina criminal record search;
- MVR;
- Sex offender registry search; and

- Search of the criminal records of any known state of residence to include those states reflected by the social security verification and on the application. Any driving offenses that qualify as criminal charges must also be included in this type of Report.

3.4. CATS Special Package:  
CATS requires a Special Package that shall include:

- Education verification;
- Sex offender registry search;
- National federal criminal record search;
- MVR;
- North Carolina criminal record search; and
- Employment verification.

**4. Reporting and Invoicing.**

The Company shall establish policies and procedures for handling and processing the Services for multiple Departments while submitting management reports, and providing training on procedures. Management reports shall include a quarterly breakdown of utilization and cost by Department.

The Company shall establish account(s) per each Department's billing requirements. Said accounting procedures shall be consistent with the accounting practices used by the City.

**STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG**

**AGREEMENT TO PROVIDE  
CITYWIDE DRUG AND ALCOHOL TESTING SERVICES**

THIS PROFESSIONAL SERVICES CONTRACT (the "Contract") is made and entered into as of this 26th day of April 2017 (the "Effective Date"), by and between Wolfe, Inc., a corporation doing business in North Carolina (the "Company"), and the City of Charlotte, a North Carolina municipal corporation (the "City") a political subdivision of the State of North Carolina.

**RECITALS**

**WHEREAS**, the City issued a Request For Proposals (RFP # 269-2017-047) for Citywide Drug and Alcohol Testing Services dated January 12, 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 Citywide Drug and Alcohol Testing Services ("Services"), and the Company desires to provide such Services; and

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

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

**CONTRACT**

**1. EXHIBITS.**

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

- 1.1. EXHIBIT A: PRICE SCHEDULE
- 1.2. EXHIBIT B: SCOPE OF WORK
- 1.3. APPENDIX A: COLLECTION FACILITIES LIST
- 1.4. APPENDIX B: PAYMENT AFFIDAVIT OF SUBCONTRACTOR UTILIZATION
- 1.5. APPENDIX C: LETTER OF INTENT

**2. DEFINITIONS.**

- 2.1. *ACCEPTANCE* – Refers to the receipt and approval by the City of a Deliverable or Service in accordance with the acceptance process and criteria set forth in this Contract.
- 2.2. *AFFILIATES* – Refers to all departments or units of the City and all other governmental units, towns, boards, committees or municipalities for which the City processes data or performs services that involve the Deliverables or Services.
- 2.3. *CITY* - Refers to the City of Charlotte, North Carolina.
- 2.4. *CITY PROJECT MANAGER* - Refers to a specified City employee representing the best interests of the City for this Project.
- 2.5. *COMPANY* - Refers to Wolfe, Inc.
- 2.6. *COMPANY PROJECT MANAGER* - Refers to a specified Company employee representing the best interests of the Company for this Project.

- 2.7. *CONTRACT* - Refers to this written agreement executed by the City and Company for the Services as outlined herein.
- 2.8. *DELIVERABLES* - Refers to all tasks, reports, information, designs, plans and other items, which the Company is required to complete and deliver to the City in connection with this Contract.
- 2.9. *DEPARTMENT*. Refers to a department within the City of Charlotte.
- 2.10. *DOCUMENTATION* - Refers to all written, electronic, or recorded works, that describe the use, functions, features, or purpose of the Deliverables or Services or any component thereof, and which are published or provided to the City by the Company or its subcontractors, including without limitation all end user manuals, training manuals, guides, program listings, data models, flow charts, logic diagrams, and other materials related to or for use with the Deliverables or Services.
- 2.11. *EFFECTIVE DATE* - Refers to the date this Contract is fully executed by all parties to the Contract.
- 2.12. *ENVIRONMENTALLY PREFERABLE PRODUCTS* - 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.
- 2.13. *MILESTONES* - Refers to the benchmarks of performance (consisting of an identified deadline for the completion of specific services and/or the Acceptance of identified Deliverables), as specified in this RFP.
- 2.14. *POST-CONSUMER RECYCLED MATERIAL* - 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.
- 2.15. *PROJECT PLAN* - 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.
- 2.16. *RECYCLABILITY* - 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.
- 2.17. *RECYCLED MATERIAL* - Refers to material and by-products which have been recovered or diverted from solid waste for the purpose of recycling. It does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.
- 2.18. *SERVICES* - Refers to the Citywide Drug and Alcohol Testing Services as requested in this Contract.
- 2.19. *SPECIFICATIONS AND REQUIREMENTS* - Refers to all definitions, descriptions, requirements, criteria, warranties and performance standards relating to the Deliverables and Services which are set forth or referenced in: (i) this Contract; (ii) the Documentation; and (iii) any functional and/or technical specifications which are published or provided by the Company or its licensors or suppliers from time to time with respect to all or any part of the Deliverables or Services.
- 2.20. *WORK PRODUCT* - Refers to 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. DESCRIPTION OF SERVICES.**

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

**4. COMPENSATION.**

**4.1. FEES FOR SERVICES**

The City agrees to pay the Company for the Drug and Alcohol Testing Services pursuant to the pricing itemization detailed in Exhibit A. Pricing stated in Exhibit A will not be increased except by a written instrument duly executed by both parties.

**4.2. NO EXPENSES CHARGEABLE.**

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

**4.3. EMPLOYMENT TAXES AND EMPLOYEE BENEFITS.**

The Company represents and warrants that the employees provided by the Company to perform the Services 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.

**4.4. INVOICES.**

Each invoice sent by the Company shall detail all Services performed and delivered which are necessary to entitle the Company to the requested payment under the terms of this Contract. All invoices must include the City purchase order number for purchases made under the Contract. Purchase order numbers will be provided by the City. Invoices must be submitted with lines matching those on the City-provided purchase order.

The Company shall email all invoices to [cocap@charlottenc.gov](mailto:cocap@charlottenc.gov) with Accounts Payable (or AP) in the subject line.

Invoices that are addressed directly to City departments and not to Accounts Payable may not be handled as quickly as invoices that are addressed correctly.

**4.5. DUE DATE OF INVOICES.**

Payment of invoices shall be due within thirty (30) days after receipt of an accurate, undisputed properly submitted invoice by the City. Invoices must include state and local sales tax.

**4.6. PRE-CONTRACT COSTS.**

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

**4.7. AUDIT.**

During the term of this Contract and for a period of one (1) year after termination of this Contract, the City shall have the right to audit, either itself or through an independent auditor, all books and records and facilities of the Company necessary to evaluate Company's compliance with the terms and conditions of this Contract or the City's payment obligations. The City shall pay its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs of the Company. However, if non-compliance is found that would have cost the City in excess of \$10,000 but for the audit, then the Company shall be required to reimburse the City for the cost of the audit.



**5. TIME IS OF THE ESSENCE.**

Time is of the essence in having the Company perform all Services and deliver all Deliverables within the time frames provided by this Contract and Exhibit 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.

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

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

**7. COMPANY PROJECT MANAGER.**

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

- 7.1. Coordination of Project schedules and the Company's resource assignment based upon the City's requirements and schedule constraints;
- 7.2. Management of the overall Project by monitoring and reporting on the status of the Project and actual versus projected progress, and by consulting with the City's Project Manager when deviations occur and by documenting all such deviations in accordance with agreed upon change control procedures;
- 7.3. Provision of consultation and advice to the City on matters related to Project implementation strategies, key decisions and approaches, and Project operational concerns/issues and acting as a conduit to the Company's specialist resources that may be needed to supplement the Company's normal implementation staff;
- 7.4. Acting as the Company's point of contact for all aspects of contract administration, including invoicing for Services, and status reporting;
- 7.5. Facilitation of review meetings and conferences between the City and the Company's executives when scheduled or requested by the City;
- 7.6. Communication among and between the City and the Company's staff;
- 7.7. Promptly responding to the City Project Manager when consulted in writing or by E-mail with respect to Project deviations and necessary documentation;
- 7.8. Identifying and providing the City with timely written notice of all issues that may threaten the Company's Services in the manner contemplated by the Contract (with "timely" meaning immediately after the Company becomes aware of them);
- 7.9. Ensuring that adequate quality assurance procedures are in place throughout the Contract; and
- 7.10. Meeting with other service providers working on City projects that relate to this effort as necessary to resolve problems and coordinate the Services.

**8. CITY PROJECT MANAGER.**

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

The City shall be allowed to change staffing for the City Project Manager position on one (1) business day's notice to the Company.

The City Project Manager will be:

Antoine M. Ensley, City of Charlotte Human Resources  
700 East 4th St. Charlotte, NC 28202

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

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

**10. COMPANY PERSONNEL REMOVAL, REPLACEMENT, PROMOTION, ETC.**

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

**11. 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.

- If job duties include entering a private household or interaction with children: A sexual offender registry check.

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

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

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

**12. 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.

**13. 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.

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

**14.1. GENERAL WARRANTIES.**

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

**14.2. ADDITIONAL WARRANTIES.**

The Company further represents and warrants that:

- 14.2.1. 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;
- 14.2.2. It has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Contract;

- 14.2.3. The execution, delivery, and performance of this Contract have been duly authorized by the Company;
- 14.2.4. 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;
- 14.2.5. 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
- 14.2.6. 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).

**15. OTHER OBLIGATIONS OF THE COMPANY.**

- 15.1. **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.
- 15.2. **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.
- 15.3. **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.
- 15.4. **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.
- 15.5. **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.
- 15.6. **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.

**16. REMEDIES.**

- 16.1. **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.

16.2. **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.

16.3. **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.

16.4. **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.

16.5. **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.

**17. TERM AND TERMINATION OF CONTRACT.**

17.1. **TERM.**

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

17.2. **TERMINATION BY THE CITY.**

The City may terminate the Contract at any time without cause by giving thirty (30) days prior written notice to the Company. As soon as practicable after receipt of a written notice of termination without cause, Company shall submit a statement to the City showing in detail the Services performed under this Contract through the date of termination. The forgoing payment obligation is contingent upon: (i) the Company having fully complied with Section 18; 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.

17.3. **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.

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

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

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

17.5. **NO SUSPENSION.**

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

17.6. **CANCELLATION OF ORDERS AND SUBCONTRACTS.**

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

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

**18.1. OBLIGATIONS UPON EXPIRATION OR TERMINATION.**

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

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

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

**18.3. OTHER REMEDIES.**

The remedies set forth in this Section and **Section 16** shall be deemed cumulative and not exclusive, and may be exercised successively or concurrently, in addition to any other remedies available under this Contract or at law or in equity.

**19. TRANSITION SERVICES UPON TERMINATION.**

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

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

**20. CHANGES.**

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

In the event either party desires a Change, the Project Manager for such party shall submit to the other party's Project Manager a proposed Change Statement. If the receiving party does not accept the Change Statement in writing within ten (10) days, the receiving party shall be deemed to have rejected the Change Statement. If the parties cannot reach agreement on a proposed Change, the Company shall nevertheless

continue to render performance under this Contract in accordance with its (unchanged) terms and conditions.

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

**21. CITY OWNERSHIP OF WORK PRODUCT.**

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

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

**22. RESERVED**

**23. RELATIONSHIP OF THE PARTIES.**

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

**24. INDEMNIFICATION.**

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

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

**26. CONFIDENTIAL INFORMATION.**

26.1. CONFIDENTIAL INFORMATION.

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

- 26.1.1. *Trade secrets.* For purposes of this Contract, trade secrets consist of *information* of the City or any of its suppliers, contractors or licensors: (a) that derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.
- 26.1.2. *Information of the City or its suppliers, contractors or licensors marked "Confidential" or "Proprietary."*
- 26.1.3. *Information relating to criminal investigations conducted by the City, and records of criminal intelligence information compiled by the City.*
- 26.1.4. *Information contained in the City's personnel files, as defined by N.C. Gen. Stat. 160A-168.* This consists of all information gathered and/or maintained by the City about employees, except for that information which is a matter of public record under North Carolina law.
- 26.1.5. *Citizen or employee social security numbers collected by the City.*
- 26.1.6. *Computer security information of the City,* including all security features of electronic data processing, or information technology systems, telecommunications networks and electronic security systems. This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software and codes.
- 26.1.7. *Local tax records of the City that contains information about a taxpayer's income or receipts.*
- 26.1.8. *Any attorney / City privileged information disclosed by either party.*
- 26.1.9. *Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.*
- 26.1.10. *The name or address of individual homeowners who, based on their income, have received a rehabilitation grant to repair their home.*
- 26.1.11. *Building plans of city-owned buildings or structures, as well as any detailed security plans.*
- 26.1.12. *Billing information of customers compiled and maintained in connection with the City providing utility services.*

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

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

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

26.2. RESTRICTIONS.

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

- 26.2.1. It shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information.
- 26.2.2. It shall not, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information of the other to any third party or to any individual employed by the Company, other than an employee, agent, subcontractor or vendor of the City or Company who: (i) has a need to know such Confidential Information, and (ii) has executed a confidentiality agreement incorporating substantially the form of this Section of the Contract and containing all protections set forth herein.
- 26.2.3. It shall not use any Confidential Information of the City for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written agreements between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.
- 26.2.4. It shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information of the other.
- 26.2.5. The Company shall use its best efforts to enforce the proprietary rights of the City and the City's vendors, licensors and suppliers (including but not limited to seeking injunctive relief where reasonably necessary) against any person who has possession of or discloses Confidential Information in a manner not permitted by this Contract.
- 26.2.6. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, the Company shall assert this Contract as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.
- 26.2.7. All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to the City or destroyed upon satisfaction of the purpose of the disclosure of such information.

26.3. EXCEPTIONS.

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

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

- 26.3.2. Was or becomes publicly known through no wrongful act of the Company;
  - 26.3.3. Was rightfully obtained by the Company from a third party without similar restriction and without breach hereof;
  - 26.3.4. Was used or disclosed by the Company with the prior written authorization of the City;
  - 26.3.5. Was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, the Company shall first give to the City notice of such requirement or request;
  - 26.3.6. Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the Company shall take use its best efforts to obtain an agreement or protective order providing that, to the greatest possible extent possible, this Contract will be applicable to all disclosures under the court order or subpoena.
- 26.4. UNINTENTIONAL DISCLOSURE.  
Notwithstanding anything contained herein in to the contrary, in the event that the Company is unintentionally exposed to any Confidential Information of the City, the Company agrees that it shall not, directly or indirectly, disclose, divulge, reveal, report or transfer such Confidential Information to any person or entity or use such Confidential Information for any purpose whatsoever.
- 26.5. REMEDIES.  
The Company acknowledges that the unauthorized disclosure of the Confidential Information of the City will diminish the value of the proprietary interests therein. Accordingly, it is agreed that if the Company breaches its obligations hereunder, the City shall be entitled to equitable relief to protect its interests, including but not limited to injunctive relief, as well as monetary damages.

## 27. INSURANCE.

### 27.1. TYPES OF INSURANCE.

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

- 27.1.1. Automobile Liability - Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit - bodily injury and property damage.
- 27.1.2. Commercial General Liability - Bodily injury and property damage liability as shall protect the Company and any subcontractor performing Services under this Contract, from claims of bodily injury or property damage which arise from performance of this Contract, whether such operations are performed by the Company, any subcontractor, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate, or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, operations, personal and advertising injury, and contractual liability, assumed under the indemnity provision of this Contract.
- 27.1.3. Workers' Compensation and Employers Liability - meeting the statutory requirements of the State of North Carolina, \$500,000 per accident limit, \$500,000 disease per policy limit, \$500,000 disease each employee limit.

The Company shall not commence any Services in connection with this Contract until it has obtained all of the foregoing types of insurance and such insurance has been approved by the City.

The Company shall not allow any subcontractor to commence Services on its subcontract until all similar insurance required of the subcontractor has been obtained and approved.

27.2. OTHER INSURANCE REQUIREMENTS.

- 27.2.1. The City shall be exempt from, and in no way liable for any sums of money, which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Company and/or subcontractor providing such insurance.
- 27.2.2. 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.
- 27.2.3. Certificates of such insurance will be furnished to the City and shall contain the provision that the City be given thirty (30) days' written notice of any intent to amend coverage reductions or material changes or terminate by either the insured or the insuring Company.
- 27.2.4. Should any or all of the required insurance coverage be self-funded/self-insured, a copy of the Certificate of Self-Insurance or other documentation from the North Carolina Department of Insurance shall be furnished to the City.
- 27.2.5. If any part of the Services under this Contract is sublet, the subcontractor shall be required to meet all insurance requirements as listed above. However, this will in no way relieve the Company from meeting all insurance requirements or otherwise being responsible for the subcontractor.

**28. COMMERCIAL NON-DISCRIMINATION.**

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, marital status, familial status, sexual orientation, gender identity, gender expression, 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.

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

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



courts and hereby irrevocably waive any and all objections, which they may have with respect to venue in any court sitting in Mecklenburg County, North Carolina.

31.4. **BINDING NATURE AND ASSIGNMENT.**

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

31.5. **CITY NOT LIABLE FOR DELAYS.**

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

31.6. **FORCE MAJEURE.**

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

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

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

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

31.7. **SEVERABILITY.**

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

- 31.8. NO PUBLICITY.  
No advertising, sales promotion or other materials of the Company or its agents or representations may identify or reference this Contract or the City in any manner absent the written consent of the City.
- 31.9. APPROVALS.  
All approvals or consents required under this Contract must be in writing.
- 31.10. WAIVER.  
No delay or omission by either party to exercise any right or power it has under this Contract shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this Contract shall not be constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Contract shall be effective unless in writing and signed by the party waiving the rights.
- 31.11. SURVIVAL OF PROVISIONS.  
The following sections of this Contract shall survive the termination hereof:  
Section 4.3 "Employment Taxes and Employee Benefits"  
Section 14 "Representations and Warranties of Company"  
Section 17 "Term and Termination of Contract"  
Section 21 "City Ownership of Work Product"  
Section 24 "Indemnification"  
Section 26 "Confidential Information"  
Section 27 "Insurance"  
Section 30 "Notices and Principal Contacts"  
Section 31 "Miscellaneous"
- 31.12. CHANGE IN CONTROL.  
In the event of a change in "Control" of the Company (as defined below), the City shall have the option of terminating this Contract by written notice to the Company. The Company shall notify the City within ten (10) days of the occurrence of a change in control. As used in this Contract, the term "Control" shall mean the possession, direct or indirect, of either (i) the ownership of or ability to direct the voting of, as the case may be fifty-one percent (51%) or more of the equity interests, value or voting power in the Company or (ii) the power to direct or cause the direction of the management and policies of the Company whether through the ownership of voting securities, by contract or otherwise.
- 31.13. DRAFTER'S PROTECTION.  
Each of the Parties has agreed to the use of the particular language of the provisions of this Contract and any questions of doubtful interpretation shall not be resolved by any rule or interpretation against the drafters, but rather in accordance with the fair meaning thereof, having due regard to the benefits and rights intended to be conferred upon the Parties hereto and the limitations and restrictions upon such rights and benefits intended to be provided.
- 31.14. FAMILIARITY AND COMPLIANCE WITH LAWS AND ORDINANCES.  
The Company agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Services. The Company further agrees that it will at all times during the term of this Contract be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to, workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all OSHA regulations applicable to the Services.

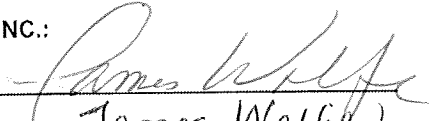
- 31.15. CONFLICT OF INTEREST.  
The Company covenants that its officers, employees and shareholders have no interest and shall not acquire any interest, direct or indirect that would conflict in any manner or degree with the performance of Services required to be performed under the Contract.
- 31.16. NO BRIBERY.  
The Company certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the forgoing has bribed or attempted to bribe an officer or employee of the City in connection with the Contract.
- 31.17. HARASSMENT.  
The Company agrees to make itself aware of and comply with the City's Harassment Policy. The City will not tolerate or condone acts of harassment based upon race, sex, religion, national origin, color, age, or disability. Violators of this policy will be subject to termination.
- 31.18. TRAVEL UPGRADES.  
The City has no obligation to reimburse the Company for any travel or other expenses incurred in connection with this Contract unless this Contract specifically requires reimbursement. If this Contract requires reimbursement by the City: (a) the City will only pay coach/economy rate airline fares, and (b) the Company's invoices shall include sufficient detail of travel expenses to demonstrate that fares were at coach/economy rates. Notwithstanding the forgoing, nothing in this provision shall preclude complimentary upgrades to first class or business class seating, mileage, points, or credits based upgrades, or upgrades paid for by the contractor so long as the City is not charged for or asked to reimburse the upgrade charge or the value of the miles, points, or credits used.
- 31.19. TAXES.  
Except as specifically stated elsewhere in this Contract, the Company shall pay all applicable federal, state and local taxes which may be chargeable against the performance of the Services. The Company consents to and authorizes the City to collect any and all delinquent taxes and related interest, fines, or penalties of the Company by reducing any payment, whether monthly, quarterly, semi-annually, annually, or otherwise, made by the City to the Company pursuant to this Contract for an amount equal to any and all taxes and related interest, fines, or penalties owed by the Company to the City. The Company hereby waives any requirements for notice under North Carolina law for each and every instance that the City collects delinquent taxes pursuant to this paragraph. This paragraph shall not be construed to prevent the Company from filing an appeal of the assessment of the delinquent tax if such appeal is within the time prescribed by law.
- 31.20. COUNTERPARTS.  
This Contract may be executed in any number of counterparts, all of which taken together shall constitute one single agreement between the parties.
- 31.21. PREAUDIT.  
No pre-audit certificate is required under N.C. Gen. Stat. 159-28(a) because this Contract is for an indefinite quantity with no minimum purchase requirement. Notwithstanding anything contained herein to the contrary, this Contract does not require the City to purchase a single product or service, and a decision by the City to not make any purchase hereunder will violate neither this Contract nor any implied duty of good faith and fair dealing. The City has no financial obligation under this Contract absent the City's execution of a valid and binding purchase order or contract addendum containing a pre-audit certificate.

*[Signature Page Follows]*

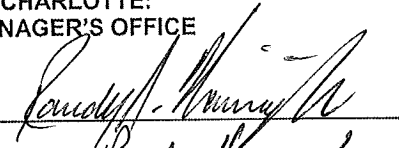


IN WITNESS WHEREOF, and in acknowledgment that the parties hereto have read and understood each and every provision hereof, the parties have caused this Contract to be executed on the date first written above.

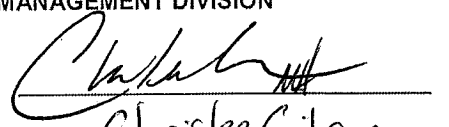
WOLFE, INC.:

BY:   
PRINT NAME: James Wolfe  
TITLE: CEO  
DATE: 5/15/17

CITY OF CHARLOTTE:  
CITY MANAGER'S OFFICE

BY:   
PRINT NAME: Randy Harrington  
TITLE: CEO  
DATE: 5/31/17

CITY OF CHARLOTTE:  
RISK MANAGEMENT DIVISION

BY:   
PRINT NAME: Chrislee Gibson  
TITLE: Insurance Manager  
DATE: 5/25/17

**EXHIBIT A PRICE SCHEDULE**

This Price Schedule is an Exhibit to and is incorporated into the Services Contract between the City of Charlotte and Wolfe, Inc. (the "Contract"). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract.

SERVICES	PRICE
<b>LABORATORY &amp; MEDICAL REVIEW FEES:</b>	
5-Panel DOT Laboratory & Medical Review Fee	\$15.00/specimen
9-Panel Non-DOT Laboratory & Medical Review Fee	\$15.00/specimen
<b>BUSINESS HOURS COLLECTIONS: (8:30 AM-5:30 PM MONDAY- FRIDAY)</b>	
Urine Collection at Company's Offices Located in Charlotte Metro Area	\$10.00/collection
Breath Alcohol Test at Company's Offices Located in Charlotte Metro Area	\$22.50/test
Combined Urine Collection & Breath Alcohol Test at Company's Offices Located in Charlotte Metro	\$32.50/both
Saliva Testing at Company's Office(s) Located in Charlotte Metro	\$10.00/collection
Urine Collection at Locations in Charlotte Metro Provided by Company's Subcontractors	\$16.75/collection
Breath Alcohol Test at Locations in Charlotte Metro Provided by Company's Subcontractors	\$27.00/test includes confirmation
Combined Urine Collection & Breath Alcohol Test at Locations in Charlotte Metro Provided by Company's Subcontractors	\$43.75 for both
Saliva Testing at Locations in Charlotte Metro Provided by Company's Subcontractors	\$16.75/collection
Urine Collection at City Facility Located in Charlotte Metro Area	\$12.00/collection
Breath Alcohol Test at City Facility Located in Charlotte Metro Area	\$22.50/test includes confirmation
Combined Urine Collection & Breath Alcohol Test at City Facility Located in Charlotte	\$34.50/both includes BAT confirmation
Saliva Testing at City Facility Located in Charlotte	\$12.00/collection
<b>AFTER HOURS COLLECTIONS AT WOLFE'S UPTOWN CHARLOTTE OFFICE 801 BAXTER ST., STE 401 5:31PM-8:29AM Monday- Friday, 12:00 AM-11:59 PM Saturday, 12:00 AM-11:59 PM Sunday, 12:00 AM-11:59 PM Holidays</b>	
Urine Collection at Company's Offices Located in Charlotte Metro Area	\$35.00/collection
Breath Alcohol Test at Company's Offices Located in Charlotte Metro Area	\$24.75/test
Combined Urine Collection & Breath Alcohol Test at Company's Offices Located in Charlotte Metro	\$49.50 for both
Saliva Testing at Company's Offices Located in Charlotte Metro Area	\$35.00/collection
Urine Collection at Locations in Charlotte Metro Provided by Company's Subcontractors	N/A
Breath Alcohol Test at Locations in Charlotte Metro Provided by Company's Subcontractors	N/A
Combined Urine Collection & Breath Alcohol Test at Locations in Charlotte Metro Provided by Company's Subcontractors	N/A
Saliva Testing at Locations in Charlotte Metro Provided by Company's Subcontractors	N/A
After Hours Response Fee	\$25.00 per call / \$50 No show
Wait Time (for each additional hour past first hour)	waived
<b>OUT-OF-TOWN DRUG TESTING (to be performed at the request of City Department seeking to have drug testing performed at a location outside Charlotte Metro Area)</b>	
Drug Testing at Company's Facilities in Out-of-Town Location	N/A
Drug Testing at Company's Subcontractor's Facilities in Out-of-Town Location	\$35.00/test includes collection
Setup package for applicants outside of Charlotte in which neither the Company nor its subcontractors Perform the Testing (includes sending a package with forms or electronic authorization delivery, collection site info and directions to the applicants). Reporting and invoicing to the City to be performed by the Service Provider.	\$0.00/setup and remote setup fee waived
<b>ADDITIONAL PRICING</b>	
Onsite Set-Up Fee for Urine Testing at City Facility Located in Charlotte	waived
Wait Time at City Facility (for each additional hour past first hour)	\$25.00/call
Expanded Panel for Reasonable Cause Testing	\$26.30 & up Each Includes Oxy and Meperidine
Litigation Package	\$125.00/package
Provide testimony regarding process, lab certification and results	\$100.00/hour
Random Selections: Conduct monthly computer generated selection for all categories (FMCSA, FTA, City safety sensitive). Provide selection results to City Project Manager or his designee.	\$15.00/monthly, per pool. Includes invoice distribution by City department

ADDITIONAL SERVICES	
Oral Fluid Lab Fee & MRO (not indicated under Laboratory & Medical Review Fees)	\$25.00/each
Split Specimen Test Fee	\$177.00/each
6-MAM Test (When ordered by MRO to verify presence of heroin)	waived
D&L Isomer Test (When ordered by MRO to verify presence of meth)	waived
MRO Letter Regarding process, lab certification, and results	waived
Employee Database Management (for random selection participants)	waived
Group Shipping of chain-of-custody forms	waived
Substance Abuse Professional Referral (SAP)	waived
All prices in this worksheet include the following: Courier Service to the Laboratory; Reporting including IVR access to the results; Results Database maintenance and City access to same; Chain-of-custody Form and Kit; and Chain-of-custody handling by Laboratory personnel	

**EXHIBIT B  
SCOPE OF WORK**

This Scope of Work is an Exhibit to and is incorporated into the Services Contract between the City of Charlotte and Wolfe, Inc. (the "Contract"). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract.

**1. SCOPE OF CITYWIDE DRUG AND ALCOHOL TESTING SERVICES.**

1.1. GENERAL SCOPE.

The City of Charlotte has approximately 7,500 employees and 15 Departments. Company shall meet the following objectives including design and implementation of the Citywide Drug and Alcohol Testing Services. While the City is flexible with respect to certain elements of the Citywide Drug and Alcohol Testing Services, the City has specific requirements and preferences for the Service delivery method.

1.2. EQUIPMENT.

The Company shall furnish all equipment, services and supplies necessary to achieve full compliance with the specifications and requirements. The fact that a particular service, item of equipment or material is not listed does not release the Company from its obligation to provide it, if such service, equipment or material is necessary to supply the Services so they fully comply with the specifications and requirements.

1.3. COLLECTIONS.

The Company shall be responsible for providing all Citywide Drug and Alcohol Testing Services for the City during the term of the Agreement. All Collections of Drug and Alcohol test samples shall be handled as follows:

1.3.1. The Company or its subcontractors shall be responsible for all collections.

1.3.2. Collection sites will be available in multiple locations throughout Mecklenburg County.

1.3.3. The City requires testing availability 24 hours a day, 7 days a week, including all weekends and holidays. All collection sites are located in the Charlotte/Mecklenburg County area. All collection site locations and hours are listed on Appendix 1 - Collection Facility List.

1.3.4. The Company shall conduct collections on City property and/or in City facilities only on an as-requested basis. Currently the City is aware of one on-site testing event that occurs on an annual basis and typically 150-200 collections will occur on one day at a designated City facility.

1.3.5. The Company shall provide the following emergency and after-hours collections on an as-needed basis. (Currently all post-accident drug and alcohol collections occur at Company sites):

1.3.5.1. Post-Accident Drug and Alcohol Testing

Post-accident drug test collections are required within thirty-two (32) hours after a vehicular accident; alcohol test collections within two (2) hours.

1.3.5.2. Reasonable Suspicion Drug and Alcohol Testing

Reasonable suspicion tests are required immediately upon a supervisor making a determination that an employee may be under the influence of drugs and/or alcohol.

- 1.3.5.3. Random Drug and Alcohol Testing.  
All employees that hold certain categories of jobs are subject to random testing regardless of shift. Employees are notified when to report for random test collection, which commonly will occur after hours.
- 1.3.6. The Company shall have collection options for locations outside of Mecklenburg County, NC.
  - 1.3.6.1. The Company may arrange for drug testing to occur at its own location(s) outside of Mecklenburg County, NC or at a subcontractor's location for out-of-town testing.
  - 1.3.6.2. For locations outside of Mecklenburg County, NC where neither the Company nor its subcontractor maintain a facility to perform the testing the Company shall prepare a setup package for donors outside of Charlotte. The Company shall send a package including forms, collection site information, and directions to the donor.
  - 1.3.6.3. The vendor or subcontractor performing the drug testing in the out-of-town location will be required to report results back to the Company (not the City) and the Company shall provide the results to the City.
  - 1.3.6.4. All payments to the vendor or subcontractor performing a drug test at an out-of-town location would be made by the Company directly to the vendor or subcontractor and then invoiced back to the City.
  - 1.3.6.5. The City is unable to determine in advance locations where out-of-town testing will be required. The Company will be informed of City out-of-town testing needs on an as-needed basis.
- 1.4. TRACK RESULTS DATA.  
The Company shall maintain and track all data related to City Employee Drug and Alcohol testing based on the specific requirements detailed below:
  - 1.4.1. The Company provider shall maintain a database to track all drug and alcohol test results.
  - 1.4.2. The Company will provide the database update process to the City and specify how frequently the database will be updated.
  - 1.4.3. The Company shall provide designated City users with a Web-based database interface to retrieve results.
  - 1.4.4. The Company shall assign a unique access code to each representative. The access code shall be used to access test results by email or telephone. The access code shall be changed monthly.
  - 1.4.5. Designated human resources representatives at each Department and/or division will have access to testing data for employees that report to that Department or division.
    - 1.4.5.1. Department representative shall be provided database access to the individual department test results only.
    - 1.4.5.2. City Project Manager shall have access to the entire database for all results.
  - 1.4.6. The Company shall electronically notify designated human resources representative(s) of the relevant Department or division when new drug test results are available for employees that report to that Department or division no later than noon of the business day following the Service Provider's receipt of such results.
    - 1.4.6.1. Email shall be sent to notify human resource Department representatives of availability of individual drug test results.

- 1.4.6.2. Phone call shall only be made to notify Department representatives and City Project Manager of positive results.
- 1.4.7. Test results shall be made available within 24 hours of collection.
- 1.4.8. The Company shall report current employee positive results to the designated Department human resources representative and City Project Manager by telephone within one (1) hour of Service Provider's receipt of positive test results.

1.5. RANDOM TESTING PROCESS.

The Company shall conduct monthly computer generated selection for all categories (FMCSA, FTA, CITY safety sensitive) using employee number or similar identifier specified by the City. There are approximately 750 employees in the FMCSA pool, 250 employees in the FTA pool, and 2,000 employees in the City safety sensitive pool. These are three separate uncombined pools, and random selections are made from within each of the three pools. The pools are updated monthly prior to the random selection.

All employees (approximately 7,500) are subject to testing while only approximately 3,000 of the 7,500 are in one of the random pools based on the specified categories. There are no other named or designated "pools" of employees for purposes of implementing random testing and the group of 4,500 employees not covered by random testing is not "named" for random testing purposes.

After the Company generates the selection list, the Company will be required to notify the Department or division rep with the names via electronic means. The Company may send the names of the employees to be tested to the Department or division rep in an email, or send an email to the Department or division rep stating that a list has been selected and providing online access to the list in the vendor database.

The Company shall be solely responsible for:

- Providing selection results to the City's Project Manager;
- Providing selection results to work location (Department or division); and
- Maintaining selection records.

The equivalent of 50% of pool members shall receive drug tests and 25% receive alcohol tests. Some employees may be tested more than once due to the fact that the entire pool is subject to random selection each month and therefore it is possible that fewer than 50% of the total population of the pool may be tested.

All employees in the City Safety Sensitive pool are non-DOT and the 9-panel non-DOT drug test and the non-DOT alcohol test will be used. City Safety Sensitive employees are subject to DOT testing. Under the City's authority, it may designate certain positions to be safety sensitive. These positions are NOT covered under standards of USDOT although the City uses a higher percentage of pool members than required by federal regulations.

1.6. MEDICAL REVIEW OFFICER.

The Company shall identify a Medical Review Officer ("MRO") to conduct the following tasks during the term of the Agreement:

- 1.6.1. Provide services of certified MRO in compliance with all applicable federal and state laws and regulations;
- 1.6.2. Provide analysis and protocol verification for the lab;
- 1.6.3. Certify all results, both positive and negative;
- 1.6.4. Interpret drug test results identified by the laboratory as non-negative;

- 1.6.5. Determine if non-negative drug test results indicate prescription medicine use or have other alternative medical explanations;
- 1.6.6. Review applicable forms for possible errors;
- 1.6.7. Provide litigation package regarding process, lab certification, and results when requested by the City; and
- 1.6.8. Provide litigation testimony regarding process, lab certification, and results when requested by the City. Litigation testimony can typically be provided by telephone on an as-needed basis.

1.7. MIS REPORTING.

The Company shall prepare and submit to the City Project Manager an annual Drug & Alcohol Management Information System (“MIS”) report for employees covered by Federal Transit Administration (“FTA”) requirements. The format of the MIS is defined by the FTA. The MIS is a compilation of test data by category for tests that have been administered during a given year. The MIS reports the number of tests given, how many tests were positive, and the substance that resulted in each positive test. Employees that are subject to FTA requirements include Charlotte Area Transit System (“CATS”) light rail or special transportation vehicle drivers, supervisors, and dispatchers, as well as certain mechanics.

1.8. CHAIN OF CUSTODY.

The Company shall meet Chain of Custody (“COC”) requirements as follows:

- 1.8.1. Create bar-coded COC materials for individual work locations;
- 1.8.2. Develop COC re-order procedures. Each City work location must be able to contact the Company to re-order COC materials, and the Company must have a centralized process for accepting such orders; and
- 1.8.3. Develop procedure for instances when candidate shows up without COC materials.

1.9. TESTING.

A sample of urine or saliva when applicable by policy, provided by the employee/applicant, is used to test for the presence of any of the following drugs or drug metabolites. A blood sample may be accepted in lieu of a urine sample only as approved by the City Project Manager with a release from the employee in those circumstances such as medical emergencies in a hospital environment. Federal government regulations and the US Department of Transportation (“DOT”) testing guidelines mandate cutoffs for minimum quantity of drug or alcohol that must be detected in the initial test and also in the confirmation test. When the initial test results reach the minimum cutoff limit, a confirmation test is conducted using the cutoff limits established for the confirmation test. (See below) Cutoff limits are measured in nanograms per milliliter.

<u>DRUGS</u>	<u>SCREENING TEST</u>	<u>CONFIRMATION TEST</u>
(a) Amphetamines	500	250
(b) Barbiturates	300	200
(c) Benzodiazepines	300	200
(d) Cannabinoids	50	15
(e) Cocaine	150	100
(f) Methaqualone	300	200
(g) Opiates	2000	2000
(h) Phencyclidine	25	25
(i) Propoxyphene	300	200
(j) Other drugs which may be determined to reduce work efficiency as determined by the City.		

The 9 panel tests are required for public safety and include the following Amphetamines,

Barbiturates, Benzodiazepines, Cannabinoids, Cocaine, Methaqualone, Opiates, Phencyclidine, and Propoxyphene. The 5 panel tests include Cannabinoids, Cocaine, Phencyclidine, Amphetamines, and Opiates. All Positive drug and alcohol tests require a confirmation test.

1.10. LAB CERTIFICATION

The Substance Abuse & Mental Health Services Administration (SAMHSA) lab certification is required by the City.

1.11. REPORTING REQUIREMENTS.

Company shall provide summary reports to the City Project Manager or his designee, and individual reports to designated human resources representatives at the relevant Department or division on a monthly.

1.11.1. Summary Reports shall include but are not limited to:

- All testing activity;
- Time Period covered for the report;
- Total number of employees tested by location during that time period;
- Total number of positive and negative tests by location;
- Total number of test by Department, division or location; and
- Reason for testing

1.11.2. Individual Test Report shall include but are not limited to:

- Donor Name or unique identifier;
- Date and time of collection;
- Type of sample taken;
- List of drugs tested; and
- Indication of positive or negative for each drug tested.



APPENDIX A - COLLECTION FACILITIES LIST

NAME (List subcontractor name where applicable)	ADDRESS	NORMAL HOURS OF OPERATION	AFTER-HOURS OF OPERATION
Wolfe Inc.	801 Baxter Street, Ste. 401 Charlotte NC 28202	<u>Monday – Friday</u> 8:30am – 5:30pm	After hours available 24 hours per day, 7 days per week.
*Behavioral Health Intervention Center	8401 Medical Plaza Dr #120 Charlotte NC 28262	<u>Mon, Wed, Fri</u> 8:00am – 2:00pm <u>Tues &amp; Thursday</u> 8:00am – 4:00pm	
*FACTLabs **Not available until mid-May 2017	1905 JN Pease Place Ste. 103 Charlotte NC 28262	<u>Monday – Friday</u> 8:00am – 2:00pm	
*Employment Practices Counsel (EPC) **Not available until end-May 2017	841 Baxter Street Suite 118 Charlotte, NC 28202	<u>Monday – Friday</u> 8:30am – 8:00pm	
Novant Health Urgent Care & Occupational Medicine – Kings Dr	445 South Kings Drive Charlotte NC 28204	<u>Monday – Friday</u> 7:00am – 8:00pm <u>Weekends</u> 9:00am – 6:00pm	
Novant Health Urgent Care & Occupational Medicine - Waverly	11840 Southmore Drive #100 Charlotte NC 28277	<u>Monday – Friday</u> 7:00am – 8:00pm <u>Weekends</u> 9:00am – 6:00pm	
Novant Health Urgent Care & Occupational Medicine – Matthews	9600 E Independence Blvd Charlotte NC 28105	<u>Monday – Friday</u> 8:00am – 5:00pm <u>Saturday</u> 10:00am – 3:00pm <u>Sunday</u> 1:00pm – 3:00pm	
Novant Health Urgent Care & Occupational Medicine – Quail Hollow	8450 Park Rd Charlotte NC 28210	<u>Monday – Friday</u> 7:00am – 4:00pm <u>Weekends</u> 8:00am – 5:00pm	
Novant Health Urgent Care & Occupational Medicine - Charlotte	1918 Randolph Rd Ste. 175 Charlotte NC 28207	<u>Monday – Friday</u> 8:00am – 5:00pm <u>Saturday</u> 10:00am – 3:00pm <u>Sunday</u> 1:00pm – 3:00pm	

\*MWSBE



**APPENDIX B - CBI FORM 6: PAYMENT AFFIDAVIT OF SUBCONTRACTOR UTILIZATION**

The Company shall submit this form monthly detailing aggregate payments to MWSBE Subcontractors.

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

Contract#: \_\_\_\_\_

Contract Goods or Services: \_\_\_\_\_

Payment Period: \_\_\_\_\_ to \_\_\_\_\_

City Department(s): \_\_\_\_\_

Subcontractor	Certification (MBE, WBE, and/or SBE)	Vendor #	Description of Work Performed	# of Payments this Period	Payment Total

Please indicate the total amount invoiced to the City during this period: \$ \_\_\_\_\_

The undersigned Company certifies the preceding chart is a true and accurate statement of all payments that have been made to MWSBE subcontractors on this Contract, and that all Suppliers providing goods under this contract have been listed in the Sales Tax Statements submitted to the City in connection with this Payment Affidavit. If no subcontractors or suppliers are listed on the preceding chart or Sales Tax Statements, the Company certifies that no subcontractors or suppliers were used in performing the Project/Contract for the payment period indicated. Failure to provide accurate and truthful information is a violation of the Charlotte Business INclusion Policy and may result in the sanctions prescribed therein.

This \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name and Title

<u>To be completed by City:</u>		Overall MWSBE	%
		Goal:	
Total Paid to Prime			
Company:	\$		
Total Paid to		Overall MWSBE	
MWSBEs:	\$	Commitment:	%
		MWSBE Goal	
		Attainment this	
		period:	%

**APPENDIX C - CBI FORM 6: LETTER OF INTENT**



**CBI FORM 4 - Letter of Intent**

<b>Contract Goods or Services:</b>	Citywide Drug and Alcohol Testing Services
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<b>To be completed by the Prime Company:</b>	
Name of Prime Company:	WOLFE INC Vendor #: 118574
Address:	681 CABARRUS AVE WEST; CONCORD NC 28027
Contact Person:	ZACHARY DOYLE Email: ZacharyD@WolfeInc.com
Telephone:	717-309-0490 Fax: 704-784-2624

Identify in complete details the goods or services to be provided by the MWSBE Subcontractor:

As part of the preferred collection site listing for City of Charlotte. The subcontractors, upon request from the various city departments, will perform drug screen collections and Breath alcohol testing.

Value of the goods or services committed to be purchased from the MWSBE Subcontractor: \$ 7,400.00

<b>To be completed by MWSBE Subcontractor:</b>	
Name of MWSBE:	BEHAVIORIAL HEALTH INTERVENTION CENTER Vendor #: 303653
Address:	8401 MEDICAL PLAZA DR STE 102; CHARLOTTE NC 28262
Contact Person:	CHRIS MATTEWS Email: Chris.bhic@gmail.com
Telephone:	704-458-9292 Fax: 704-908-1448

Value of the goods or services committed to be purchased from the MWSBE Subcontractor: \$ 7,400.00

<b>To be completed by MWSBE Subcontractor:</b>	
Name of MWSBE:	FACTSLABS Vendor #: 303161
Address:	1905 JN PEASE PLACE STE 103; CHARLOTTE NC 28262
Contact Person:	MARVIN STALLWORTH Email: marvinastallworth@yahoo.com
Telephone:	980-210-1093 Fax:

Value of the goods or services committed to be purchased from the MWSBE Subcontractor: \$ 7,400.00

<b>To be completed by MWSBE Subcontractor:</b>	
Name of MWSBE:	EMPLOYMENT PRACTICES COUNSEL (EPC) Vendor #: 300340
Address:	7714 MATTHEWS MINT HILL RDL STE H; MINT HILL NC 28227
Contact Person:	LYNN LEARY Email: llearv@encounsel.com
Telephone:	980-207-1138 Fax:

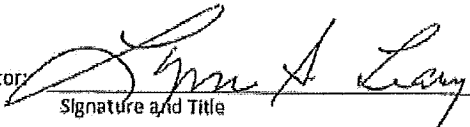
Upon execution of a Contract with the City for the above referenced goods or services, the Prime Company certifies that it intends to utilize the MWSBE listed above, and that the description and value of work to be performed by the MWSBE Subcontractor described above is accurate. The MWSBE Subcontractor certifies that it has agreed to provide such goods or services for the amount stated above.

Prime Contractor:	_____	Date:	_____
	Signature and Title		
MWSBE Subcontractor:	<u><i>Maureen Stalworth</i></u>	Date:	<u>3-29-17</u>
	Signature and Title		
MWSBE Subcontractor:	_____	Date:	_____
	Signature and Title		
MWSBE Subcontractor:	_____	Date:	_____
	Signature and Title		

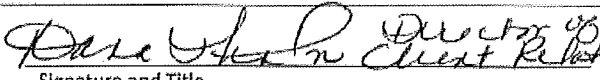
Upon execution of a Contract with the City for the above referenced goods or services, the Prime Company certifies that it intends to utilize the MWSBE listed above, and that the description and value of work to be performed by the MWSBE Subcontractor described above is accurate. The MWSBE Subcontractor certifies that it has agreed to provide such goods or services for the amount stated above.

Prime Contractor:	_____	Date:	_____
	Signature and Title		
MWSBE Subcontractor:	<u><i>Christopher Matthews, owner</i></u>	Date:	<u>3-29-17</u>
	Signature and Title		
MWSBE Subcontractor:	_____	Date:	_____
	Signature and Title		
MWSBE Subcontractor:	_____	Date:	_____
	Signature and Title		

Upon execution of a Contract with the City for the above referenced goods or services, the Prime Company certifies that it intends to utilize the MWSBE listed above, and that the description and value of work to be performed by the MWSBE Subcontractor described above is accurate. The MWSBE Subcontractor certifies that it has agreed to provide such goods or services for the amount stated above.

Prime Contractor:	_____	Date:	_____
	Signature and Title		
MWSBE Subcontractor:	 CEO	Date:	3/30/2017
	Signature and Title		
MWSBE Subcontractor:	_____	Date:	_____
	Signature and Title		
MWSBE Subcontractor:	_____	Date:	_____
	Signature and Title		

Upon execution of a Contract with the City for the above referenced goods or services, the Prime Company certifies that it intends to utilize the MWSBE listed above, and that the description and value of work to be performed by the MWSBE Subcontractor described above is accurate. The MWSBE Subcontractor certifies that it has agreed to provide such goods or services for the amount stated above.

Prime Contractor:	 Director of Cust Rpt	Date:	3/31/17
	Signature and Title		
MWSBE Subcontractor:	_____	Date:	_____
	Signature and Title		
MWSBE Subcontractor:	_____	Date:	_____
	Signature and Title		
MWSBE Subcontractor:	_____	Date:	_____
	Signature and Title		



# CITY OF CHARLOTTE

# Purchase Order

Fiscal Year 2022 Page 1 of 1

THIS NUMBER MUST APPEAR ON ALL INVOICES, PACKAGES AND SHIPPING PAPERS.

Purchase Order # **22002568**

IF A CONTRACT # IS PROVIDED BELOW, ALL PURCHASES MADE UNDER THIS PO ARE SUBJECT TO THE TERMS AND CONDITIONS THEREIN:

Contract #

All invoices must be mailed to [cocap@charlottenc.gov](mailto:cocap@charlottenc.gov)

BILL TO

CITY OF CHARLOTTE AP  
P.O. BOX 37979  
CHARLOTTE, NC 28237-7979  
[COCAP@CHARLOTTENC.GOV](mailto:COCAP@CHARLOTTENC.GOV)

VENDOR

FORENSIC POLYGRAPH CONSULTANTS  
726 NEAL DR  
CHARLOTTE, NC 28213  
[SUDDRETHUNCC@GMAIL.COM](mailto:SUDDRETHUNCC@GMAIL.COM)

SHIP TO

Fire Administration  
500 Dalton Avenue  
Charlotte, NC 28206

Vendor Phone Number 704-596-1974	Vendor Fax Number	Requisition Number 2831	Buyer 97104	Delivery Reference Kim Sanders
Date Ordered 08/02/2021	Vendor Number 309406	Date Required	Days To Net 30	Freight Method/Terms
				Department/Location CFD Administration

Line#	Description/Part No.	Qty	UOM	Unit Price	Extended Price
1	FY22 Polygraph Testing Polygraph Testing Services  Please reference purchase order number on all invoices.	50.0	EACH	\$300.00	\$15,000.00

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act

By *Kay Elmore*  
Chief Procurement Officer

By *Kyle Plamery*  
Finance Officer

Total Ext. Price \$15,000.00  
PO Total \$15,000.00

# Terms and Conditions

The Terms and Conditions listed below will govern all matters relating to the goods and services provided by you or your company (the "Vendor") to the City of Charlotte (the "City") under this purchase order ("PO"). Additional terms and conditions stated on the face of this PO shall take precedence over any conflicting terms and conditions stated below. Any terms and conditions not stated on the face of this PO but incorporated by reference therein shall be binding only if provided or signed by the City and attached hereto. In the event that a binding written contract signed by both the Vendor and the City exists, the terms and conditions of that contract shall supersede any conflicting terms and conditions below or on the face of this PO.

1. If Vendor refuses to accept this PO exactly as written, Vendor will return it at once with explanation.
2. The City will not be responsible for any goods or services delivered without a PO. Vendor will deliver invoices to the City only at the address shown on the face of this PO. Vendor will send separate invoices for each PO number.
3. No boxing, packing, cartage, or shipping charges will be allowed by City unless specifically authorized on the face of this PO.
4. Any cash discount period to City will date from City's receipt of the invoice or from the date of the receipt of goods, whichever is later.
5. Unless "FOB Origin" is stated on the face of this PO, the risk of loss of and damage to goods that are the subject of this PO remain on Vendor until the goods are (a) delivered to the destination set out in this PO and (b) accepted by the City.
6. The City may inspect all products or service deliverables prior to acceptance. Payment does not constitute acceptance. The City's failure to accept or reject products or services shall not relieve Vendor from liability for products or services that are defective or do not meet specifications. Rejected products shall be returned to Vendor at Vendor's risk and expense.
7. Vendor warrants that the products and services furnished pursuant to this PO shall: (a) comply with all federal, state, and local laws applicable thereto; (b) satisfy all requirements set forth on the face of this PO and any applicable documentation incorporated herein; (c) meet industry standards and be suitable for the purpose intended; (d) be of merchantable quality; and (e) be free from defects in title, labor, material, or fabrication.
8. The City may terminate this PO for convenience at any time by providing ten (10) days' written notice to Vendor. The City may terminate this PO or any part thereof effective immediately upon the giving of written notice of termination for cause if Vendor violates or fails to deliver or perform any covenant, provision, obligation, term, or condition contained in this PO, or if the City determines that Vendor will not be able to deliver or perform due to insolvency or other reason.
9. Vendor will defend, indemnify, and save the City harmless from any and all loss, damages, costs, fees, and expenses incurred on account of any and all claims, suits, or judgments alleging that any product or service provided under this PO violates any patent, copyright, trade secret, trade name, or any other intellectual property right of any nature.
10. If any product provided hereunder is alleged to be defective in any respect whatsoever, Vendor will defend, indemnify and save City harmless from all loss, damages, costs, fees, and expenses incurred by reason of such allegation or defect, including without limitation all liability arising from any accidents, injuries, or damages to persons or property that may result in whole or in part from such product.
11. If Vendor performs services or constructs, erects, inspects, or delivers hereunder, Vendor will indemnify and save harmless the City from all loss, damages, costs, fees, or expenses incurred in connection with any accidents, injuries, or damages to persons or property that are alleged to have resulted in whole or in part from the performance thereof.
12. Vendor agrees not to release any advertising or other materials using the City's trademark, quoting the opinion of any City employee, or implying in any way that the City endorses Vendor or its products or services.
13. Vendor represents and warrants that no federal or state statute or regulation or municipal ordinance has been or will be violated in the manufacture, sale, or delivery of any product or service sold and delivered hereunder and if such violation is alleged, Vendor will indemnify and save the City harmless from all loss, penalties, fees, costs, and expenses resulting in whole or in part from such violation or allegation.
14. E-Verify Requirements: Vendor 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.
15. Except as required by law, any information or data of the City or its suppliers or subcontractors that Vendor receives access to in connection with this PO shall be kept as confidential proprietary information of the City and not divulged or made available to any individual or organization without City's prior written approval. Such information or data will be the sole property of the City and not Vendor. Access to "Restricted Data" (as defined by the City's Restricted Data Policy) is subject to execution of a confidentiality agreement by Vendor.
16. All intellectual property, including, but not limited to, patentable inventions, patentable plans, copyrightable works, trademarks, service marks, and trade secrets invented, developed, created, or discovered in performance of this PO shall be the property of the City.
17. Vendor agrees to comply with the Non-Discrimination Policy set forth in Chapter 2, Article V of the Charlotte City Code, which is available for review at <http://library.municode.com/index.aspx?clientId=19970> and incorporated herein by reference. Vendor consents to be bound by the award of any arbitration conducted thereunder.
18. Vendor agrees to provide Payment Affidavits as required by Part D, Section 9 of the Charlotte Business Inclusion Policy, which is available at <http://chameck.org/city/charlotte/CharlotteBusinessInclusion/Pages/default.aspx> and incorporated herein by reference.
19. Vendor shall pay all sales or use taxes that are or become due in connection with any products or services provided hereunder, and shall indemnify and save harmless the City from any damages, costs, fees, expenses, or penalties on account of such taxes. Vendor may charge the City only for those taxes that are applicable to the goods and/or services being provided under this PO.
20. Vendor shall secure, before delivery of any goods or services hereunder, Commercial General Liability insurance in an amount not 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, with the City listed as additional insured. Vendor shall produce an insurance certificate evidencing such coverage upon request by the City.
21. In addition to the insurance required in the preceding paragraph, if Vendor performs services hereunder, Vendor shall secure, before delivery of such services (1) Workers' Compensation Insurance meeting State of North Carolina statutory requirements with \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit, providing coverage for employees and owners; and (2) Commercial Automobile Liability Insurance with limits of no less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit each occurrence/aggregate, with the City listed as additional insured, provided that if Vendor will operate a vehicle on the Charlotte Douglas International Airport airfield, coverage limits for Commercial Automobile Liability Insurance shall be raised to \$5,000,000 for each of the above categories. Evidence of commercial automobile coverage is necessary only if vehicles are used in the provision of services under this PO. Vendor shall produce an insurance certificate evidencing such coverage upon request by the City.
22. The City may at any time insist upon strict compliance with these Terms and Conditions notwithstanding any previous custom, practice, or course of dealing.
23. The Terms and Conditions as stated in this PO govern in event of conflict with any terms of Vendor's proposal, and are not subject to change by reason of any written or verbal statements by Vendor or by any terms stated in Vendor's acknowledgment unless accepted in writing by the City.
24. This PO is governed by North Carolina law. Any legal actions arising from this purchase order shall be brought in Mecklenburg County, North Carolina.
25. Vendor certifies that: (a) 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; (b) it has not been designated by the NC State Treasurer pursuant to N.C.G.S. 147-86.81 as a company engaged in the boycott of Israel; and (c) it will not take any action causing it to appear on any such list during the term of this PO.
26. Because this PO may be partially or fully paid from federal funds, the City's "Federal Contract Terms and Conditions Exhibit," accessible at [insert webpage], is incorporated into and made part of this PO. The incorporated federal terms include without limitation the provisions required by 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II; Equal Employment Opportunity (41 C.F.R. Part 60); Davis-Bacon Act (40 U.S.C. 3141-3148); Copeland "Anti-Kickback" Act (40 U.S.C. 3145); Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387); Debarment and Suspension (Executive Orders 12549 and 12689); Byrd Anti-Lobbying Amendment (31 U.S.C. 1352); Procurement of Recovered Materials (2 C.F.R. § 200.322); and Record Retention Requirements (2 C.F.R. § 200.324). Additional federal terms may apply for certain agencies or grants.



## PRICING WORKSHEET

### Pre-employment

Physical exam	\$75.00
DOT exam	\$75.00
Urinalysis	\$10.00
Electrocardiogram	\$60.00
Audiogram/hearing test	\$20.00
Titmus/vision exam	\$20.00
Pulmonary function test	\$35.00
Chest x-ray (2 views)	\$80.00
Respiratory questionnaire	\$30.00
Complete blood count	\$15.00
Complete metabolic panel	\$27.00
Lipid panel	\$33.00
HBsAb	\$28.00
HBsAg	\$28.00
Blood lead	\$51.00
Zinc protoporphtrin	\$88.00

Other procedures and testing requested by The City of Charlotte during the pre-employment examination will be reduced by 50% off of the Novant Health Urgent Care & Occupational Medicine fee schedule.



MMR	\$89.00
MMR Titer	\$105.00
Varicella	\$137.00
Varicella Titer	\$73.00
Hep B Titer	\$49.00
Chest X-ray w/B reader	\$60.00
Asbestos Physical	\$78.00