Presentation At IMLA Annual Conference
September 18, 2006

Software Procurement
Avoiding the Pitfalls

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1) START WITH THE RIGHT FORM

Attached are 3 forms the City of Charlotte frequently uses in technology transactions. Keep in mind though -- they are not "one size fits all." Technology transactions vary greatly from case to case and you will have to make changes to fit your situation. Our philosophy is to include as much as possible in the forms, because it's easier to delete than to add.

a) **The MCSI (Master Contract for System Integration)**: For implementing, licensing and maintaining complex software applications. Can be edited down and modified for simpler transactions.

b) **Amendment to Standard Software License:** For use when there is no implementation work to be done and the vendor won't deviate from its standard forms.

c) **Confidentiality Agreement:** Always have vendors sign a confidentiality agreement when they will have access to confidential information of the municipality or other vendors. If the vendor won't be sharing its own trade secrets, edit the agreement to make it unilateral.

2) SET THE STAGE WITH A GOOD RFP

a) Protecting yourself legally is much easier when groundwork is laid on the front end, before the request for proposal goes out. Design the request for proposal to address legal and contractual issues, as well as technical performance and functionality.

b) **Include a detailed set of requirements** in chart format and have each vendors respond as to whether its solution meets the requirement, does not meet the requirement or can meet the requirement with modifications. If it's the latter, have the vendor explain.

c) Include a draft contract in the RFP.

i) It puts the proposers on notice of key contract provisions you will require

ii) Once a project has been priced, efforts to insert legal protections and accountability may price increases (otherwise you are likely to hear "*that's a new requirement*" or "*our pricing was not based on the assumption that we would bear that risk*" when you try to impose accountability in the contract documents).

iii) It allows you to take exceptions to the contract terms and conditions into account if two proposers are close in meeting the user requirements

iv) It helps identify the key issues in dispute, and allows early discussion before investing a lot of time in negotiations

v) It stakes a vendor out before on contract terms before it becomes apparent that they have offered

such a great price for the system that best meets your needs

d) **Avoid getting caught between a rock and hard place when it comes to disclosure of trade secrets.** Technology proposals sometimes contain trade secret information which is exempt from disclosure under the public records laws. Disclosure of such information could subject a local government to damages. On the other hand, refusing to disclose information that not a trade secret could subject a local government to payment of attorney's fees if challenged in court. The difficult part is, determining whether information is a trade secrets depends on facts the municipality is not likely to have, namely: (i) whether the information derives commercial value from not being generally known by the public; and (ii) whether the vendor has made reasonable efforts to maintain its secrecy. Consider the following precautions:

i) Include language in RFP requiring vendors to properly mark trade secrets, and to indemnify the municipality for any costs associated with refusing to disclose information the vendor has designated as a trade secret. Example:

> Upon receipt at the Procurement Office, your Proposal is considered a public record except for material which qualifies as "trade secret" information under N.C. Gen. Stat. 66-152 et. seq. After the Proposal opening, your Proposal will be reviewed by the City's evaluation committee, as well as other City staff and members of the general public who submit public records requests. To properly designate material as trade secret under these circumstances, each Proposer must take the following precautions: (a) any trade secrets submitted by a Proposer must be submitted in a separate, sealed envelope marked "Trade Secret—Confidential and Proprietary Information—Do Not Disclose Except for the Purpose of Evaluating this Proposal," and (b) the same trade secret/confidentiality designation must be stamped on each page of the trade secret materials contained in the envelope.
>
> In submitting a Proposal, each Proposer agrees that the City may: (a) reveal any trade secret materials contained in the Proposal to City staff and to any outside consultants or other third parties who are hired by the City; and (b) post the Proposal on the City's intranet. Furthermore, each Proposer agrees to indemnify and hold harmless the City and each of its officers, employees, and agents from all costs, damages, and expenses incurred in connection with refusing to disclose any material which the Proposer has designated as a trade secret. Any Proposer that designates its entire Proposal as a trade secret may be disqualified.

ii) Make sure everyone who receives materials that contain trade secrets is *aware* of the need to protect against disclosure. Restrict access to trade secret information to those individuals having a need to know.

iii) All consultants and contractors who have the opportunity to review trade secret materials in your client's possession should sign confidentiality and non-disclosure agreement before such access is permitted**.**

e) **Make clear that the proposal is a firm offer and will remain in place for a period of time long enough to select a vendor and reach a contract.** In technology contracts where there will be negotiations, this process can take a bit longer than other situations. Our standard lock-in period for bids in technology contracts is 180 days. Otherwise, the vendor may try to increase prices in the course of contract negotiations. A vendor's bargaining leverage increases once it knows that its system has been selected as the one that best meets user requirements.

f) **To facilitate cost comparison and avoid surprises, the RFP should require proposers to complete a uniform cost sheet requiring itemization of all costs that could conceivably be charged in connection with the procurement.** Most of you probably do that now in your bid documents. With technology projects it is especially important because they involve a number of different types of costs, including fixed prices for hardware, software license fees, training costs, and maintenance and support fees, fixed prices for services, and time and material charges for additional work. Out-of-pocket expenses on a major project can run in the hundreds of thousands of dollars. Make sure these costs are readily identifiable in one place and not buried in the different parts of the proposal. Make sure you negotiate the maintenance fees on the front-end. Once you buy the system, you have little leverage.

3) NEGOTIATING TIPS

a) **Consider having your procurement staff to lead the negotiations.** While the user department needs to be heavily involved in the procurement process, they may be too excited about the new technology to be objective. In addition, because the user department staff will have to work hand in hand with vendor throughout the project, there may be a tendency to shy away from conflict for the sake of being cooperative or not starting out on the wrong foot.

b) Educate staff not to say things that kill your leverage:

- "Your solution is the best fit for our needs"
- "We have ruled all the other vendors out except for you"
- "We have a critical deadline coming up and need to get started right away"
- "We want to partner with you"

c) Be aware of vendor negotiating ploys:

i) "**We never deviate from our standard forms**." Most vendors will, at least to some extent. Whether they do may depend on the size and type of transaction, and your client's bargaining power. Prepare for this ploy in advance by seeking copies of that vendor's contracts from other governmental entities.

ii) **"Even though we cannot legally commit not to do that, you know that if we did that kind of thing we would lose all of our customers"** . . . " or "you don't have to worry about us doing that because we will be looking to you as a key reference site and we want to keep you happy." The final license or contract will in all likelihood have a merger clause. If the vendor makes a representation, either get it in writing or don't rely on it.

iii) **"Time is limited, the prices will increase if we cannot close the deal by next Friday**," etc. Avoid this by requiring in the RFP that prices remain fixed for a long enough period of time to conclude negotiations. Be aware that time pressure from a sales representative is sometimes commission driven.

iv) **"That would set a bad precedent**." Try to find out if the vendor has made that particular concession before. If you can't find that out, ask for a "most favored nations" clause stating that if the vendor has agreed to a better price or other particular concession for another customer within a specific time period, the vendor will give you the same concession. You might also get some valuable information by asking about previous problems the vendor has had with precedents being established. (What were the precedents? Shouldn't you be entitled to them now?)

v) "**If we lower the price we can't give you our best consultants**." Find out more about the estimated hours of each level of staff. If you conclude this is not a ploy, see if there are ways to push down some of the work.

vi) "**We can't negotiate the service levels until we have some experience with your operations**." In the vast majority of cases, this is not true. If your case is the rare exception (i.e., completely untried technology), make sure your client has an option to terminate on favorable terms (such as a refund of all or part of what it has paid) if services levels are not agreed to and signed within a specified period of time.

d) Do not sign a letter of intent

- Often unclear as to liability for interim services if deal doesn't happen
- Removes leverage by eliminating competition
- Possible liability for breach of contract or breach of duty of good faith and fair dealing

4) **MAKE ONE VENDOR ACCOUNTABLE FOR THE WHOLE PROJECT**

a) **Technology purchases sometimes create a tradeoff between lowest cost and accountability**. When a client needs multiple products and services, dividing the transaction up into separate purchases may result in a better price. On the other hand, acquiring all of the products and services from a single vendor should result in that vendor assuming responsibility for anything that goes wrong with the system.

b) **Do not under-value the advantage of vendor accountability**. When different vendors provide different parts of the same system, the buyer may wind up as referee in a finger-pointing contest if something goes wrong.

c) **If it is not feasible to structure a purchase so that one vendor assumes responsibility for the whole system, it is important to identify in the contract the boundaries of each vendor's responsibilities**. Additionally, it is helpful to agree on a process for identifying and solving problems and to require each vendor to cooperate with the others in following it.

5) QUANTIFY THE COST BEFORE MAKING THE COMMITMENT

a) Many software projects require at least some degree of customization. It may be necessary to fill gaps between user requirements and standard software functionality. It also may be necessary to

build interfaces between existing software and the software being purchased. In certain instances, it may be impossible for the vendor to price the cost of developing the custom software without an in-depth analysis of your client's environment.

b) When it is not possible to quantify all project costs without significant additional work by the vendor, consider breaking the project into parts and paying the vendor to perform the necessary analysis work before your client commits to the overall project. Contracting to invest hundreds of thousands of dollars in a project prior to learning what the total cost will be creates a high risk. A buyer's leverage in minimizing costs is much greater before reaching a point where financial or political concerns make it difficult to back out of a project.

c) **Also, in the category of lessons learned, we've found that it's often better to change your business process to match the system rather than doing a customization to make the system match your process.** When you do customizations, you have not only the front-end cost of paying someone to modify the system to match your process. You are also going to have to have those customizations incorporated into each major update and enhancement that comes out. That can greatly increase your cost over time.

6) FOCUS ON PROJECT MANAGEMENT

a) **Assigning a competent project manager** is probably the single most important thing your municipality can do to ensure the success of a technology project. Define in detail the role of the vendor's project manager and the role of the municipality's project manager. (*See* Section 5 of Exhibit C to the MCSI.)

b) **Require a detailed and comprehensive project plan.** (*See* Section 9.1 of Exhibit C to the MCSI.)

c) **Require regular progress reports.** (*See* Section 6 of Exhibit C to the MCSI.)

d) **Clearly define what resources the municipality is required to provide** in the project, and require vendor to provide written notice and proceed to next level of management if the municipality doesn't do what is required. (*See* Section 7 of the MCSI, and Section 4 of Exhibit C to the MCSI.)

e) Include a **"key personnel" clause**. (*See* Section 8 of the MCSI.)

f) Exhibit C describes each of the steps typically encountered a major software implementation. It has to be customized to fit each transaction, but it provides a good checklist to make sure you haven't missed something.

7) ADDRESS CHANGE CONTROL.

a) See Section 14 of MCSI for sample change control provision. Most important thing is, there should be no change in what vendor has committed to deliver absent customer's prior written consent.

b) Proposed change orders are deemed rejected unless accepted in writing by the municipality (no acceptance by default)

8) **TIE PAYMENTS TO PERFORMANCE**

a) **See the sample Milestone Payment Plan attached as Exhibit B to the MCSI.** Typically, your client will pay a certain amount upon execution of the agreement, a certain amount upon delivery and/or installation, and the rest upon the completion of agreed upon check points and delivery points in the implementation, testing and training process. Try to hold back at least 10% of the total license fees until final acceptance. Having the ability to withhold payment may be your best leverage in assuring that the product ultimately works.

b) Tying payment to performance also means having a **comprehensive acceptance test**. Effective acceptance testing requires detailed specifications and requirements, as well as a detailed acceptance test plan. For complex systems, the acceptance tests and procedures are often agreed upon after execution of the contract. In such situations, the contract should specify in detail the procedure for developing the acceptance tests and procedures. It should also clearly establish your client's right to reject them if they do not conclusively demonstrate that the software satisfies all of the agreed upon specifications and requirements as installed in your client's environment.

9) REPRESENTATIONS AND WARRANTIES

a) The most important warranty is that the system will operate in accordance with the contract requirements for a specified period of time. That period may be from 90 days to 2 years depending on the circumstances, but the most common warranty period is for one year.

b) Four things **to watch out for with a standard warranty clause:**

i) Make sure that you have **full compliance** and **not just substantial compliance**.
ii) Make sure that the warranty references the **contract specifications** and not the just vendor's specifications. It's not unusual for the vendor to propose a warranty that the system will operate in accordance with the vendor's technical specifications. However, the vendor's specifications may not cover everything that the contract specifications do. Also, they may change over the life of the implementation.
iii) Make sure that the warranty **starts on acceptance, not delivery or installation**. In a complex implementation there can be a big time lag between installation and acceptance. You could wind up in a situation where most of your warranty is used up by the time you get the system running properly.
iv) If **third party software** is part of the system, make sure it's included in the warranty. Not uncommon for vendors to exclude it. If the third party software is critical to making the whole system work, then you don't want to be stuck in a situation where you can't get your money back because the problem happens to lie with the third party software.

c) Include a warranty that the system will **contain no viruses, time bombs, Trojan horses**, or other disabling devices that could be triggered if the organization fails to make payment or perform any of its other obligations.

d) You will need to have warranties regarding intellectual property infringement, adequacy of documentation, etc. (*See* Section 9 of the MCSI for other common warranties.)

10) REMEDY FOR BREACH OF WARRANTY

a) See the end of **Section 10 of the MCSI** for our preferred remedy for breach of warranty (a full refund of all amounts paid under the contract, without limitation of other remedies.) However, the standard warranty

offered by most vendors is to repair or replace the system at no additional cost if it malfunctions during the warranty period. Several things to watch out for in a remedies clause for breach of warranty.

b) Make sure that it is an **absolute obligation** to fix the system, and not just an obligation to use "**best efforts**."

c) Most warranties provide that if the vendor cannot repair or replace the system so that it meets specifications, then the buyer is entitled to a refund. However, **be careful about the wording of the refund clause.**

d) Some clauses **limit the refund** limited to the **amount paid for defective component**. Do not ever agree to that. You may have a small component of the system that won't work and prevents you from using the whole system. The refund includes everything that you cannot use**.**

e) **Often, the refund** only includes the license fees. With many projects, what you pay for professional services to implement the system is greater than what you pay for the software license itself. Make sure that the refund includes the professional fees you pay to implement the system.

f) **Beware of agreeing that repair, replacement and refund are your exclusive remedies for breach of warranty.** If you have to abandon a project, the cost to your organization will be greater than just the amount paid to the vendor. As a result, the organization should be entitled to pursue other remedies, such as its actual damages.

11) OTHER REMEDIES FOR BREACH

a) See Section 10 of the MCSI for other remedies. Make sure that withholding payment based on a good faith dispute is not a default that entitles the vendor to terminate your license.

b) Consider liquidated damages if timing is critical to the project.

12) LICENSE ISSUES

a) The license should make clear who may use the software. Will persons or entities outside your municipality use the software? A city and county may share software. A police department may need to ensure that other state departments and the FBI and the DEA are authorized to access certain third party software to run inquiries, etc.

b) **Will there be a restriction on the number of users,** or will an unlimited number of people within the licensed entities be allowed to use the software? If there is a restriction, will it be based on concurrent use, or the total number of users?

c) Location of Use. At what location(s) will you use the software, and will that list change?

i) In general, the license should authorize you to move the software to another location controlled by you upon written notice to the vendor. Make certain that you have the right to *change* locations without paying an additional fee. However, an additional fee may be required in some instances to *add* locations.

ii) If it is conceivable that you may desire to expand the use of the software to other locations,

negotiate the fees for such expansion before you sign the license.

d) Equipment Restrictions. What equipment will you use the software on, and that list change?

i) Some licenses limit your use of the software to a specific piece of equipment. Restrictions of this nature may make sense for software that was designed to support a particular piece of equipment, or in other situations where moving the software could impact the vendor's maintenance obligations. However, they can be a trap for the unwary and trigger an unwarranted fee increase when they prohibit moving software from one server to another with no impact on a vendor's maintenance obligations.

ii) As with the expansion of locations, if it is conceivable that you may desire to expand the use of the software to other equipment, negotiate the fees for such expansion before you sign the license.

e) **Right to make modifications.** The license should specify whether your client will get source code and have the right to make modifications to the software. (Your client may need modifications to correct problems, add features or make changes to the software.)

i) If your client will get source code and have rights to modify it:

(1) You will need (and the vendor will insist upon) stringent protections to prevent the copying and disclosure of the source code. The vendor will try to restrict third party access to those entities which it approves in writing (options include excluding third parties who are competitors of the vendor of who present a security risk, or imposing requirements of reasonableness on the vendor's ability to withhold consent).

(2) The vendor may refuse to warrant or maintain software that your client has modified.

ii) If your client will not get source code or have the right to modify it:

(1) It is critical that you have a maintenance commitment from the vendor, with agreed upon maintenance fees for an extended period; and

(2) You will need a source code escrow arrangement to give your client access to the code in the event the vendor goes out of business or fails to maintain the software. See sample form attached to this outline.

f) **Source Code Escrow Agreement.** In setting up a source code escrow arrangement, beware of the following:

(1) You might want to consider negotiating your own source code escrow agreements with one of the major escrow companies, and require vendors to use your agreement. Vendor agreements are often problematic in 3 respects:

(a) They only let you have the source code if the vendor goes out of business. You should negotiate for much broader release conditions. For example, below are the release conditions in the City of Charlotte's standard source code escrow agreement:

- Depositor requests in writing that Iron Mountain release the Source Material to Beneficiary;

- Depositor is in material breach of its obligations to support or maintain the Software under a support and maintenance agreement with Beneficiary and/or under the License Agreement with Beneficiary, after receipt of written notice of breach from Beneficiary;

- Depositor has availed itself of, or been subjected to, by any third party, a proceeding in bankruptcy in which Depositor is named debtor;

- An assignment by Depositor for the benefit of its creditors;

- The appointment of a receiver for Depositor, or any other proceeding involving insolvency or the protection of or from creditors, and the same has not been discharged or terminated without any prejudice to Beneficiary's rights or interests under the License Agreement within thirty (30) days;

- Depositor has ceased its ongoing business operations, or has ceased the sale, licensing, maintenance or other support of the Software and no successor of Depositor has undertaken the sale, licensing, maintenance and/or support of the Software; or

- The occurrence of any other event or circumstance which demonstrates with reasonable certainty the inability or unwillingness of Depositor to fulfill its material obligations to Beneficiary under the License Agreement, this Agreement or other agreement with Beneficiary related to the Software, including, without limitation, the correction of material defects in the Software.

(b) They require your municipality to indemnify the escrow agent

(c) They do not require that the municipality get notice when deposits are made.

13) MAINTENANCE AND SUPPORT

a) The maintenance period generally begins after expiration of warranty period and should be factored into the cost of the software. Typically, the annual maintenance fees are a percentage of the total license fees (and may range up to 20% or more).

b) Negotiate the maintenance and support fees at the time of the license agreement, not at the time your client needs the support. Once you invest in the software, you lose your leverage. At the time of the license, your client can either negotiate for an option to purchase annual maintenance for a set price for a number of years (generally three to five, depending on the size of the investment and other factors, but sometimes longer), or sign an agreement to purchase maintenance for a fixed number of years.

c) Do not agree to an "evergreen" clause for extended maintenance. An evergreen clause provides for automatic renewal unless either party notifies the other of an intent to terminate. This can be problem with software maintenance because it's expensive, and folks tend to forget to send a termination notice when they no longer need it. See Section 4.3 of the MCSI for a sample renewal term.

d) Important to state whether New Versions and New Releases will incorporate your customizations at no additional charge. If not, this can be a very expensive hidden cost. Also need to find out whether the vendor will charge to come onsite to assist with installing New Versions and New Releases, and whether you will get free training in how to use them

e) Include meaningful consequences for failure to fix problems within a specified time period. Time period and consequence should depend on severity of problem. Most vendors willing to allow financial consequences, if it's a reasonable percentage of maintenance fees and if problems caused by customer are excluded. See Section 2.15 of Exhibit E to MCSI for sample severity level resolution chart.

f) It can be expensive for your client to convert to a New Release or New Version because it might require new hardware or operating system. On the other hand, it is expensive for software companies to maintain multiple versions of a product at one time – so they like to limit the time they are required to support the old version after the New Release or New Version comes out. Buy yourself some time in the contract to convert to a New Release or New Version. See Section 4 of Exhibit E to the MCSI for an example.

14) LIMITATIONS ON LIABILITY

a) **Background**. Vendors have a legitimate argument for some limitation on their liability in technology contracts. Otherwise, they could be subject to astronomical damages for lost profits, loss of use and other damages incidental to the failure of a computer system. Many vendors, however, seek limits that are unreasonably low.

b) Exclusion of Special, Indirect and Consequential Damages. Almost all vendors will try to include language which prohibits your client from recovering special, indirect and consequential damages. Possible compromises include (i) setting a cap on these damages rather than eliminating them; and/or (ii) carving out and allowing certain types of special, indirect or consequential damages. In any event, any restriction on special, consequential or indirect damages should be mutual (not just for the benefit of the vendor). A sample clause of this nature is set forth below:

> To the extent permitted by law, neither party shall be liable to the other party for consequential, indirect, special damages, lost profits or attorneys= fees in connection with any matters relating to the Contract Documents (except as provided in the indemnity provisions thereof), provided that each of the following types of damages shall be recoverable by the City in an aggregate amount of up to $ _____, even if deemed consequential, indirect or special damages:
>
> i. Consulting fees paid to an expert in connection with the procurement of a new _____ system;
>
> ii. Attorneys fees (not to exceed $200 per hour) paid in connection with the procurement of a _____ system;
>
> iii. Internal staff hours or independent contractor hours made necessary by the transition from the _____ system or the procurement of a new system;
>
> iv. Additional application software costs associated with obtaining or transitioning to a

new system, including modification of new or existing software; and

v. Additional hardware costs associated with obtaining or transitioning to a new system, including modification of new or existing hardware.

The parties stipulate and agree that to the extent any of the damages referenced in the preceding subsections are deemed by a court to be direct damages, they shall not be counted for purposes of determining whether the $_____ cap has been attained.

The parties further stipulate and agree that the limitation set forth above shall not apply to punitive or treble damages, and that they do not intend for punitive or treble damages to be considered consequential, indirect or special damages for purposes of this Agreement.

c) **Limitations on Direct Damages**. Many vendors will attempt to limit their direct damages as well as indirect damages. Typically, the proposed limit is the total amount paid by your client or the total contract amount. Sometimes you may be able to negotiate having the limit be a multiple of the total contract amount. When negotiating limits on direct damages, consider the following:

i. Avoid agreeing to a limit equal to the amount paid by your client. If the vendor fails to deliver before your client has paid anything (or after your client has paid only a small percentage), this may leave your client without any meaningful remedy at a time when the cost of buying and installing alternative software has increased drastically.

ii. Avoid agreeing to a limit equal to the amount of the defective module or component. In many instances, one defective module or component may prevent your client from using the entire system.

iii. If the vendor proposes a limit on directs and an exclusion for indirects, try to get rid of the exclusion for indirects and let the limit apply to both.

iv. Carve out from the limit damages for negligence, gross negligence and willful misconduct, as well as any indemnity obligations that may exist in the contract.

15) TRAINING

a) When local government staff will need training to fully utilize the software, the cost of the training should be considered at the time of the license. If the licensor or its subcontractor will be providing the training, the terms of the training should be negotiated and set forth in the license or a contemporaneous services agreement. Training terms to address include the following:

i. Number of days or hours available

ii. Number of trainees allowed in each session

iii. Length of time when training is available

iv. Location of the training and the qualifications of the instructors

v. Description of the training materials and the scope of the training

b) For custom software, the local government may require the vendor to prepare and submit for approval a training plan outlining all of the topics to be covered and the course materials to be submitted for each session.

16) **CONFIDENTIALITY AGREEMENT**

a) See the attached Confidentiality Agreement. It differs from many vendor forms in 2 key respects:

b) It addresses public records concerns (by requiring vendors to specifically mark trade secrets as such, and to indemnify the municipality for all attorneys' fees and other costs incurred by the municipality in connection with any refusal to disclose materials that the vendor has marked as trade secret).

c) It does not require the municipality to obtain the vendor's consent before disclosing the vendor's confidential information to third parties working for the City as consultants or contractors.

d) Also, the categories of confidential information in our form include many categories that only relate to local government (such as building plans, citizen social security numbers, etc.)

17) UCITA

a) UCITA is a proposed law to establish uniform rules the sale, licensing, development, support and maintenance of computer software, and for other contracts involving information. It was originally proposed in 1995 as a new Article 2B to the UCC, which is co-authored by the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Law Institute (ALI) -- both of which must agree to any revision. However, the Article 2B project ended when ALI walked out after repeatedly calling for revisions (primarily to protect consumer rights and avoid limiting competition). NCCUSL responded by renaming the bill the Uniform Computer Information Transactions Act (UCITA), and adopted it in 1999 with the support of software and information publishers. Based on a recent LEXIS search, it appears that only Maryland and Virginia had adopted UCITA.

b) At least 2 states (Iowa and Vermont) have adopted anti-UCITA provisions stating that a choice of law provision in a software license or similar computer information agreement entered into by a resident of the state is voidable if it provides that the agreement will be interpreted in accordance with the laws of a state that has adopted UCITA

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

Statement of Background and Intent

A. The City sent out a "Request for Proposals for a **[DESCRIBE SYSTEM]**" Number [**RFP NUMBER]** dated **[RFP DATE]** requesting proposals from qualified vendors to provide the City with a **[DESCRIBE SYSTEM]**. This Request for Proposals, together with all attachments and amendments, is referred to herein as the "RFP".

B. In response to the RFP, the Company submitted to the City a proposal dated **[PROPOSAL DATE]**. This proposal, together with all attachments and separately sealed confidential trade secrets, is referred to herein as the "Proposal."

C. The City and the Company have negotiated and now desire to enter into an arrangement for the Company to **[design, supply, install, customize, configure, test, commission and maintain]** a **[DESCRIBE SYSTEM]** for the City, all in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and conditions contained in this Contract, the parties agree as follows:

A G R E E M E N T

1. **EXHIBITS.** The following Exhibits and Appendices are attached to this Contract and incorporated into and made a part of this Contract by reference:

Exhibit A:	Price Schedule and List of System Components
Exhibit B:	Milestone Plan
Exhibit C:	Scope of Implementation Services
Exhibit D:	Project Schedule
Exhibit E:	Scope of Maintenance Services
Exhibit F:	License
Exhibit G:	Requirements
Appendix 1 to Exhibit G	Confidential / Trade Secret Section of Specifications and Requirements
Exhibit H	Final Payment Affidavit

Each reference to the Contract shall be deemed to include all Exhibits and Appendices. Any conflict between language in an Exhibit or Appendix to this Contract and the main body of this Contract shall be resolved in favor of the main body of this Contract. Each reference to **[COMPANY NICKNAME]** in the Exhibits and Appendices shall be deemed to mean the Company.

2. **DEFINITIONS.** The following terms shall have the following meanings for purposes of this Contract (including all Exhibits):

2.1. **"Affiliates"** means all departments or units of the City and all other governmental units, towns, boards, committees or municipalities for which the City processes data or performs Services that involve the System.

2.2. **"Company Software"** and "**[COMPANY NICKNAME]** Software" shall be used interchangeably to mean all pre-existing software owned by the Company or any of its Related Entities which the Company provides or is required to provide under this Contract, and all New Releases and New Versions of the foregoing.

2.3. **"Current Release"** means the latest version of the Software offered for general commercial distribution at a given point in time, including all New Releases.

2.4. **"Customizations"** means all newly-developed software created by the Company and/or its subcontractors pursuant to this Contract, including but not limited to all interfaces between different components of the System and between the System and other systems. Customizations will not include New Releases and New Versions that become part of the company Software.

2.5. **"Defect"** means any failure of the System or any component thereof to fully conform to the Specifications and Requirements. A non-conformity is not a Defect if it results directly from the City's improper use or damage, unless it is reasonably likely that such non-conformity would have occurred on that or another occasion even without the City's improper use or damage.

2.6. **"Deliverables"** means all tasks, reports, information, designs, plans and other items that the Company is required to complete and deliver to the City in connection with this Contract, other than the Products.

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

2.8. **"Effective Date"** means the date stated in the first sentence of this Contract.

2.9. **"Hardware"** means all hardware, equipment and materials that the Company actually provides or is required to provide under the terms of this Contract (whether now or in the future).

2.10. **"Implementation Services"** means the Services described in Exhibit C.

2.11. **"License"** means the license agreement attached to this Contract as Exhibit F.

2.12. **"Maintenance Services"** means the Services described in Exhibit E.

2.13. **"Milestones"** means 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 Exhibit B and the Project Plan.

2.14. **"New Version"** means any products, parts of products, improvements, additions or materials not included in the Products as of the Effective Date that significantly modify the Products to provide a function or feature not originally offered or an improvement in function. New Versions are typically identified by a new version number that changes the number left of the decimal point. For example, a change from Version 5.0 to Version 6.0 would likely represent a New Version.

2.15. **"New Release"** means any change issued by the Company or its subcontractors to the Products or the Documentation that is not a New Version. New Releases are typically identified by changing the number to the right of the decimal point (e.g., going from Version 5.1 to 5.2).

2.16. **"Project"** refers to the project for the Company to design, supply, install, configure, test and commission the System for the City in accordance with the terms and conditions in this Contract.

2.17. **"Project Plan"** means the detailed plan for implementation of the System as described in Exhibit C, in the form accepted in writing by the City.

2.18. **"Products"** means all Software and all Hardware (both as herein defined).

2.19. **"Project Schedule"** means the Project Schedule attached to this Contract mean Exhibit D.

2.20. **"Related Entity"** means any person or entity that is directly or indirectly in control of, controlled by, or under common control with the Company, including but not limited to any parent, subsidiary, and affiliate entities. The word, "control," as used in this context, shall mean ownership of a sufficient percentage (not necessarily a majority) of the outstanding voting interests in an entity so as to afford effective control of the management of the entity.

2.21. **"Services"** means all services that the Company provides or is required to provide under this Contract, including all Implementation Services and all Maintenance Services.

2.22. **"Software"** means: (i) all Company Software; (ii) all Customizations; (iii) all Third Party Software; and (iv) all New Releases and New Versions of any of the foregoing.

2.23. **"Source Code"** means the human readable form of a computer program and all algorithms, flow charts, logic diagrams, structure descriptions or diagrams, data format or layout descriptions, pseudo-code, code listings (including comments), and other technical documentation relating to such program.

2.24. **"Specifications and Requirements"** means all definitions, descriptions, requirements, criteria, warranties and performance standards relating to the Products or System which are set forth or referenced in: (i) Exhibit G of this Contract, including the Appendix; (ii) the main body of this Contract; (iii) other Exhibits to this Contract aside from Exhibit G; (iv) the Documentation; and (v) any functional and/or technical specifications which are published or provided by the Company or its licensors or suppliers from time to time with respect to all or any part of the Products or the System. Any conflict between the requirements or specifications referenced in subparts (i), (ii) (iii) (iv) or (v) of this definition shall be resolved in the order of priority in which they are listed; provided, however, that the City may, at its option, disregard the order of listing to resolve any such conflicts in a manner that takes advantage of new or enhanced functionality or features.

2.25. **"System"** means **[DESCRIBE SYSTEM]** to be **[designed, supplied, installed, configured, tested and commissioned]** by the Company under this Contract, including but not limited to all Products.

2.26. **"System Acceptance"** means acceptance by the City of the complete System as provided in Exhibit C of this Contract.

2.27. **"Third Party Software"** means all software included within the System or required for the System to function in full compliance with the Specifications and Requirements that is provided by the Company under this Contract and was not manufactured, developed or otherwise created by the Company, any Related Entity of the Company, or any of the Company's subcontractors.

2.28. **"Warranty Period"** means the twelve-month period following System Acceptance.

2.29. **"Workaround"** means a reasonable change in the procedures followed or data supplied to avoid a Defect that does not impair the performance of the System or increase the cost of using the System.

2.30. **"Work Product"** means the Deliverables and all other programs, algorithms, reports, information, designs, plans and other items developed by the Company in connection with this Contract, and all partial, intermediate or preliminary versions of any of the foregoing.

3. **GENERAL DESCRIPTION OF SERVICES.** The Company shall provide the Implementation Services described in Exhibit C and any other **[design, development, supply, installation, consulting, system integration, software development, project management, training, technical]** and other services necessary to deliver and implement the System so that it is in production at the City in full compliance with the Specifications and Requirements on or before **[PLANNED ACCEPTANCE DATE].** The Company shall also provide the Maintenance Services described in Exhibit E. The Company shall perform the Implementation Services on site at the City's facilities in Charlotte, North Carolina, except as otherwise stated in this Contract or agreed in writing by the City.

4. **COMPENSATION.**

4.1. *PURCHASE PRICE FOR SYSTEM.* The City shall pay the Company a fixed price of **[PURCHASE PRICE]** (the "Purchase Price") as full and complete consideration for the satisfactory performance of all the requirements of

this Contract other than Maintenance Services beyond the Warranty Period ("Extended Maintenance Services"). The Purchase Price is allocated to the Products and Services in accordance with Exhibit A, and shall be payable in accordance with Exhibit B (the "Milestone Plan"). The amount of the Purchase Price referenced in this Section constitutes the total fees, charges and expenses payable to the Company under this Contract for everything other than the Extended Maintenance Services, and shall not be increased except by a written instrument duly executed by the City, which expressly states that it amends this Section of this Contract.

4.2. *MILESTONE PAYMENT PLAN.* The Company shall invoice the City for the Purchase Price in accordance with the Milestone Plan attached as Exhibit B. The Company shall not invoice the City for any Products or Services within a particular Milestone until all Products and Services required in connection with that Milestone have been fully delivered, completed and accepted by the City.

4.3. *MAINTENANCE FEES FOR EXTENDED MAINTENANCE*. The Maintenance Services shall be provided to the City at no charge for a period of one year after System Acceptance (the "Warranty Period"). After the Warranty Period, the City shall have four one-year options to purchase Extended Maintenance Services from the Company at a price of **[ANNUAL MAINTENANCE FEE]** per year (the "Maintenance Fees." The City shall be entitled to exercise its option to buy Extended Maintenance Service for a given one-year option period by: (a) providing written notice to the Company at any time prior to or within sixty days following the beginning of such one-year option period; or (b) payment of the Company's invoice for such one-year option period. The Company shall invoice the City for Maintenance Fees on an annual basis, but not more than sixty days before the one-year extended maintenance term being billed for begins.

4.4. INVOICES.

4.4.1. Each invoice sent by the Company shall detail all Services, Products and Deliverables performed and delivered which are necessary to entitle the Company to the requested payment.

4.4.2. The Company shall mail all invoices to:

[ADDRESS FOR INVOICES]

4.5. *DUE DATE OF INVOICES.* Payment of invoices shall be due within thirty (30) days after the later of: (a) receipt of an undisputed properly submitted invoice by the City; or (b) acceptance by the City of the Milestone to which the invoice applies. For Extended Maintenance Service fees, only subpart (a) of the preceding sentence shall apply.

4.6. *ADDITIONAL PURCHASES.* For a period of eighteen months after the date of this Contract, the City shall have the right to purchase and the Company shall sell to the City all Hardware and Software listed in Exhibit A as optional items at the prices set forth in Exhibit A.

4.7. *PRE-CONTRACT COSTS.* The City shall not be charged for any Services or other work performed by the Company prior to the Effective Date.

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

5. **TIME IS OF THE ESSENCE**. Time is of the essence in having the Company perform all Services and deliver all Products within the time frames provided by this Contract and the Project Plan, 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. PRODUCT PURCHASE AND DELIVERY.

6.1. *COMPANY TO PROVIDE ALL HARDWARE AND SOFTWARE.* As part of the Purchase Price, the Company shall provide all hardware, software, labor, equipment and materials required by the City in order for the System to

perform in accordance with the Specifications and Requirements, except for those items that are specifically listed in Exhibit C as a City responsibility.

6.2. *DELIVERY SCHEDULE.* The Company shall deliver the Products by the delivery dates set forth in the Project Schedule, as may be modified by the parties' mutual consent in the Project Plan. Delivery shall be to the City's facility at 600 E. Fourth Street in Charlotte, North Carolina unless otherwise agreed in writing by the City.

6.3. *TITLE / RISK OF LOSS*. Except for loss or damage occurring in connection with the Company's performance of services under this Contract, title and risk of loss of all Hardware shall pass to the City upon delivery of the Hardware to the City's premises.

6.4. *DELIVERY AND INSTALLATION COSTS*. All delivery and installation costs associated with the Hardware and the Software shall be borne by the Company.

6.5. *SOFTWARE LICENSE FOR EMBEDDED SOFTWARE*. The Company grants to the City the right to use all software which is embedded in or included with the Hardware ("Embedded Software") to the full extent necessary for the City to use the Hardware in the manner contemplated by this Contract. The City agrees to be bound by the terms and limitations of any licenses for Embedded Software which have been: (i) provided to the City in writing preceding delivery of such Hardware; and (ii) accepted by the City in writing. Notwithstanding the foregoing, in no event shall any terms or conditions of such licenses restrict the City from using the Hardware in the manner contemplated by this Contract, nor shall such terms or conditions in any way modify the City's rights under the License.

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

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

7. DUTY OF COMPANY TO IDENTIFY AND REQUEST INFORMATION, PERSONNEL AND FACILITIES. Throughout the duration of this Contract, the Company shall identify and request in writing from the City Project Manager all City resources that may reasonably be required by the Company to perform the Services (the "City Resources"), including all information, City staff, equipment, facility or materials needed by the Company. The Company shall request City Resources far enough in advance to allow adequate planning and availability on the City's part and to avoid unnecessary expense or overtime. Notwithstanding the foregoing, the Company shall not be entitled to request that the City provide City Resources other than those identified as a City responsibility in Exhibit C (with respect to the Implementation Services) or Exhibit E (with respect to the Maintenance Services) unless the City can do so at no significant cost. If the City Project Manager fails to provide within a reasonable time period a City Resource that this Contract requires the City to provide, the Company will notify the responsible City Key Business Executive of such failure. The Company shall not be relieved of any failure to perform under this Contract by virtue of the City's failure to provide any City resource: (i) that the Company failed to identify and request in writing from the City pursuant to this Section; or (ii) which the City is not required to provide pursuant to this Contract. To the extent the Company is excused from performance under the terms of this Section, the Company will only be excused for delays that occur after it has given notice to the City Key Business Executive of the City's failure.

8. **REMOVAL, REPLACEMENT AND PROMOTION OF COMPANY PERSONNEL.** 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. The City shall be entitled to exercise such right in its sole discretion by providing written notice to the Company.

The City must approve in writing any hires or transfers of personnel to "Key Personnel" positions on the Project, and the City shall have the right to interview all personnel that the Company proposes to hire or transfer to such positions. As used in this Contract, the term "Key Personnel" shall mean the Company Project Manager, and any other personnel of the Company or its subcontractors who are identified as Key Personnel in an Exhibit to the

Contract, or whom the City from time to time designates in writing to the Company as fulfilling a key role in the Project. Unless approved by the City in writing, the Company will not: (i) remove the Company's Key Personnel from the Project or permit its subcontractors to remove Key Personnel from the Project; or (ii) materially reduce the involvement of the Company's Key Personnel in the Project or allow its subcontractors to materially reduce the involvement of Key Personnel in the Project.

The Company will replace any personnel who leave the Project with equivalently qualified persons. The Company will replace such personnel as soon as reasonably possible, and in any event within thirty days after the Company first receives notice that the person will be leaving the Project.

If the Company gets more than 7 days behind in completing any Deliverable required by this Contract or the Project Plan, the Company will devote all personnel assigned to the Project to working on the Project on a first priority basis.

As used in this Contract, the term "personnel" includes all staff provided by the Company or its subcontractors, including but not limited to Key Personnel.

9. **REPRESENTATIONS AND WARRANTIES OF COMPANY.**

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

(a) For a period of twelve months after System Acceptance (the "Warranty Period"), the System will fully comply with the Specifications and Requirements, and all federal, state and local laws, regulations, codes and guidelines that apply to it (including any changes to such laws, etc.).

(b) All Products and Services delivered after System Acceptance shall fully conform to the Specifications and Requirements for a period of one year after acceptance of such Product or Service by the City.

(c) For as long as the City exercises its options to purchase Extended Maintenance Services, the System will fully comply with the Specifications and Requirements, and all federal, state and local laws, regulations, codes and guidelines that apply to it (including changes to such laws, etc.).

(d) All Software provided by the Company or its subcontractors is and will be free of viruses, worms and Trojan horses, and any code designed to disable the Software because of the passage of time, alleged failure to make payments due, or otherwise (except for documented security measures such as password expiration functions);

(e) All Software and Hardware is and will be Year 2000 Compliant (as defined below).

(f) In accordance with the North Carolina electronic data-processing records law N.C.G.S. §132-6-1:

9.1.f.1. All Software and Documentation provided by the Company or its subcontractors will have sufficient information and capabilities to enable the City to permit the public inspection and examination and to provide electronic copies of public records stored, manipulated or retrieved by the System; and

9.1.f.2. All Software and Documentation provided by the Company or its subcontractors will have sufficient information to enable the City to create an index containing the following information with respect to each database used by the System without extraordinary commitments of staff or resources: (i) annotated list of data fields: name, description, and restricted field indicator; (ii) description of the format or record layout; (iii) frequency with which the database is updated; (iv) list of any data fields to which public access is restricted; (v) description of each form in which the database can be copied or reproduced; (vi) title of the database; (vii) owner of the data; (viii) narrative description of the database; (ix) person creating the index; and (x) purpose of the database. The Company agrees that the City may copy and disclose the information listed above in response to requests for database information under the North Carolina General Statutes.

(g) All Documentation for the Products and the System is and will be in all material respects complete and accurate, and will enable data processing professionals and other City employees with ordinary skills and experience to utilize the Products and the System for the expressed purpose for which they are being acquired by the City;

(h) All work performed by the Company and/or its subcontractors pursuant to this Contract shall meet the highest industry standards and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;

(i) Neither the Services, nor the Products nor any Deliverables provided by the Company under this Contract will violate, infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party, or any other third party rights (including without limitation non-compete agreements);

(j) All Hardware shall be delivered and shall remain free and clear of all liens and encumbrances. The Company shall not place or allow to be placed on the Software any third party lien or encumbrance of any kind at any time which could conceivably interfere with the City's use of the Software or the Company's maintenance of the Software.

For purposes of this Contract, the term "Year 2000 Compliant" means that software will: (a) store all date-related information and process all data interfaces involving dates in a manner that unambiguously identifies the century, for all date values before, during and after the Year 2000; (b) calculate, sort, report and otherwise operate correctly and in a consistent manner for all date information processed by the software, whether before, during or after the Year 2000; (c) calculate, sort, report and otherwise operate correctly, in a consistent manner and without interruption regardless whether the date on which the software is operated or executed is before, during or after the Year 2000; (d) report and display all dates with a four-digit date so that the century is unambiguously identified; and (e) handle all leap years, including but not limited to the Year 2000 leap year, correctly;

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

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

9.2. *ADDITIONAL WARRANTIES*. Company further represents and warrants that:

(a) It is a corporation duly incorporated, validly existing and in good standing under the laws of the state of **[STATE OF INCORPORATION]**;

(b) It has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Contract;

(c) The execution, delivery, and performance of this Contract have been duly authorized by the Company;

(d) 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;

(e) 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

(f) The Company shall not violate any agreement with any third party by entering into or performing this Contract.

10. **REMEDIES.**

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

(a) Employ such means as it may deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and the Company is again able to resume performance under this Contract; and

(b) Deduct any and all expenses incurred by the City in obtaining or performing the Services from any money then due or to become due the Company and, should the City's cost of obtaining or performing the services exceed the amount due the Company, collect the amount due either from the Company.

10.2. *RIGHT TO WITHOLD 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.

10.3. *SPECIFIC PERFORMANCE AND INJUNCTIVE RELIEF*. The Company agrees that monetary damages are not an adequate remedy for the Company's failure to provide the Products, Services or System 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.

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

10.5. *LIQUIDATED DAMAGES.* The City and the Company acknowledge and agree that the City will incur costs if the Company fails to meet one or more of the time frames for delivering Services and Products under this Contract and the Project Plan, including all completion dates, response times and resolution times (the "Completion Dates"). The parties further acknowledge and agree that the costs that the City might reasonably be anticipated to accrue as a result of such failures are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the Company agrees to pay liquidated damages at the rate of **[LIQUIDATED DAMAGES]** per day for each day the Company is late in meeting a Completion Date set forth in the Project Schedule or the Project Plan. The Company further agrees to pay any liquidated damages that are set forth in Exhibit E in the event it fails to meet a Completion Date for Maintenance Services.

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

10.6. *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.

11. **REGENERATION OF LOST OR DAMAGED DATA**. With respect to any data which has been lost or damaged due to an act or omission of the Company or its subcontractors, the Company shall, at its own expense: (a) promptly replace or regenerate such data from the City's machine-readable supporting material, or (b) obtain a new machine-readable copy of lost or damaged data from the City's data sources. The Company shall further reload and restore such data at the Company's expense. The Company shall not be responsible for any expenses that are the result of the failure of the City to maintain backup data in accordance with the City's regular schedule.

12. **TERMINATION.**

12.1. *TERM.* Unless terminated in accordance with its terms, this Contract shall commence on the Effective Date, and shall continue until the License has terminated.

12.2. *TERMINATION WITHOUT CAUSE*. The City may terminate this Contract at any time without cause by giving thirty (30) days 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. In the event of termination without cause pursuant to this Section, the City agrees to: (i) pay the Company a pro rata amount of the purchase price for Implementation Services rendered through the termination date based on percentage of completion of the applicable payment Milestones; and (ii) return all Hardware which the City elects not to keep, and (iii) pay the Company for any Hardware received by the City which the City has elected to keep, or which has been damaged by the City so as to preclude return. The forgoing payment obligation is contingent upon: (i) the Company having fully complied with Section 12-7; and (ii) the Company having provided the City with written documentation reasonably adequate to verify the number of hours of Services rendered by each person through the termination date and the percentage of completion of each task.

12.3. *TERMINATION FOR DEFAULT BY EITHER PARTY.* By giving written notice to the other party, either party may terminate this 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 this Contract, provided that, unless otherwise stated in this 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 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 this 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 pursuant to this Section 12.3 shall identify this Section of this Contract and shall state the party's intent to terminate this Contract if the default is not cured within the specified period.

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

(a) Failure of the Company to complete and deliver a particular Product, Deliverable or Service by the completion date set forth in this Contract (including the Exhibits) or the Project Plan;

(b) Failure of the Company to correct all Defects and deficiencies identified by the City with respect to a Deliverable within the time period set forth in Exhibit C;

(c) Failure of the Company to correct all items identified in a Rejection Notice within the time period specified in Exhibit C;

(d) Failure of the Company to resolve a problem within the time set forth in Exhibit G regarding Maintenance Services (whether during the Warranty Period or during Extended Mainframe Services);

(e) The Company makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Contract, Company's Proposal, or any covenant, agreement, obligation, term or condition contained in this Contract; or

(f) The Company takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Contract, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Contract, or failure to provide the proof of insurance as required by this Contract.

12.5. *TERMINATION FOR FAILURE TO AGREE ON PROJECT PLAN.* If the parties have not finalized and agreed upon the Project Plan by the date set forth in the Project Schedule, the City shall be entitled to terminate this Contract and receive a refund of all amounts paid to the Company.

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

12.7. *OBLIGATIONS UPON EXPIRATION OR TERMINATION*. Upon expiration or termination of this Contract, the Company shall promptly (a) return to the City all computer programs, files, documentation, data, media, related material and any other material and equipment that is owned by the City; (b) deliver to the City all Work Product; (c) allow the City or a new service provider access to the systems, software, infrastructure, or processes of the Company that are necessary to mitigate the Services to a new service provider; and (d) refund to the City all pre-paid Maintenance Fees (other than pre-paid Maintenance Fees for the then current year).

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

12.9. *AUTHORITY TO TERMINATE*. The following persons are authorized to terminate this Contract on behalf of the City: (a) the City Manager, any Assistant City Manager or any designee of the City Manager; (b) the Key Business Executive of the City Key Business Unit responsible for administering this Contract.

13. **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, functions and operations provided by the Company hereunder to another provider or to the City as determined by the City in its sole discretion. The transition services that the Company shall perform if requested by the City include but are not limited to:

13.1. Working with the City to jointly develop a mutually agreed upon transition services plan to facilitate the termination of the Services; and

13.2. Notifying all affected service providers and subcontractors of the Company of transition activities;

13.3. Performing the transition service plan activities;

13.4. Answering questions on an as-needed basis; and

13.5. Providing such other reasonable services needed to effectuate an orderly transition to a new system.

14. **CHANGES.** In the event changes to the Services (collectively "Change"), become necessary or desirable to the parties, the parties shall follow the procedures set forth in this Section. A Change shall be effective only when documented by a written, dated agreement executed by both parties which expressly references this Contract (a "Change Statement"). The Change Statement shall set forth in detail: (i) the Change requested, including all modifications of the duties of the parties; (ii) the reason for the proposed Change; and (iii) a detailed analysis of the impact of the Change on the results of the Services and time for completion of the Services, including the impact on all 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 a Key Business Executive, the City Manager, or an Assistant City Manager; depending on the amount. Some increases may also require approval by City Council.

15. **INTELLECTUAL PROPERTY**

15.1. *COMPANY OWNERSHIP*. The Company shall have exclusive ownership of intellectual property rights in all Company Software and related Documentation, including but not limited to all copyrights, patents and trade secrets (collectively "Company Intellectual Property"). The Company grants the City a perpetual, royalty-free, non-exclusive license to use and copy the Company Intellectual Property for all purposes of the City and the Affiliates in accordance with the terms of the License.

15.2. *CITY OWNERSHIP.* The City shall have exclusive ownership of all intellectual property rights in all Customizations, Deliverables and other Work Product created by the Company or its subcontractors in connection

with this Contract, including all modifications, updates, enhancements and Documentation relating thereto, and including but not limited to all copyrights, patents and trade secrets (collectively "City Intellectual Property"). The Company hereby assigns and transfers all rights in the City Intellectual Property to the City. The Company further agrees to execute and deliver such assignments and other documents as the City may later require to perfect, maintain and enforce the City's rights as sole owner of the City Intellectual Property, including all rights under patent and copyright law. The Company hereby appoints the City as attorney in fact to execute all such assignments and instruments and agree that its appointment of the City as an attorney in fact is coupled with an interest and is irrevocable.

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

15.3. *COMPANY WILL NOT SELL OR DISCLOSE DATA*. The Company will treat as Confidential Information under the Confidentiality Agreement all data provided by or processed for the City in connection with this Contract or use of the Software (including metadata). Such data shall remain the exclusive property of the City. The Company will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the City in any manner except that contemplated by this Contract.

16. OTHER OBLIGATIONS OF COMPANY

16.1. *WORK ON CITY'S PREMISES*. The Company will ensure that its employees and agents shall, whenever on the City's premises, obey all instructions and directions issued by the City with respect to rules, regulations, policies and security procedures applicable to work on the City's premises. The Company agrees that its personnel and the personnel of its subcontractors will comply with all such rules, regulations and security procedures when on the City's premises.

16.2. *DAMAGE TO EQUIPMENT OR FACILITIES*. The Company shall be responsible for any damage to or loss of the City's equipment or facilities arising out of the negligent or willful act or omission of the Company or its subcontractors.

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

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

17.1. The Company shall provide the City with prompt written notice of all upgrades, enhancements and modifications to the Products or Services that become available during the term of this agreement (the "New Technology").

17.2. Unless specified in writing by the City in a specific instance, all Products provided by the Company will be the latest, most recent version available as of the time of installation. The Company will schedule installation of all Products as late in the process as is reasonably practicable to meet the Project Plan deadlines. Unless specified in writing by the City in a specific instance, the Company will continually update the Software after installation at no additional cost and it shall be a condition of System Acceptance that all Software be the latest, most current version available as of the date of System Acceptance.

17.3. If the Company causes a delay in the Project of six months or more, it shall be a condition of System Acceptance (at the City's option) that the Hardware be the latest, most recent version available as of six months prior to the date of System Acceptance.

17.4. Notwithstanding anything contained in this Contract to the contrary, the City shall have the option to reject proposed New Technology and to accept less that the most current version of the Products by providing written notice to the Company.

17.5. The Company shall make the New Technology available to the City at no additional cost if the required by this Contract, or if New Technology is generally commercially available to the Company's customers at no additional cost. Notwithstanding the foregoing, there shall be no additional charges for providing the most recent version of the Hardware as required by Section 17.2 or 17.3.

17.6. The Company shall provide additional details and estimated prices to the City at the request of the City, if the City wants to consider further the possible addition of the New Technology.

17.7. Notwithstanding anything contained herein to the contrary, neither the acceptance of proposed New Technology by the City nor the amendment of this Contract to incorporate New Technology shall relieve the Company from its obligations under this Contract to satisfy the Specifications and Requirements.

18. **INDEMNIFICATION.** To the fullest extent permitted by law, the Company shall indemnify, defend and hold harmless each of the "Indemnitees" (as defined below) from and against any and all "Charges" (as defined below) paid or incurred any of them as a result of any claims, demands, lawsuits, actions, or proceedings: (i) alleging violation, misappropriation or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to the Work or any products or deliverables provided to the City pursuant to this Contract ("Infringement Claims"); (ii) seeking payment for labor or materials purchased or supplied by the Company or its subcontractors in connection with this Contract; or (iii) arising from the Company's failure to perform its obligations under this Contract, or from any act of negligence or willful misconduct by the Company or any of its agents, employees or subcontractors relating to this Contract, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible; or (iv) arising from the Company's violation of any law (including without limitation immigration laws); or (v) any claim that the Company or an employee or subcontractor of the Company is an employee of the City, including but not limited to claims relating to worker's compensation, failure to withhold taxes and the like. For purposes of this Section: (a) the term "Indemnitees" means the City and each of the City's officers, officials, employees, agents and independent contractors (excluding the Company); and (b) the term "Charges" means any and all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, royalties, interest charges and other liabilities (including settlement amounts).

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

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19. **INSURANCE.** Throughout the term of this Contract, the Company shall comply with the insurance requirements described in this Section. In the event the Company fails to procure and maintain each type of insurance required by this Contract, or in the event the Company fails to provide the City with the required certificates of insurance, the City shall be entitled to terminate this Contract immediately upon written notice to the Company.

    19.1. *General Requirements*.

        19.1.1. The Company shall not commence any work in connection with this Contract until it has obtained all of the types of insurance set forth in this **Section 17**, and the City has approved such insurance. The Company shall not allow any subcontractor to commence work on its subcontract until all insurance required of the subcontractor has been obtained and approved.

        19.1.2. All insurance policies required by **Section 17.1** shall be with insurers qualified and doing business in North Carolina recognized by the Secretary of State and the Insurance Commissioner's Office. The Company shall name the City as an additional insured under the commercial general liability policy required by **Section 17.1**

        19.1.3. The Company's insurance, except for Automobile Liability, shall be primary of any self-funding and/or insurance otherwise carried by the City for all loss or damages arising from the Consultant's operations under this agreement. The Company and each of its subcontractors shall and does waive all rights of subrogation against the City and each of the Indemnitees (as defined in **Section 16**).

19.1.4. The City shall be exempt from, and in no way liable for any sums of money that 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.

19.1.5. Within 3 days after execution of this Contract, the Company shall provide the City with certificates of insurance documenting that the insurance requirements set forth in this **Section 17** have been met, and that the City be given thirty (30) days' written notice of any intent to amend coverage or make material changes to or terminate any policy by either the insured or the insurer. The Company shall further provide such certificates of insurance to the City at any time requested by the City after execution of this Contract, and shall provide such certificates within five (5) days after the City's request. The City's failure to review a certificate of insurance sent by or on behalf of the Company shall not relieve the Company of its obligation to meet the insurance requirements set forth in this Contract.

19.1.6. Should any or all of the required insurance coverage be self-funded/self-insured, the Company shall furnish to the City a copy of the Certificate of Self-Insurance or other documentation from the North Carolina Department of Insurance.

If any part of the work under this contract is sublet, the subcontractor shall be required to meet all insurance requirements set forth in this **Section 17**, provided that the amounts of the various types of insurance shall be such amounts as are approved by the City in writing. However, this will in no way relieve the Consultant from meeting all insurance requirements or otherwise being responsible for the subcontractor

19.2. *Types of Insurance*. The Company agrees to purchase and maintain during the life of this Contract with an insurance company, acceptable to the City, authorized to do business in the State of North Carolina the following insurance:

19.2.1. 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.

19.2.2. Commercial General Liability. Bodily injury and property damage liability as shall protect the Company and any subcontractor performing work under this Contract, from claims of bodily injury or property damage which arise from operation 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.

19.2.3. Errors and Omissions Liability Insurance as shall protect the Company and his employees from claims alleging the failure to provide the services required by this Contract. This policy shall be specific to the performance of this Contract and shall provide limits of $1,000,000 each occurrence/aggregate. Proof of this policy of insurance shall be submitted to the City's Risk Management Division before acceptance.

19.2.4. Electronic Errors and Omissions. If the risks typically covered by Electronic Errors and Omissions Insurance are not covered by the Company's Errors and Omissions Insurance, the Company shall purchase an electronic errors and omissions insurance policy having aggregate limits of $1,000,000 and occurrence limits of $750,000, respectively.

19.2.5. Workers' Compensation Insurance. The Company shall meet the statutory requirements of the State of North Carolina, $100,000 per accident limit, $500,000 disease per policy limit, $100,000 disease each employee limit.

The City shall be named as additional insured under the commercial general liability insurance for operations or services rendered under this Contract. Certificates of all required insurance shall be furnished to the City and shall contain the provision that the City will be given thirty (30) day written notice of any intent to amend or terminate by either the insured or the insuring company.

20. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties established by this Contract is solely that of independent contractors, and nothing contained in this Contract shall be construed to (i) give any party the power to

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

21. **SUBCONTRACTING.** The Company shall not subcontract any of its obligations under this Contract without the City's prior written consent. In the event the City does consent in writing to a subcontracting arrangement, Company shall be the prime contractor and shall remain fully responsible for performance of all obligations which it is required to perform under this Contract. Any subcontract entered into by Company shall name the City as a third party beneficiary.

22. **CONFIDENTIALITY AGREEMENT.** The parties acknowledge that they have executed and entered into a Confidentiality Agreement prior to the execution of this Contract (the "Confidentiality Agreement"), and that they are bound by all terms contained in the Confidentiality Agreement with respect to any Confidential Information which either of them obtains access to in connection with this Contract.

23. **NON-DISCRIMINATION.** The City has adopted a Commercial Non-Discrimination Policy that is described in Section 2, Article V of the Charlotte City Code, and is available for review on the City's website (the "Non-Discrimination Policy"). 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, ethnicity, age, or disability 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. The Company understands and agrees that a violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of the Company from participating in City contracts or other sanctions.

    As a condition of entering into this Contract, the Company agrees to: (a) promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation, selection, treatment and payment of subcontractors in connection with this Contract; and (b) if requested, provide to the City within sixty days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Company has used on City contracts in the past five years, including the total dollar amount paid by Contractor 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 as set forth in Section 2, Article V of the City Code, 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 clause shall be considered a material breach of this Contract and may result in contract termination, disqualification of the Company from participating in City contracts and other sanctions.

    The Company further 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 provided by the City.

24. **DRUG-FREE WORKPLACE.** The City is a drug-free workplace employer. The Company hereby certifies that it has or it will within thirty (30) days after execution of this Contract:

    24.1. notify employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substance is prohibited in the workplace and specifying actions that will be taken for violations of such prohibition;

    24.2. establish 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;

24.3. notify each employee that as a condition of employment, the employee will (i) abide by the terms of the prohibition outlines in (a) above, and (ii) notify the Company of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction;

24.4. impose a sanction on, or requiring the satisfactory participation in a drug counseling, rehabilitation or abuse program by, an employee convicted of a drug crime;

24.5. make a good faith effort to continue to maintain a drug-free workplace for employees; and

24.6. require any party to which it subcontracts any portion of the work under the contract to comply with the provisions of this Section.

A false certification or the failure to comply with the above drug-free workplace requirements during the performance of this Contract shall be ground for suspension, termination or debarment.

25. **OTHER SERVICES.** In the event the City desires for the Company to perform any services which are not covered by this Contract ("Other Services"), the Company will provide such Other Services at an additional charge which shall not exceed the rates being charged to similar clients for similar services, plus "Out of Pocket Expenses" as defined below that are related to the Other Services. The City shall not be required to pay for hours worked that which are not reasonable in relation to the service provided, nor shall the City be required to pay for Out-of-Pocket Expenses are not reasonable.

    As used in this Contract, the term "Out-of-Pocket Expenses" shall mean the following expenses which are actually incurred by employees of the Company or its subcontractors who live outside of a 100 mile radius of Charlotte, North Carolina and who travel to Charlotte in the performance of the Other Services, when such travel would not otherwise have been necessary for the performance of this Contract:

    - Lodging at a local hotel.
    - A per diem meals reimbursement of $25 per day.
    - Long distance calls made by employees of Company while in Charlotte, if a given call is necessary for performance of the Services detailed in this Contract.
    - Parking, tolls, or rental car.
    - Travel costs to and from the City.

    For Company or subcontractors and employees who stay in Charlotte over extended time periods, the Company will rent an apartment in the City if doing so proves to be more economical on a monthly average. Otherwise, the Company will attempt to obtain accommodations at the same rates as those applicable for federal government employees. The Company will attempt to minimize travel costs by obtaining the lowest fares reasonably practicable under the circumstances.

    Each invoice for Other Services shall detail all services performed and shall itemize in detail and provide documentation for all Out-of-Pocket Expenses for which the Company seeks reimbursement. The parties acknowledge that the Out-of-Pocket Expenses apply only to Other Services, and that the Company shall not be permitted to charge the City for Out-of-Pocket Expenses related to any Services which are covered by this Contract.

26. **SOURCE CODE**. Company shall cause the Source Code for all Software, New Releases and New Versions to be delivered to the source code escrow agent identified in the Source Code Escrow Contract, at the times set forth therein. The City shall be given such Source Code under the conditions stated in the Source Code Escrow Contract. The Company shall deliver the Source Code for all Customizations to the City prior to System Acceptance. The Company shall deliver the Source Code for all New Releases and New Versions to Customizations to the City within ten days after delivery of each New Release and New Version.

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

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

For the City	For the Company
_____	Name:
_____	
City of Charlotte	Company:
600 East Fourth Street	Address:
Charlotte, NC 28202	
Phone:	Phone:
Fax:	
E-Mail –@ci.charlotte.nc.us	

With Copy To

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

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

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

In the event the Company fails to maintain the Performance Bond as required by this Contract, the City may terminate this Contract for default and, without limiting any other remedies it may have, obtain a refund of all amounts paid to the Company under this Contract.

29. MISCELLANEOUS

29.1. *ENTIRE AGREEMENT.* This Contract, (including all Exhibits and Attachments), the Confidentiality Agreement and the Source Code Escrow Contract constitute the entire agreement between the parties with respect to the subject matter herein. 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.

29.2. *AMENDMENT.* No amendment or change to this Contract shall be valid unless in writing and signed by the party against whom enforcement is sought.

29.3. *GOVERNING LAW AND VENUE.* North Carolina law shall govern the interpretation and enforcement of this Contract, and any other matters relating to this Contract (all without regard to North Carolina conflicts of law principles). All legal actions or other proceedings relating to this Contract shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By execution of this Contract, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections they may have with respect to venue in any court sitting in Mecklenburg County, North Carolina.

29.4. *BINDING NATURE AND ASSIGNMENT.* This Contract shall bind the parties and their successors and permitted assigns. Neither party may assign this Contract without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void. For purposes of this Section, a Change in Control, as defined in Section 29.12 shall constitute an assignment.

29.5. *NO DELAY DAMAGES.* Under no circumstances shall the City be liable to the Company for any damages arising from delay, whether caused by the City or not.

29.6. *FORCE MAJEURE PRIOR TO SYSTEM ACCEPTANCE.* The following force majeure provisions shall apply to the Company prior to System Acceptance and to the City at all times. Neither party shall be liable for any failure or delay in the performance of its obligations pursuant to this Contract, and such failure or delay shall not be deemed a default of this Contract or grounds for termination hereunder if all of the following conditions are satisfied:

(a) if such failure or delay:

1. could not have been prevented by reasonable precaution;

2. cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and

3. if, and to the extent, such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions or court order.

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

(c) Upon the occurrence of a Force Majeure Event, the affected party shall promptly notify the other by telephone (to be confirmed by written notice within five (5) days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents the Company from performing its obligations for more than fifteen (15) days, the City shall have the right to terminate this Contract by written notice to the Company.

(d) Notwithstanding anything contained herein to the contrary, strikes, slow-downs, walkouts, lockouts, and industrial disputes of the Company or its subcontractors shall not constitute "Force Majeure Events" and are not excused under this provision. The parties expressly acknowledge that Year 2000-related interruptions in operations or in the supply of the products or services of the Company or its are not excused under this provision. Nothing in the preceding Force Majeure provisions shall relieve the Company of any obligation it may have regarding disaster recovery, whether under this Contract or at law.

29.7. *FORCE MAJEURE AFTER SYSTEM ACCEPTANCE.* The following force majeure provisions shall apply to the Company after System Acceptance. After System Acceptance, the Company shall not be excused from performance under this Contract by virtue of force Majeure events. The Company shall take precautions sufficient to ensure that force Majeure events (including but not limited to fire, flood, earthquake, hurricane, elements of nature, strikes, labor disputes, terrorism and acts of God) do not result in any failure or delay in the performance of the Company's obligations pursuant to this Contract. Failure to comply with this provision will constitute a default under this Contract, and grounds for immediate termination.

29.8. *SEVERABILITY*. The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Contract shall not affect the validity of the remaining portion of this Contract so long as the material purposes of this 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.

29.9. *NO PUBLICITY*. No advertising, sales promotion or other materials of the Company or its agents or representations may identify or reference this Contract or the City in any manner without the prior written consent of the City. Notwithstanding the forgoing, the parties agree that the Company may list the City as a reference in responses to requests for proposals, and may identify the City as a customer in presentations to potential customers.

29.10. *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 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.

29.11. *SURVIVAL OF PROVISIONS.* Those Sections of this Contract and the Exhibits which by their nature would reasonably be expected to continue after the termination of this Contract shall survive the termination of this Contract, including but not limited all definitions and each of the following:

Section 2	Definitions
Section 4.6	Additional Purchases
Section 4.8	Audit
Section 6.5	Software License for Embedded Software
Section 6.6	Transfer of Warranties
Section 6.7	Replacement Equipment
Section 9	Representations and Warranties
Section 12	Termination
Section 15	Intellectual Property
Section 18	Indemnification
Section 23	Non-Discrimination
Section 27	Notices
Section 29	Miscellaneous

29.12. *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 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.

29.13. *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 this Contract.

29.14. *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 work.

29.15. *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.

29.16. *TITLES OF SECTIONS*. The section headings inserted herein are for convenience only, and are not intended to be used as aids to interpretation and are not binding on the parties.

29.17. CONSTRUCTION OF TERMS. 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

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.

ATTESTED:

BY:_____

NAME: _____

TITLE: _____

COMPANY NAME

BY: _____

NAME: _____

TITLE: _____

ATTESTED:

BY: _____

CITY OF CHARLOTTE

BY: _____

NAME: _____

TITLE: _____

Exhibit A

PRICE SCHEDULE AND COMPONENTS KNOWN AS OF THE EFFECTIVE DATE

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

1. **PURCHASE PRICE.** The City shall pay the Company a fixed price of $_____ as full and complete consideration for the performance of all obligations of the Company under the MCSI (the "Purchase Price"), other than Maintenance Services beyond the Warranty Period ("Extended Maintenance Services"). The Purchase Price is allocated to the Products and Services in accordance with this Exhibit, and shall be payable only in accordance with the Milestone Plan.

2. **MAINTENANCE FEE.** The Company shall provide the Maintenance Services at no additional charge during the Warranty Period. After the Warranty Period, the City shall have four one-year options to purchase Extended Maintenance Services a price of $_____ per year. The City shall be entitled to exercise its option to buy Extended Maintenance Service for a given one-year option period by: (a) providing written notice to the Company at any time prior to or within sixty days following the beginning of such one-year option period; or (b) payment of the Company's invoice for such one-year option period.

3. PURCHASE SCHEDULE FOR SOFTWARE

Item	Quantity	Price

4. PURCHASE SCHEDULE FOR HARDWARE

Item	Quantity	Price

5. PURCHASE SCHEDULE FOR SERVICES

Item	Quantity	Price

6. **OPTIONAL ITEMS.** The items listed below are not required under the MCSI, and are not necessary for the System or any of its components to perform in accordance with the MCSI. However, the Company has agreed that for a period of ____ months after the date of this Contract, the City shall have the right to purchase and the Company shall sell to the City the following items at the prices set forth below:

Item	Quantity	Price

Nothing in this Exhibit shall be deemed to eliminate the Company's obligation to provide alternative or updated Products to the extent required by Exhibit C or other provisions of the MCSI.

Exhibit B

MILESTONE PLAN

This Milestone Plan is incorporated into and made a part of the Master Contract for System Integration ("MCSI") between the City of Charlotte (the "City") and **[INSERT COMPANY NAME]** (the "Company"). Unless otherwise defined herein, capitalized terms in this Exhibit shall have the same meanings as are assigned to such terms in the MCSI, including but not limited to Exhibit C.

The Company shall invoice the City for the Purchase Price in accordance with the Milestone Plan set forth below. The Company shall not invoice the City for any Products, Services or Deliverables within a particular Milestone until all Services and Deliverables required in connection with that Milestone have been fully completed and accepted by the City.

5% ($_____) shall be paid within fifteen (15) days after execution of this Contract by both parties;

5% ($_____) shall be paid within thirty (30) days after the later of: (i) receipt by the City of an undisputed and properly submitted invoice for completion of Phase 1 of the Project as described in Exhibit C (the "Define Phase"); or (ii) acceptance by the City of all Products, Services and Deliverables required in Phase 1 of the Project;

10% ($_____) shall be paid within thirty (30) days after the later of: (i) receipt by the City of an undisputed and properly submitted invoice for completion of Phase 2 of the Project as described in Exhibit C (the "Design Phase"); or (ii) acceptance by the City of all Products, Services and Deliverables required in Phase 2 of the Project;

20% ($_____) shall be paid within thirty (30) days after the later of: (i) receipt by the City of an undisputed and properly submitted invoice for completion of Phase 3 of the Project as described in Exhibit C (the "Build Phase"); or (ii) acceptance by the City of all Products, Services and Deliverables required in Phase 3 of the Project;

20% ($_____) shall be paid within thirty (30) days after the later of: (i) receipt by the City of an undisputed and properly submitted invoice for completion of all tasks in Phase 4 of the Project as described in Exhibit C (the "Deliver Phase"); or (ii) acceptance by the City of all Products, Services and Deliverables required in Phase 4 of the Project.

40% ($_____) shall be paid within thirty (30) days after the later of: (i) receipt by the City of an undisputed and properly submitted invoice for the completion of System Acceptance; or (ii) successful completion of System Acceptance at the conclusion of the Test Period.

Exhibit C

SCOPE OF IMPLEMENTATION SERVICES

1. MCSI

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

2. GENERAL DESCRIPTION OF COMPANY RESPONSIBILITIES

The Company shall **design, supply, install, configure, test and commission** a **[DESCRIBE SYSTEM]** that fully complies with the Specifications and Requirements. Except for the "City Responsibilities" specifically identified in this Scope of Implementation Services, 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 in the MCSI does not release the Company for its obligation to provide it, if such service, equipment or material is necessary to **design, supply, install, configure, test and commission** the System so that it fully complies with the Specifications and Requirements. Without limiting or shifting to the City the obligations of the Company which are acknowledged in the preceding two sentences, the Company shall provide to the City the specific system components and services which are itemized in Exhibit A to the MCSI, or any newer versions that the Company is required to provide under the MCSI. In the event any of the System components or services listed on Exhibit A (or any newer version that the Company is required to provide) are insufficient for the Company to deliver to the City a System which fully complies with the Specifications and Requirements, the Company shall immediately provide the City with written notice (a "Deficiency Notice"): (i) describing the deficient components and/or services and the probable impact on the System; and (ii) proposing such other or additional components or services as are necessary for the System to meet all Specifications and Requirements (the "Substitute Components/Services"). Substitute Components/Services must be equal or better in all respects to the deficient components/Services. The City shall within fifteen (15) days after receipt of a Deficiency Notice, give the Company written notice to either proceed with the current components and/or services, or to proceed with the Substitute Components and Services. In the event the City elects to proceed with the Substitute Components and Services, the Company shall provide the Substitute Components and Services at no additional charge to the City. In the event the City elects to proceed with the current components and/or Services, the Company shall not be responsible for Defects which are solely attributable to the deficiency identified by the Company in the Deficiency Notice with respect to such components and services.

3. PROJECT SCHEDULE

Time is of the essence in having the Company perform the Implementation Services. The Company shall perform all Implementation Services within the time periods set forth in the Project Schedule and the Project Plan. There shall be no extensions of such time periods without the mutual written consent of both parties; provided, however, that:

3.1. if the City fails to complete any task assigned to it by the completion date set forth in the Project Schedule or Project Plan, and if such failure is reasonably likely to cause a delay in the completion of the remaining tasks, then the Company shall give the City written notice that its delay is causing the Company to fall behind (a "Delay Notice"). The completion dates for all remaining tasks shall be automatically extended by the number of business days between the date the City receives the Delay Notice and the date the City completes the overdue task identified in the Delay Notice; and

3.2. if the Company fails to meet a completion date set forth in the Project Schedule or the Project Plan, the completion dates for tasks assigned to the City shall be automatically extended by the number of business days between the date the date the task should have been completed and the date the Company actually completes such task; and

3.3. the City shall in its sole discretion be entitled to postpone the Project at any time for any reason by giving written notice to the Company. This postponement shall result in the extension of all deadlines set forth in the Project Schedule, the Project Plan and the MCSI, provided that such extensions shall not total more than six (6) months

in the aggregate without the Company's prior written consent.

The failure by the Company to meet a given completion date in the Project Schedule or Project Plan shall not entitle the Company to receive an extension for the completion of any other task assigned to the Company, even if such failure has caused the City to delay in completing one or more tasks as allowed under Section 3.2 above.

4. CITY PROVIDED EQUIPMENT, FACILITIES AND SERVICES

The City shall be responsible for supplying the following equipment, services and facilities for the implementation of the System (collectively referred to herein as the "City Responsibilities"):

4.1. Physical space and electrical power necessary for the installation of all Products (hardware, software and interconnections) by the Company;

4.2. A facility to accommodate Company training of City personnel, equipped with up to __ workstations at any given facility; and

4.3. Office facilities for up to __ Company staff, consisting of

4.3.1. work space (consisting of a table, desk or cube, as the City may elect)

4.3.2. a telephone;

4.3.3. a modem line;

4.3.4. access to a copier or, in the City's discretion, City staff to make copies; and

4.3.5. access to a fax or, in the City's discretion, City staff to send faxes.

4.4. Company staff will be allowed reasonable use of the City's break room facilities when they are on City premises. The Company's employees shall not venture outside those areas where the City Project Manager has specifically authorized them to go. Access to the City's facilities outside normal business hours is restricted; necessary access must be arranged each day as needed with the City Project Manager.

4.5. City staff will perform the tasks assigned to the City in this Scope of Implementation Services.

5. PROJECT MANAGERS

5.1. *COMPANY PROJECT MANAGER.* _____ shall be the "Company Project Manager" under this Contract. The duties of the Company Project Manager include, but are not limited to:

5.1.1. Direct the Project as the Company contact with responsibility for Project performance from initiation to closure, including planning, organizing, managing, and controlling all aspects of the Project to ensure that Project tasks are performed according to the approved Project Schedule and Project Plan.

5.1.2. Coordinate and schedule all Company resource assignments.

5.1.3. Identify all known items that may impact the availability of City resources during the Project, and coordinate with the City Project Manager to avoid delays.

5.1.4. Ensure that all necessary subcontractor commitments are in place and monitor subcontractor commitments.

5.1.5. Initiate and maintain Project reporting and filing systems to ensure that Project documentation is up-to-date, organized and readily accessible by appropriate Company and City staff.

5.1.6. Obtain from the City a system network configuration diagram and update it regularly to ensure that the system network configuration diagram accurately reflects the City architecture as it may change during the implementation of the project.

5.1.7. Arrange for the delivery and installation of all Products and Services in accordance with the Project Schedule.

5.1.8. Coordinate Company logistics for all on-site activities

5.1.9. Mutually agree and clarify with the City the training logistics considerations such as schedules and classroom resources

5.1.10. Provide the City Project Manager and Company upper management with the weekly progress reports described in this Scope of Implementation Services

5.1.11. Maintain a "punch list" of all Defects, incomplete requirements or unresolved issues that occur over the course the Project, including date and manner of resolution.

5.1.12. Communicate with the City Project Manager on a daily or weekly basis, as needed, regarding Project progress and activities, and ensure adequate communication between members of the Company's and City implementation staffs.

5.1.13. Monitor and follow-up to ensure that the Implementation Services are completed in compliance with the MCSI and the dates set forth in the Project Schedule and Project Plan.

5.1.14. Promptly consult with the City's Project Manager when Project Plan deviations occur, and document all such plan deviations in accordance with agreed upon change control procedures;

5.1.15. Provide 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;

5.1.16. Act as the Company's point of contact for all aspects of contract administration, including invoicing for services, and status reporting;

5.1.17. Facilitate review meetings and conferences between the City and the Company's executives when requested by the City;

5.1.18. Identify and provide the City with timely written notice of all issues that may threaten the implementation, operation or performance of the System (with "timely" meaning immediately after the Company becomes aware of them);

5.1.19. Employ project management procedures that ensure a mutual understanding and agreement of the tasks to be completed and the schedule to be observed.

5.1.20. Employ project planning methods that document the City's expectations so that there are no false starts or wasted effort.

5.1.21. Maintain a complete record of the Project's history.

5.1.22. Ensure that adequate quality assurance procedures are in place throughout the Project, and that the System complies with the Specifications and Requirements; and

5.1.23. Meet with other vendors working on City technology projects as necessary to resolve problems and coordinate the work that is included within the scope of this Project.

The Company Project Manager shall remain onsite at the City throughout the duration of the Project, except for instances where the City has specifically agreed in writing that the Company Project Manager need not be present.

5.2. *CITY PROJECT MANAGER.* _____ shall be the "City Project Manager" under this Contract. The duties of the City Project Manager are: (i) coordinating to fulfill the City's obligations pursuant to this Contract; (ii) promptly responding to the Company's Project Manager when consulted in writing or by E-mail with respect to project issues; and (3) acting 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 business day's notice to the Company.

5.3. In the event of vacation, illness or training, the Project Manager for each party shall appoint a designee to serve in his or her temporary absence.

6. PROGRESS REPORTS

Throughout the Project, the Company shall prepare and submit weekly written reports to the City Project Manager. The weekly reports shall:

6.1. Update the Project Plan indicating progress for each task;

6.2. Identify and report the status of all tasks that have fallen behind schedule, the reason for the delay, and the projected completion date;

6.3. Identify and summarize all risks and problems identified by the Company which may affect the Project;

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

6.5. For each risk and problem identified, state the impact on the Project Plan; and

6.6. Identify all personnel, equipment, facilities and resources of the City that will be required for the Company to perform the Implementation Services at least (2) weeks in advance of the need.

I.

7. REVIEW AND CORRECTION OF INTERIM DELIVERABLES

Upon completion of each Deliverable and Milestone, the Company shall give the City a written notice of completion. Within a reasonable time after receiving such completion notice, the City shall the City shall notify the Company in writing of the City's acceptance or rejection of the applicable Deliverable or Milestone. The City shall be entitled to reject the Deliverable or Milestone if it fails in any way to comply with the MCSI (including this Scope of Implementation Services), or if it fails to comply with the highest industry standards, or if it contains time periods that are not reasonably attainable. If the City fails to accept or reject the Deliverable or Milestone within a reasonable time period, then: (a) the Deliverable or Milestone shall be deemed rejected; (b) the Company shall give the City written notice of such failure to accept or reject; and (c) work on all contingent tasks shall cease until all issues about the Deliverable or Milestone have been resolved and the City has issued an acceptance. As used in this paragraph, the term "reasonable time" means the time reasonably necessary to review and evaluate the Deliverable or Milestone based on its length, complexity and the number of people who need to review it. Under no circumstances shall the "reasonable time" be less than fifteen business days, unless the City has agreed in writing to a shorter review time.

If the City rejects a Deliverable or Milestone, the Company shall: (a) act diligently and continuously to correct all Defects and deficiencies identified by the City, and (b) immediately upon completing such corrections give the City a written, dated certification that all Defects and deficiencies have been corrected (the "Certification"). In the event the Company fails to correct all Defects and deficiencies identified in by the City and provide a Certification within a reasonable time after receipt of the Rejection Notice (which time shall in no event exceed fifteen business days), the City shall be entitled to terminate this Contract for default without further obligation to the Company.

Upon the City's receipt of the corrected Deliverable or Milestone, 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 Defect or deficiency previously identified by the City, or more than twice for any given Deliverable or Milestone (and shall be entitled to terminate this Contract for default if the criteria for acceptance are not met within this time frame).

Under no circumstances shall the City's acceptance of a Deliverable or Milestone be deemed to constitute a waiver of any of the Specifications and Requirements, the completion dates in the Project Plan, or any of the Company's other obligations under this Contract. No such waiver shall be effective unless specifically agreed to in writing by a City Key

Business Executive. Likewise, the Company shall not be relieved of such obligations by any Defect or deficiency in the Deliverable, nor by any failure on the part of the Company or City to detect such Defect or deficiency.

8. PROJECT PHASES

The Company will design, install, configure, deliver, test and commission the System in the following five phases, each of which is described in detail in the subsequent Sections of this Scope of Implementation Services:

Phase I: Define Phase

Phase II: Design Phase

Phase III: Build Phase

Phase IV: Deliver Phase

Phase V: Trial Period

II. 9. PHASE I: DEFINE PHASE

The Define Phase will consist of the following tasks and Deliverables:

9.1. PROJECT PLAN

9.1.1. Within thirty (30) days after the Effective Date, the Company shall prepare and submit to the City for approval a comprehensive and detailed project plan that identifies all tasks, steps and resources needed for delivery of the System in full compliance with the Specifications and Requirements within the time periods set forth in the Project Schedule (the "Project Plan").

9.1.2. The Project Plan shall clearly identify in detail all steps, tasks, activities, events, milestones and resources necessary for the Company to: (i) design, supply, configure, install, test and commission a System which fully complies with the Specifications and Requirements, and (ii) provide for a smooth and efficient transition from the existing system, to the new System, with minimum disruption to City operations. The Project Plan shall clearly define all hardware, software, deliverables and tasks required for each Milestone in each Phase of the Project. The Project Plan shall include a chart in Microsoft Project format that clearly identifies the schedule, order, completion date, number of days duration, responsible party and prerequisites for all such activities, events, tasks, Milestones and Deliverables.

9.1.3. The Project Plan will be developed in a manner so that the City and Company Project team can use it as a stand-alone document.

9.1.4. The Project Plan will contain a schedule, overall strategy and methodology for the mapping, data conversion and the loading of data from the current City system(s) to the System.

9.1.5. The Project Plan will contain a schedule for all training courses needed by the City to fully and productively use the System.

9.1.6. The Project Plan will identify when each type of Hardware and Software component will be installed.

9.1.7. The Company shall maintain the Project Plan. The Microsoft Project schedule contained within the Project Plan and shall be updated and submitted to the City on a weekly basis throughout the Project (until System Acceptance), to reflect the current status of all work. Aside from updates to show mutually agreed upon status changes, no changes to the Project Plan shall be made without the prior written approval of the City.

9.2. TRAINING PLAN.

9.2.1. Within the time periods and by the completion dates set forth in the Project Schedule, the Company shall prepare and provide to the City for approval a written comprehensive training program that shall outline the content, sequence and duration of each segment of each training

session necessary to thoroughly and comprehensively train City personnel to fully utilize the System (the "Training Plan"). The Training Plan will outline all subjects necessary to train City staff to fully understand and utilize all user functions of the System, and to train the designated "trainers" to effectively train other City personnel to fully understand and utilize the user functions of such software on the System.

9.2.2. The Training Plan shall require the Company to provide the operator training and comprehensive "train the trainer" training for the numbers of City designated personnel listed in the chart identified in Section 9.2.4. In the Training Plan, the Company will schedule the training classes and modules according to their appropriate phase of the Project. For example, the classes for building tables must be scheduled before the City begins building the tables, and operator training must be scheduled to ensure a smooth transition to live operations. The Training Plans described below will also take into account classroom resources and personnel scheduling.

9.2.3. In the Training Plan, the Company shall provide the City with a written description of the types of the precise training classes that will be conducted, the number of persons that can be trained in each session, and the total number of hours required for each person to be trained. The Training Plan shall provide for rotating shift operations. All training will be conducted on-site in City facilities.

9.2.4. Without limiting the Company's obligations hereunder, the Company will provide and the Training Plan will include each of the courses described in the Training Courses List which is attached to this Scope of Implementation Services as Attachment I and incorporated herein by reference to the numbers of students set forth below:

CLASS	# STUDENTS
• System Overview	
• System Administration	
• System Management Reporting	
• Supervisor Functions	

The cost of all training referenced in this Exhibit is included in the Purchase Price.

9.5. The System Administration and Management Reporting courses shall contain all information and materials necessary to enable City designated staff to become fully proficient to:

9.5.1. troubleshoot and identify the area or System component within the System that is causing any problem(s);

9.5.2. modify existing System management reports;

9.5.3. identify sources of statistical data that can be used to assess trends in System operations (use) and performance; and

9.5.4. demonstrate configuration of the System terminal display forms.

9.6. The Company will provide a documentation template so that the City can replicate all training material and pass it out to City staff and other authorized users of the System.

9.7. The Training Plan provided by the Company during the Project will include the following information:

9.7.1. Course summary/outline;

9.7.2. Duration of training for each module;

9.7.3. Location of training; and

9.7.4. Student prerequisites.

9.8. After approval of the Training Plan by the City, the Company shall prepare and provide to the City for approval, the instructor's course notes, which shall contain all information and materials necessary that will be presented in each course to be provided as part of the Training Plan (the "Lesson Plan").

9.9. The Company shall supply all training aids and course materials for the training, for: (i) the "train the trainer" training described above; and (ii) all operator training. For each course referenced in the chart included in this Section, the Company shall provide, at a minimum, the number of complete sets of all course materials and training aids for each class equal to the number of students shown on the chart (other than the videotapes).

9.10. The City shall be entitled (but not required) to videotape all training classes provided by the Company, and to use the videotapes as a permanent training aid as part of the ongoing City training program.

9.11. The City shall have royalty free unrestricted rights to reproduce an unlimited number of copies of the Training Program, the Course Lesson Plan and all Company supplied course materials and training aids (including the videotapes), for use by the City as part of the City's ongoing training.

10. PHASE II: DESIGN PHASE

The Design Phase will consist of the following tasks and Deliverables:

10.1. SYSTEM DESIGN

10.1.1. Within the time period and by the completion dates set forth in the Project Schedule and the Project Plan, the Company shall prepare and submit to the City for approval the detailed design documentation described below (the "Design Documentation").

10.1.2. The Company shall prepare and submit to the City for approval interface and map construction documentation in the form of, product specifications, installation, and/or other types of documentation that will enable the City to clearly determine, whether the System as proposed by the Company will fully satisfy the Specifications and Requirements. The Design Documentation shall include, without limitation, the following:

10.1.2.1. Interface Designs for all interfaces to the System. The Company will provide a design for all interfaces specified in Exhibit G sufficient to ensure compliance with the Specifications and Requirements. The interface designs will specify all links, protocols and interfaces that need to be created to link the System to required data sources and other systems.

10.1.2.2. Map Importation Design. The Company will provide specifications for all map importation so as to ensure compliance with the Specifications and Requirements. The map specifications will contain overall strategy and methodology for the mapping, conversion and loading of data from the current City system(s) to the System. The Company will specify a methodology for cleaning and verifying old data before migration, including but not limited to a contingency plan for handling data that cannot be converted (e.g., fields with data elements that have changed their meaning over time). The Schedule for the map activities will be part of the overall project schedule.

10.1.2.3. Manuals, Documentation and/or on-line help capability for all third-party products used for interfaces or map importation (which documentation shall be sufficient to enable trained City users to fully utilize the System and identify problems).

The parties acknowledge that the City will require Design Documentation which meets the City's written approval prior to allowing the implementation of the System by the Company to proceed, except as agreed in writing by the City for specific items.

10.1.3. CONFIGURATION PLAN

10.2. Within the time period and by the completion dates set forth in the Project Schedule and the Project Plan, the Company shall prepare, and submit to the City for approval a configuration plan in Visio format compatible with the City's software for all System Hardware and Software Deliverables. The Configuration Plan will include the following:

Visio Diagrams, including both system level and components; and

A System overview (written documentation to document Visio Diagrams).

10.3. The Configuration Plan shall clearly identify all the Hardware to be delivered as part of the System, as well as the respective Software for each piece of Hardware. The Configuration Plan will provide system administrators and other City personnel with a clear understanding of the overall System Hardware/Software configuration.

10.4. All references to the Project Plan in the MCSI or the Exhibits thereto shall be deemed to include to the Configuration Plan.

11. CONVERSION PLAN

11.1. Within the time period and by the completion dates set forth in the Project Schedule and the Project Plan, the Company shall prepare and submit to the City for approval, a conversion plan for converting all data necessary to transfer all operations from the old system to the new System ("Conversion Plan").

11.2. The Conversion Plan shall clearly identify in detail all steps, tasks, activities, events, milestones and resources necessary for the Company to convert data to the System in a manner so that the System will operate in full compliance with the Specifications and Requirements. The Company will be responsible for all data conversion activities.

11.3. All references to the Project Plan in the MCSI or the Exhibits thereto shall be deemed to include to the Conversion Plan.

12. CUT-OVER PLAN

12.1. Within the time period and by the completion dates set forth in the Project Schedule and the Project Plan, the Company shall prepare and submit to the City for approval a cut-over plan the ("Cut-Over Plan").

12.2. The Cut-Over Plan shall clearly identify in detail all steps, tasks, activities, events, milestones and resources necessary for the Company and the City, to cut over to the System in a manner so that it fully complies with the Specifications and Requirements. The Cut-Over Plan shall ensure a smooth and efficient transition from the City's current systems to the System with minimum disruption to current operations. The Cut-Over Plan will identify those operations which cannot be interrupted by implementation and provide a methodology to ensure continual delivery of service. The Company will work with the City to ensure that at the time of cut-over, the System is functioning with equivalent or better performance to the configuration currently used by the City.

12.3. All references to the Project Plan in the MCSI or the Exhibits thereto shall be deemed to include to the Conversion Plan.

14. ACCEPTANCE TEST PLAN AND PROCEDURES

14.1. Within the time period and by the completion date set forth in the Project Schedule and the Project Plan, the Company shall prepare and provide to the City comprehensive acceptance test plans and procedures that will clearly and conclusively demonstrate to the City's satisfaction whether the entire System and each component thereof meets all Specifications and Requirements (the "Test Plan and Procedures").

14.2. The Test Plan and Procedures shall clearly specify and describe all tests, test methods and inspections necessary to clearly and conclusively demonstrate to the City's satisfaction whether or not the complete System and each component thereof meets and satisfies all Specifications and Requirements. The acceptance testing shall include peak-load processing and on-line processing, as well as all links, protocols and interfaces. The Test Plan and Procedures shall require the Company to perform the following tests in conjunction with City personnel prior to cut-over:

14.2.3. Sub-system testing to ensure that collections of modules which have been integrated into sub-systems operate correctly together (including tests sufficient to detect all interface errors);

14.2.4. System-wide testing to ensure that the entire System operates correctly as a whole. These tests will validate whether the System as a whole fully complies with the Specifications and Requirements; and

14.2.5. City Data Testing to ensure that the System performs in full compliance with the Specifications and Requirements with data supplied by the City.

14.3. The Test Plan and Procedures shall further include detailed descriptions of each test to be conducted, and the minimum acceptable limits and tolerances clearly identified for each test. The Test Plan and Procedures shall identify all tests which shall occur as a condition for the end of Phase IV and the beginning of cut-over. Additionally, the Test Plan and Procedures shall specify for each test a written results record form that will be completed by the Company as witnessed and acknowledged by the City, after each test is completed. The Test Plan and Procedures shall further include a list of all test equipment, software and facilities that will be required to complete all tests.

14.4. The Test Plan and Procedures shall clearly identify the sequence of all tests and the schedule for conducting all tests to comply with the Project Plan.

14.5. The City shall have the right to witness and object to each test performed pursuant to the Test Plan and Procedures. The Company shall provide the City reasonable notice of and opportunity to witness and object to each test performed pursuant to the Test Plan and Procedures. No test shall be deemed to be completed unless the City receives reasonable notice of such test, and was provided with an opportunity to plainly observe such test.

14.6. The Test Plan and Procedures shall include a description of tests for system security requirements that will occur, including but not limited to attempted break-ins. The Test Plan and Procedures shall also specify all testing software tools that are planned for use and which party will use such products in the testing. Finally, the Test Plan and Procedures will describe how and where test plans and results will be stored, including a 10-year storage requirement.

14.7. The Company shall conduct all tests included in the Test Plan and Procedures and shall be responsible for providing all test equipment (hardware and software), all test routines, and personnel for setting up and conducting all such tests.

14.8. Neither the Test Plan and Procedures nor the Test Procedures shall be revised without the prior approval of the City.

15. PHASE III: BUILD PHASE

During the Build Phase, the Company will gather input and perform System configuration activities to support the City's unique operational workflow. The Company will populate the database and construct the maps during this phase. The Company's key responsibilities during this phase include the following:

15.1. SYSTEM DEVELOPMENT

During System Development, the Company will translate the Specifications and Requirements and the Design Documentation into usable hardware components, adaptable interfaces, and appropriate code.

15.2. STAGING AND TESTING

The Company will perform integration consisting of staging the System, preparing the test platform, and testing the System. Together with development, these activities will produce the required System.

15.3. DOCUMENTATION CUSTOMIZATION

The Company will provide Documentation sufficient for the City to fully utilize the System and each of the Products.

15.4. CONFIGURATION MANAGEMENT

The Company will build the System in accordance with the approved Configuration Plan. The Company's configuration management responsibilities include maintaining baseline documentation, System configuration details and baseline software. They also include managing change. The Company Project Manager will be responsible for processing and maintaining Change Statements throughout the life of the Project and will also be responsible for updating the initial configuration diagram. By instituting an active configuration management process, the Company will ensure that the System development effort will move ahead, that critical baseline information will be rigorously maintained, and that change requests are properly evaluated and effectively implemented when appropriate.

15.5. DATA COLLECTION

The Company will work closely with the City to ensure that the data collection activities meet the System's requirements.

15.6. COMPLETED SYSTEM

The Build Phase culminates in the creation of the System.

16. PHASE IV: DELIVER SYSTEM

During the Deliver Phase, the System will be tested and placed into live operation. The Test Plan and Procedures will serve as a foundation for the System to be rigorously tested for correct operation prior to its actual use. The Company's key responsibilities during this phase include the following:

16.1. OVERVIEW OF OPERATING ENVIRONMENT CREATION

To create the System operating environment, Company will perform the following:

16.1.1. Install the System at the City's site.

16.1.2. Establish the baseline operating environment.

16.1.3. Set up the System with all Product-related data, such as product administration accounts and product schema definitions.

16.1.4. Initialize the System and bring it on-line according to the start-up instructions.

16.1.5. Load converted data and verify connection to any other external systems as required.

16.1.6. Create, configure, and customize, as appropriate, the required user accounts.

The Deliverable for this task is that the System will be ready for the System-wide functional acceptance tests which confirm that the entire System functions in full compliance with the Specifications and Requirements using City data.

16.2. DELIVERY OF PRODUCTS

16.2.1. The Company shall deliver all Products within the time periods set forth in the Project Schedule.

16.2.2. All Company supplied Hardware will be staged and tested at the Company's facilities prior to delivery to the City's site. Prior to delivery of Software, the Company will perform factory acceptance tests using the Software to be delivered. The Software loaded and tested will be the latest certified version.

16.2.3. The City shall not be required to make any inspection of the Products. However, the City shall be entitled to inspect the Products as they are delivered and to reject all or any of the Products for any failure to comply with the descriptions, specifications, requirements and performance standards set forth in the

MCSI, including but not limited to the requirement that all Hardware shall be new, undamaged and in good working order (any such failure to comply being referred to as a "Product Deficiency").

16.2.4. Within a reasonable time period, the City shall give the Company written notice of any Product Deficiencies which the City wants corrected based on the City's initial inspection. Failure by the City to give written notice of any Product Deficiencies shall not in any way relieve the Company from or shift to the City any of the Company's obligations under the Contract Documents, including but not limited to the Company's obligation to design, supply, install, configure, test and commission the System in accordance with the Specifications and Requirements. Likewise, the Company shall not be relieved of such obligations by any Defects in the Products, nor by any failure on the part of the Company or City to detect such Defects.

16.2.5. Upon receipt of notice that the City has rejected any of the Products, the Company shall promptly replace all such rejected Products. In the event the Company fails to provide replacement Products with all Product Deficiencies identified by the City corrected (and no new Product Deficiencies created) within five (5) business days after receipt of the City's notice of rejection, the City shall be entitled to terminate this MCSI without further obligation to Company. Rejection of all or part of the Product delivery by the City shall not result in any extension of the completion dates or time periods set forth in the Project Schedule unless specifically agreed in writing by a City Key Business Executive with respect to a particular rejection notice.

16.3. INSTALLATION AND CONFIGURATION OF SYSTEM

Within the time period and by the completion date set forth in the Project Plan, the Company shall install and configure the complete System Hardware and Software in full compliance with the Specifications and Requirements.

16.3.1. Workmanship And Installation Standards

A. The Company and its subcontractors shall perform all installation work in accordance with the highest industry standards and shall comply with all local, state and federal government codes and regulations.

B. The installation, location and methods of installation of all Hardware shall be subject to the prior written approval of the City.

C. The Company shall route all wiring and cables from computer terminal connection points to City-provided connection points to avoid obstructing passage of personnel and shall include safeguards against inadvertent harm to personnel, the general public, or damage to the equipment and facilities of the City and its vendors.

D. All installation work performed by the Company and its subcontractors shall be carried out by qualified, skilled trades people.

E. The Company shall be responsible for determining all minimum installation standards for all sites, and shall obtain the City's written approval, prior to and after completion of all installation work.

16.4. SECURITY AND WAREHOUSING OF EQUIPMENT

The Company shall be responsible for the security and warehousing of all equipment supplied by the Company (or its subcontractors) pending installation of the equipment in the City facilities.

16.3.2. Restoration Of Premises

After implementation and prior to the expiration of the Trial Period, the Company shall restore the City's premises to their original condition. This includes removal of debris, restoring areas affected in the course of implementation, and repairing all damage.

The Company Project Manager will be responsible for inspecting all areas before work starts and reporting any pre-existing damage to the City Project Manager.

16.3.3. Training

Training will be completed under the schedule set forth in the Project Plan and the Project Plan.

16.3.4. Operation

At the end of the Deliver Phase, the System will be operational and in full conformance with the Specifications and Requirements and will be ready for use in live operations. The Company will work with the City to ensure that the System will function with equivalent or better performance to the configuration currently used by the City immediately after cut-over.

16.3.5. Testing

By the end of the Build Phase, the Company will complete all acceptance tests set forth in the Test Plan and Procedures, so as to establish that the System is ready to go into production. All acceptance tests shall be conducted in strict compliance with the Test Plan and Procedures with the City present during all such Tests to witness and verify such Tests. The Company will provide the City with copies of all acceptance test results immediately upon completion. After the acceptance tests have been successfully completed, the City can choose the timing for taking the System into full production use.

During the course of acceptance testing, the City may give the Company written notice of any Defects it observes in the performance of the System as a whole or any component. Failure to provide such notice shall not in any way relieve the Company from or shift to the City any of the Company's obligations under the MCSI, including but not limited to the Specifications and Requirements. Likewise, the Company shall not be relieved of such obligations by any errors or omissions in the aacceptance tests.

Upon receipt of notice of Defects or deficiencies in all or any portion of the System, the Company shall act diligently and promptly to correct all Defects and deficiencies identified by the City, and shall immediately upon completing such corrections give City a written certification to that effect (a "Certification"). In the event the Company fails to correct all Defects and deficiencies identified by the City within ten (10) business days after receipt of the City's notice, the City shall be entitled to terminate the MCSI for default without further obligation to Company and without limiting any other remedies it may have. Rejection of all or part of the System by the City shall not result in any extension of the completion dates or time periods set forth in the Project Plan unless specifically agreed in writing by the City with respect to a particular rejection notice.

Upon correction of the Defects and deficiencies identified by the City and the City's receipt of a Certification, whichever is later, the System shall be re-tested and the City shall again have an opportunity to notify the Company of any Defects or deficiencies with the System or any component thereof. Upon the Company's receipt of such notice, the above-described procedure shall re-commence. Regardless of the number of Defects and deficiencies identified or the number of attempts to cure, the Company shall be required to cure all Defects and deficiencies within twenty (20) business days after receipt of the City's first notice of rejection (excluding the number of days which the City evaluate the System after each Certification). In the event the Company fails to cure all Defects and deficiencies within such period, the City shall be entitled to immediately terminate the MCSI for default, without limiting any other remedies it may have.

16.3.6. Production System (Deliverable)

The Deliverable for completion of the Deliver Phase is the installed, functional, tested, and signed-off System in full conformance with the Specifications and Requirements ready to go into production and begin the Trial Period.

16.3.7. Documentation

Within the time frame and by the completion date set forth in the Project Plan and prior to the end of

Phase IV, the Company shall provide to the City all user manuals and other Documentation necessary for the City to fully utilize the System. The Documentation shall satisfy all descriptions, requirements, specifications and standards set forth in Exhibit B to the MCSI.

16.3.8. Cut-Over Acceptance Form (Exit Criterion)

The exit criterion for the Deliver Phase will be a cut-over acceptance form signed by the City and the Company stating that the entire System and each component, module and sub-system have successfully passed acceptance tests to verify full compliance with the Specifications and Requirements and are ready to go into production, and that the Company has provided all required Documentation (the "Cut-Over Acceptance Form").

16.3.9. Cut-Over To Operations/Support

After completion of the above-referenced cut-over acceptance tests and delivery of the Documentation, the development portion of the Project will be complete. The next step in the Project management methodology is a transition to operations and support mode. This process will begin immediately after the above-referenced Cut-Over Acceptance Form is delivered to the Company, and will be conducted in accordance with the Cut-Over Plan.

16.4.1. **NO WAIVER.** Under no circumstances shall the City's acceptance of the Project Plan, Design Documentation, Configuration Plan, Conversion Plan, Cut-Over Plan, Acceptance Test Plan and Procedures or other Deliverable constitute a waiver of the Specifications and Requirements the completion dates in the Project Plan, or any of the Company's other obligations under this Contract. No such waiver shall be effective unless specifically agreed to in writing by a City Key Business Executive. Likewise, the Company shall not be relieved of such obligations by any Defect or deficiency in the Deliverable, nor by any failure on the part of the Company or City to detect such Defect or deficiency.

17. PHASE V: TRIAL PERIOD

17.1. SYSTEM ACCEPTANCE.

17.1.1. System Acceptance shall occur when the entire System has been in production use with live data for all departments and users in full compliance with the Specifications and Requirements for at least sixty (60) continuous days (the "Trial Period). The Trial Period shall begin upon cut-over, after the completion of Phase IV.

During the Trial Period, the Company will correct Defects with the System within the time frames established in the Scope of Maintenance Services attached to the MCSI as Exhibit E, even though the Maintenance Services do not officially begin until System Acceptance. If the Company fails to comply with such time frames, the City shall be entitled to terminate the MCSI for default, in addition to any other remedies that may be available under the MCSI or at law.

17.1.2. During the Trial Period, the City shall also be entitled to give the Company written Rejection Notices, of the following, each of which shall be deemed a Defect:

i. Any failure of the System or any component thereof to fully meet and comply with the Specifications and Requirements; or

ii. If the Company has not certified in writing that all Products and Services delivered to the City by the Company, are in full compliance with all Specifications and Requirements, and with all laws, regulations and industry specified standards; or

iii. If the Company has not certified in writing that all deficiencies, problems and variances, whether or not revealed as part of the testing and inspection process, have been corrected to meet all Specifications and Requirements; or

iv. If the Company has failed to satisfy all of the training obligations referenced in this Scope of Implementation Services in accordance with the requirements set forth herein; or

v. If the Company has failed to provide Documentation that satisfies the description, specifications and requirements set forth in the MCSI (including all Exhibits); or

17.2.3. Upon receipt of a Rejection Notice during the Trial Period, the Company: (a) shall act diligently and continuously to correct the Defects identified in the Rejection Notice; and (b) shall immediately upon completing such corrections give the City a Certification that all Defects have been corrected. In the event the Company fails to correct all Defects 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 Company. The Trial Period shall begin again each time the City submits a Rejection Notice to the Company, provided that the starting date of the new Trial Period shall be on the date the Company certifies that the Defect(s) identified in the Rejection Notice have been corrected. The City shall not be obligated to allow the Company to restart the Trial Period more than twice, and shall be entitled to terminate this Contract for default in the event the Trial Period is not successfully completed on the third try.

19. SYSTEM ACCEPTANCE BY THE CITY

19.1. System Acceptance shall be deemed to occur only after the City has given the Company written notice of final acceptance of the System, after successful completion of the Trial Period (including the completion of all training and Documentation).

19.2. No warranty period for any of the Products or the System shall begin to run, nor shall the Maintenance and Support Contract become effective, until System Acceptance by the City has occurred.

19.3. Until System Acceptance, the Company shall continue to provide all required Products, Services, and resources necessary to correct all System Defects deficiencies and problems in a timely , forthright, and cooperative manner so as to comply with the time periods and completion dates set forth in the Project Plan.

Exhibit D

PROJECT SCHEDULE

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

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

[Note: What will typically be attached is a rough project plan of the major tasks and deliverables done in Microsoft Project or similar software. Make sure to include a date for adoption of the final Project Plan.]

Exhibit E

MAINTENANCE SERVICES

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

1. GENERAL DESCRIPTION OF COMPANY RESPONSIBILITIES

Beginning on the date of System Acceptance and continuing throughout the term of this Contract (and any renewal period thereof), the Company shall provide to the City the services specified in the following provisions of this Contract (all of which are collectively referred to in this Contract as the "Maintenance Services").

2. **PREVENTION AND CORRECTION OF DEFECTS*.***

2.1. ***SYSTEM.*** The Company shall respond to and correct all Defects in the System within the time frames set forth in **Section** 2.15 of this Exhibit. The Company shall further take all actions reasonably necessary to prevent Defects, and to cause the System to reliably and consistently operate in conformance with the Specifications and Requirements.

2.2. **SOFTWARE.** Without limiting any of its other obligations under this Contract, the Company shall correct Defects in the Software within the time frames set forth in **Section** 2.15 of this Contract, and take such actions as are necessary to ensure that the Software fully conforms to the Specifications and Requirements. The Company's obligations hereunder extend to Third Party Software and Customizations, as well as other Software (including Upgrades and New Versions to Third Party Software and Customizations).

2.3. **HARDWARE.** Without limiting any of its other obligations under this Contract, the Company will correct Defects in the Hardware within the time frames set forth in **Section** 2.15 of this Contract, and maintain all Hardware in a manner so that: (i) the manufacturer warranty shall remain in full force and effect; (ii) such Hardware shall be qualified for coverage under the manufacturer's maintenance program, if available; and (iii) so as to ensure that the Hardware operates in conformity with the Specifications and Requirements. During the term of this Contract, the Company shall be responsible for correcting all Defects in the Hardware (whether covered by manufacturer warranty or not). The Company shall supply all parts and labor required to perform its obligations under this Subsection at no charge beyond the Maintenance Fee.

2.4. **HIGHEST INDUSTRY STANDARDS.** All work performed by the Company and/or its subcontractors pursuant to this Contract shall meet the highest industry standards for professional quality and workmanship, and shall be performed by qualified staff using quality products and materials.

2.5. **SOFTWARE NEW RELEASES AND NEW VERSIONS.** The Company shall provide to the City all New Releases and all New Versions to all Software (including Third Party Software) as soon as reasonably possible following their commercial release at no charge beyond the Maintenance Fee. The New Versions and New Releases provided by the Company to the City will incorporate Customizations at no charge beyond the Maintenance Fee. If requested by the City, the Company shall install New Releases and New Versions at no charge beyond the Maintenance Fee. All New Releases and New Versions provided to the City under this Contract will become part of the Software, and will be maintained by the Company under the terms of this Contract.

The Company will test and certify all New Releases and New Versions before providing them to the City.

Throughout the duration of the Maintenance Services, the Company will provide compatibility in new versions of the Company's Software with the Products that comprise the City's System.

2.6. **HARDWARE NEW RELEASES AND NEW VERSIONS*.*** The Company will provide and install at no charge beyond the Maintenance Fee all New Releases and New Versions to Hardware (including engineering changes) which are: (a) necessary to correct Defects or enable the System or any component to function at an optimum

level; or (b) required by the manufacturer. This includes mandatory engineering change orders (ECOs).

2.7. **COMPLIANCE WITH LAWS.** The Company will promptly develop and provide at no charge beyond the Maintenance Fee all changes and additions to the Software and the Hardware that are required to achieve compliance with local, state or federal laws, regulations, codes and guidelines (including all changes to such laws, regulations, codes and guidelines). The Company will develop New Releases as necessary to improve ease of use and correct

2.8. TRAINING AND DOCUMENTATION FOR MAJOR UPDATES AND ENHANCEMENTS. The Company will provide at no charge beyond the Maintenance Fee all training and Documentation that is necessary for the City to fully utilize all major New Releases and New Versions.

2.9. **REPORTING OF DEFECTS.** The Company shall serve as a single source to address all Defects in the System. Notwithstanding the notice provisions contained in this Contract, the City shall be entitled to report Defects to the Company by telephone, E-mail, or other means, provided that all Defects which require immediate attention shall first be reported by telephone. Notice of Defects need not be in writing, and shall be deemed effective when first received by the Company. The City shall not be required to follow up in-person, telephone, E-mail or telefax notices of Defects with a hard copy by mail or other means.

2.10. **TELEPHONE SUPPORT.** The Company shall provide toll free "single point of call" telephone support to the City with respect to the use of the Products and the correction of Defects. Such support will be available from Monday through Friday 7:00 a.m. until 6:00 p.m. Eastern Time ("Regular Business Hours"). During Regular Business Hours, the Company will provide sufficient, qualified help desk personnel to ensure that City problems are addressed immediately. At all other times, a recording will advise the City representative the appropriate pager number to utilize. The Company will respond to each page within one hour.

2.11. **REMOTE SUPPORT.** The Company shall provide remote diagnostic and repair service to the City with respect to the use of the Products and the correction of Defects, ("Remote Services"). The Company will make Remote Services available to the City both during Regular business through the help desk, and at other times through the Company staff who respond to pages. The Company shall comply with the security measures set forth on in this Exhibit regarding remote access, and any other security measures provided by the City in writing from time to time regarding access to the System.

The Remote Services to be provided by the Company include but are not limited to the following:

- Software diagnostics
- Database diagnostics
- CPU monitoring and diagnostics
- Memory usage and performance monitoring
- Operating system parameters analysis and diagnostics
- Remote downloading of software (fixes and features releases)
- Immediate response to calls

2.12. **ON-SITE SERVICES.** Company shall provide on-site maintenance and support to the extent necessary to correct any Defect in the Products, or the System, or to carry out any of the Company's other obligations under this Contract. There shall be no charge for such on-site services, other than the Maintenance Fees provided in this Contract.

2.13. CHANGE CONTROL PROCEDURES. In performing remote support and other Maintenance Services, the Company will comply with the change control procedures established by the City from time to time, provided that the City shall give the Company notice of such procedures.

2.14. **ACCESS TO FACILITIES AND PERSONNEL.** In the event Company provides on-site support, the City shall provide the Company with reasonable access, without charge, to the City's facilities, appropriate personnel, and any other information reasonably requested by Company so as to enable Company to provide Services, provided that the City can do so at no significant cost to the City.

2.15. **SEVERITY LEVELS, RESPONSE TIMES AND RESOLUTION TIMES.** The Company will comply with the response times, resolution time and resolution procedures set forth in this Section for each of the priority levels of problems described herein. The City shall assign an initial priority level for each problem reported, either verbally or in writing, based on the conditions described below. The Company will work with the City to upgrade or reduce the level of a particular problem to a different priority level, if after examining the problem there is reason to do so. Notwithstanding the foregoing, the Company shall not upgrade or reduce the level of priority of a particular error to a different priority without the City's consent, which consent may not be unreasonably withheld.

Priority One Critical	Priority One applies if the problem could: • Prevent the accomplishment of an operational or mission essential function, OR • Causes loss of data or data corruption, OR • Jeopardize safety or security
Response Time	Immediately, if the problem is reported during Regular Business Hours Within one hour of notification if the problem is reported after Regular Business Hours. If on-site repair is required, the Company will be on-site within two hours after notification.
Resolution Time	Within 12 hours after the problem is first reported by the City.
Liquidated Damages	Ten percent (10%) of the annual Maintenance Fees paid or payable by the City for each instance where the Company fails to resolve a Priority One problem within the resolution time specified above. For each twelve hours that a Priority One problem continues after the resolution time specified above, the Company shall pay additional liquidated damages equal to ten percent (10%) of the annual Maintenance Fees paid or payable by the City
Termination Trigger	The City may exercise the right to terminate this Contract immediately for default upon written notice to the Company in the event that a Priority One problem continues in duration for more than 24hours after it is first reported by the City.

Priority Two	Priority Two applies if the problem could: • Adversely affect (but not prevent) the accomplishment of an operational or mission essential function, and no Workaround is available, OR • Adversely affect technical or cost risks to the life cycle support of the System, and no Workaround is available. Priority Two problems include aborts, but not loss of data or data corruption.
Response Time	Immediately, if the problem is reported during Regular Business Hours Within one hour of notification if the problem is reported after Regular Business Hours. If on-site repair is required, the Company will be on-site within two hours after notification.
Resolution Time	Within 48 hours after the problem is first reported to the City
Liquidated Damages	Ten percent (10%) of the annual Maintenance Fees paid or payable by the City for each instance where the Company fails to resolve a Priority Two problem within the resolution time specified above. For each forty-eight hours that a Priority Two problem continues after the resolution time specified above, the Company shall pay additional liquidated damages equal to ten percent (10%) of

	the annual Maintenance Fees paid or payable by the City
Termination Trigger	The City may exercise the right to terminate this Contract immediately for default in the event that a Priority Two problem continues in duration for more than forty-eight (48) hours after it is first reported by the City.
Priority Three	Priority Three applies if the problem could: • Adversely affect (but not prevent) the accomplishment of an operational or mission essential function, but a Workaround is available, OR • Adversely affect technical or cost risks to the life cycle support of the System, but a Workaround is available. Priority Three problems do not include aborts or loss of data..
Response Time	Immediately, if the problem is reported during Regular Business Hours. Within eight hours of notification if the problem is reported after normal working hours.
Resolution Time	Resolution within sixty (60) days.
Liquidated Damages	Five percent (5%) of the annual Maintenance Fees paid or payable by the City for each instance where the Company fails to resolve a Priority Three problem within the resolution time specified above. For each twenty days that a Priority Three problem continues after the resolution time specified above, the Company shall pay additional liquidated damages equal to five percent (5%) of the annual maintenance fees paid or payable by the City
Termination Trigger	The City may exercise the right to terminate this Contract in the event that a Priority Three problem continues in duration for sixty (60) or more calendar days after the resolution time specified above.
Priority Four Minor	Any problem related to the System which does not fall within Priority One, Two or Three
Response Time	Immediately, if the problem is reported during Regular Business Hours Within two days of notification if the problem is reported after Regular Business Hours.
Resolution Time	Resolution within the next two New Releases.
Liquidated Damages	Five percent (5%) of the annual Maintenance Fees paid or payable by the City for each instance where the Company fails to resolve a Priority Four problem within the resolution time specified above. For each thirty days that a Priority Four problem continues after the resolution time specified above, the Company shall pay additional liquidated damages equal to five percent (5%) of the annual maintenance fees paid or payable by the City

2.16. **DISASTER RECOVERY.** In the event of a disaster, the Services shall be provided to the City and/or a disaster recovery services vendor at the location of the disaster recovery efforts. Upon the occurrence of a disaster, the Company shall assist the City in performing disaster recovery activities to restore the System to operational service.

2.17. **PHONE LOGS.** Company will keep detailed records of telephone calls, Remote Services, on-site visits and other information necessary to readily identify the date a problem is reported, a summary of procedures followed by the Company to correct the problem and any follow up calls relating to such problem. Each month, the Company will send the City a report containing such information.

2.18. **TECHNICAL RECORDS.** The Company shall produce and maintain during the term of the MASI and for a period of five (5) years thereafter detailed technical records with respect to all Maintenance Services performed under the MASI, including but not limited to engineering notebooks, development commentary, flow charts, logic diagrams and other materials related to the System (the "Technical Records"). The Company shall provide the City with copies of the Technical Records as requested in writing from time to time by the City.

2.19. **PREVENTIVE MAINTENANCE.** The Company shall take all reasonable actions necessary to prevent Defects,

and to cause the System to reliably and consistently operate in conformance with the Specifications and Requirements.

3. CITY'S RIGHT TO RANDOM AND PERIODIC VALIDATION

Throughout the life of the System, the City shall have the right to, on its own or through any auditor or agent, randomly and periodically perform such tests, verifications or technical validations which the City deems necessary to determine whether the System or the Products are in conformance with the Specifications and Requirements, or to verify the results of any test(s) performed by the Company or its agents.

4. ASSURANCE OF CONTINUED MAINTENANCE AND SUPPORT

Without limiting any of the Company's other obligations under this Contract, the Company shall support the immediately preceding version of a Current Release of the Software for at least twenty four (24) months following issuance of such Current Release of the Software, provided that if a Current Release requires the City to incur significant integration costs or significant costs in replacing hardware or software (including operating system software), then the Company shall support the immediately preceding version for at least forty-eight (48) months following issuance of the Current Release.

5. **SECURITY MEASURES FOR REMOTE ACCESS** The Company will not allow any person or entity to have remote access to the System other than those individuals whom the City has consented in writing to allow access to ("Authorized Personnel"). The Company shall take appropriate steps to insure that all Authorized Personnel who have access to the System shall use such access only for the purpose of correcting Defects in the System or providing New Releases or New Versions to the System. The Company shall take appropriate steps to ensure that all Authorized Personnel comply with this restriction, including but not limited to having such persons execute a written agreement to that effect.

The Company will take such steps as are necessary to ensure that only Authorized Personnel have access to the System.

The Company build and maintain such "firewalls" as are reasonably necessary to insure that access to the System is restricted in accordance with this Contract, and that Company's access will not create an opportunity for sabotage or improper use of the System.

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Exhibit F

SOFTWARE LICENSE

This Exhibit is incorporated into and made a part of the Master Contract for System Integration ("MCSI") between the City of Charlotte (the "City") and **[INSERT COMPANY NAME]** (the "Company"). Unless otherwise defined herein, capitalized terms in this Exhibit shall have the same meanings as are assigned to such terms in the main body of the MCSI. For purposes of this Exhibit only, the term "Software" shall not be deemed to include Customizations, given that the Customizations are owned by the City and require no license.

1. GRANT OF LICENSE

1.1. *GRANT OF LICENSE*. Subject to the restrictions set forth in Section 2.2 below, the Company grants to City and the Affiliates a perpetual, nonexclusive, irrevocable, nontransferable, royalty-free license to:

1.1.1. Use the Software and the Documentation for all purposes set forth or referenced in the MCSI or the City's RFP or the Company's Proposal, including but not limited to: (a) the operation and use of the System, (b) internal training and testing, (c) development, (d) disaster recovery, backup, archive and restore testing and implementation purposes and (e) any other purpose related to the above; and

1.1.2. Allow direct and remote access to the Software and Documentation by an unlimited number of users and departments of: (a) the City; (b) any Affiliate, (c) any other entity to which the City provides services through use of the System; and (d) any other person or entity to which the City needs to allow access in order to provide services to any of the above through the System;

1.1.3. Modify, improve, enhance, update, integrate and make derivative works of the Software and the Documentation on its own or through a third party; and

1.1.4. Make as many copies of the Software and Documentation as it desires in support of its authorized use of the Software, provided that said copies shall include the Company's or the third party owner's copyright and other proprietary notices (as the case may be).

1.2. *RESTRICTIONS ON USE*. The City shall not use, copy, disclose or distribute the Software except as permitted by this License. **[Note: Add here any concurrent use or other specific restrictions that may apply.]**

1.3. *THIRD PARTY ACCESS.* The City may: (a) allow access to the Software and Documentation by third party contractors to modify, improve, enhance, update, integrate and make derivative works of the Software and the Documentation, and (b) make and provide a copy of the Software and Documentation to third parties to whom the City has outsourced disaster recovery functions, operations of human resources, or Year 2000 testing; provided that such third parties execute an agreement containing provisions substantially similar to those set forth in the Confidentiality Agreement.

1.4. *SOURCE CODE*. Company shall cause the Source Code for all Customizations (and Updates and Enhancements thereof) to be delivered to the City within ten days after delivery of the Customization. Company shall cause the Source Code for all Company Software (including Updates and Enhancements) to be delivered to the source code escrow agent identified in the Source Code Escrow Agreement. The City shall be given the Source Code under the conditions stated in the Source Code Escrow Agreement.

2. DELIVERY, TESTING AND ACCEPTANCE

2.1. *DELIVERY.* The Company shall cause the Software to be delivered, configured and integrated at the times set forth in Exhibit C, the Project Schedule and the Project Plan. Any breach by the Company under the MCSI shall constitute a breach of this License.

2.2. *ACCEPTANCE*. The Software shall not be deemed to have been accepted by the City until System Acceptance has occurred

2.3. *ENHANCEMENTS AND UPDATES*. Company shall provide Enhancements and Updates to the City for so long as the Maintenance Services are in effect. Upon delivery to the City, such Enhancements and Updates of the Company Software and Third Party Software shall be deemed incorporated into and made part of the Company Software or the Third Party Software (as the case may be).

Exhibit G

REQUIREMENTS

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

Note To Drafter: Include each of the following in this Exhibit:

- *General description of the System from the Company's Proposal.*
- *All requirements and specifications included in the RFP, and the Company's response to each. Make sure to resolve all conflicts and clarify all responses that are anything other that an acknowledgement of full compliance.*
- *All other information from the Company's Proposal that describes the System*
- *Any brochures or other marketing materials provided by the Company about the System.*
- *All other standards that the System must meet.(published specifications, user manuals, etc.)*
- *Include a standard that the converted data will be successfully processed by the new System*
- *Include response times for the System to perform certain tasks (online processing of data, retrieving of data from databases, moving from screen to screen, printing reports, overnight batch processing times for large data volumes). Example: The System will allow users to move from screen within 2 seconds after hitting the appropriate key 98% of the measurable time period when the System is in use. Do not use average response times – they are very difficult to measure.*
- *Include a requirement for System availability or "uptime."*

*WHEN INCLUDING SECTIONS OF THE COMPANY'S PROPOSAL AND MARKETING MATERIALS, BE CAREFUL NOT TO INCLUDE, DISCLAIMERS OR LEGAL TERMS AND CONDITIONS. ALSO, BE CAREFUL NOT TO INCLUDE ANY QUALIFICATIONS, '"WIGGLE WORDS' OR GENERAL STATEMENTS THAT CONFLICT WITH THE REQUIREMENTS OF THE RFP THAT THE COMPANY AGREED TO MEET.

ADDENDUM TO SOFTWARE LICENSE AGREEMENT

This Addendum (“Addendum”) is entered into and made effective as of _____, _____, (“Effective Date”) by and between _____, a corporation with an address at _____ (the "Company"), and the City of Charlotte, a North Carolina municipal corporation (the "City").

WHEREAS, the City and Company have entered into an agreement for the license of certain computer software, captioned “_____” (the “License Agreement”);

WHEREAS, as a condition of entering into the License Agreement, the parties have agreed to amend and supplement the terms and conditions of the License Agreement in accordance with the terms and conditions of this Addendum;

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:

1. **Definitions.** Notwithstanding any definitions contained in the License Agreement, the following terms shall have the following meanings for purposes of this Addendum. Capitalized terms used in this Addendum that are not defined herein shall have the same meanings as are assigned to such terms in the License Agreement.

1.1 **"Acceptance"** shall be deemed to have occurred after the later of: (a) the Software has been fully installed at the City and the City has confirmed that it meets the Specifications and Requirements through testing in a live production environment; and (b) all data conversion services that Company has agreed to provide have been completed; and (c) Company has provided all training that it has agreed to provide under the terms of this Addendum or the License Agreement.

1.2 **"Affiliates"** means all departments or units of the City and all other governmental units, towns or municipalities that operate within Mecklenburg County, including but not limited to Mecklenburg County itself.

1.3 **"Agreement"** means the License Agreement as amended and supplemented by this Addendum.

1.4 **"Documentation"** means the user manuals existing from time to time and all other documentation that is reasonably necessary for an end user to operate the Software, including but not limited to the documentation referenced in the License Agreement. Company shall provide Documentation that completely and accurately describes in all material respects the operation of the Software, published user manuals for all updates and new releases of the Software.

1.5 **"Licensed Product"** means all of the Software and the Documentation.

1.6 **"Software"** means the software licensed to the City in the License Agreement, and any updates, modifications, releases or new versions to the Software delivered under the terms of this Addendum or any maintenance and support agreement for the Software.

1.7 **"Specifications and Requirements"** means all definitions, descriptions, requirements, criteria and performance standards relating to the Software which are set forth or referenced in: (a) any specifications or requirements documents that are attached as an Exhibit to this Addendum; (b) the Documentation, or (c) any other materials published by the Company or its licensors from time to time describing the functional and/or technical specifications with respect to all or any part of the Software. Any conflict between the requirements or specifications set forth in subparts (a) (b) (b) of this definition shall be resolved in the order of priority in which they are listed (with subpart (a) prevailing over (b) and subpart (b) prevailing over (c), etc.), provided that the City shall have the option of resolving any such conflicts in favor of the option providing the best performance and the most functionality.

2. **Priority of Documents**. In the event of a conflict or inconsistency between the terms and conditions of the License Agreement and the terms and conditions of this Addendum, the terms and conditions of this Addendum will prevail. In the event of a conflict or inconsistency between the main body of this Addendum and any Exhibit to this Addendum, the terms and conditions of the main body of this Addendum will prevail.

3. **Additional License Terms**. In addition to any license rights granted to the City in the License Agreement, Company grants to the City the following additional rights and licenses:

3.1 **Use by Affiliates**. Subject to applicable simultaneous user, server and other non-entity restrictions set forth in the License Agreement, Affiliates shall have the same rights to use the Licensed Product as the City.

3.2 **Use by Contractors**. The City may allow access to the Licensed Product by third-party contractors engaged by the City to use, operate, implement, integrate or modify the Licensed Product on behalf of the City, provided that each such contractor agrees in writing to be bound by the applicable terms and conditions of this Addendum.

3.3 **Outsourcing**. The City may also authorize a third party to use the Licensed Product in connection with the outsourcing of one or more of the City's information systems operations. As a condition of such third party's access, such third party shall agree in writing to be bound by all applicable terms and conditions of this Addendum.

3.4 **Back-up and Disaster Recovery**. The City may make back up and archival copies of the Software in accordance with its normal backup and disaster recovery
procedures, including but not limited to copies at one or more disaster recovery sites for back up purposes. The City may in the event of a disaster or emergency use the Software on a temporary basis on back up servers or at back up sites.

3.5 **Copies**. The City may make as many copies of the Licensed Product as it wishes in support of its use of the Software that is consistent with the terms of this Addendum, provided that all such copies shall include Company's copyright and other proprietary notices.

3.6 **No Termination of Paid-up Licenses**. Upon full payment of the applicable license fee for the Licensed Product, the licenses granted hereunder relating to such Licensed Product shall be perpetual, non-terminable and irrevocable.

4. **Ownership**. The City shall be the sole owner of all intellectual property rights in all software, modifications, enhancements and customizations developed or created by or for the City and all Documentation related thereto. In addition, the City shall be the sole owner of any and all data entered into or processed by the Software (the "Data"). Neither the Company nor any of its employees, agents, consultants or assigns shall have any rights in any of the Data in any form, including but not limited to raw data, stripped data, cumulated data, usage information and statistical information derived from or in connection with the Data.

5. **Warranties**. In addition to any warranties provided in the License Agreement, Company represents and warrants the following to the City:

5.1 Company represents and warrants that for a period of one year after Acceptance by the City, the Software will fully comply with the Specifications and Requirements and all applicable federal, state and local laws and regulations. During this warranty period, the Company shall promptly either repair or replace any defective Software at no additional charge to the City. If the Company is unable to totally cure any defective Software within thirty (30) days after receipt of notice from the City, the City shall have the right to immediately terminate this Addendum by written notice to the Company, and to obtain a full refund of the license and other fees paid in connection with the Software (including but not limited to any implementation, maintenance and training fees), plus the reasonable incremental cost of any replacement software acquired by the City. This remedy is without limitation of any other remedies the City may have at law or under this Addendum or the License Agreement.

Modification of the Software by the City or its subcontractors will not eliminate the above warranty, except for defects that are directly caused by such modification.

5.2 Company represents and warrants that the Software will be free of viruses, Trojan horses, worms, time bombs and other destructive or disabling devices.

5.3 Company represents and warrants that the Documentation is complete and accurately describes the Software in all material respects, and enables users of the Software to fully utilize the Software for all purposes for which it is being acquired by the City. The Company further represents and warrants that, for so long as support and maintenance services are provided to or purchased by the City, the Documentation will be updated to reflect all new versions, releases or modifications of the Software delivered to the City, and such updated Documentation will be of equal or greater quality to the initial Documentation provided to the City. Any such updated Documentation will be delivered at the same time as the new version, release or modification to which the Documentation update applies.

5.4 Company represents and warrants that it owns or has the right to license all the intellectual property rights necessary to grant the licenses set forth in this Addendum and the License Agreement.

5.5 Company further represents and warrants that in connection with its obligations under this Addendum, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits

and licenses.

6. **Indemnification**. In addition to any other indemnifications provided herein or in the License Agreement, to the fullest extent permitted by law, Company shall indemnify, defend and hold harmless the City, the Affiliates and the officers, agents and employees of the foregoing from and against any and all loss, damages, obligations, liabilities and expenses (including reasonable attorneys' fees) that arise, directly or indirectly, from:

6.1 any infringement or misappropriation of any copyright, trademark, trade secret, patent or other proprietary rights in connection with the Licensed Product (or any allegation of any of the foregoing); or

6.2 any act(s) of negligence or willful misconduct by Company or any of its agents, employees or subcontractors (or any allegations of any of the foregoing), including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal;

6.3 any fines, penalties or fees that are assessed against the City due to a breach of this Addendum by Company.

The provisions of this section are not subject in any way to any limitation of liability set forth in the License Agreement or otherwise, and shall survive any termination of this Addendum.

If the City believes in good faith that the Licensed Product is likely to be determined to be an infringement or misappropriation of a patent, copyright, trade secret, trademark or other proprietary right, the City may, in addition to any other rights and remedies available to the City, require Company to either: (a) replace such Licensed Product, or (b) modify such Licensed Product to make it non-infringing, so long as no such replacement or modification shall substantially impair the functionality or performance of such Licensed Product. If the Company fails to comply with (a) or (b) within thirty days after receiving notice from the City, the City may terminate the license for the infringing Licensed Product and obtain the refund referenced in Section 5.1 of this Addendum, prorated on a straight-line basis over a five year period to reflect the City's actual use of the Software beginning on Acceptance of the Software by the City.

7. **Miscellaneous**

7.1 This Addendum, the License Agreement and any maintenance and support agreements signed by the parties constitute the entire agreement between the parties with respect to the Software, and supersede all written or oral prior agreements or understandings with respect thereto.

7.2 North Carolina law shall govern the enforcement and interpretation of this Addendum and any other matters relating to this Addendum (all without regard to North Carolina conflicts of law principles). Any and all legal actions or proceedings relating to this Addendum shall be brought in a federal or state court in Charlotte, North Carolina. By the execution of this Addendum, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections that they may have with respect to venue in any court sitting in Charlotte, North Carolina.

7.3 If not expressly set forth in the License Agreement or encompassed in a separate Support/Maintenance Agreement, Company's current support and maintenance polices and procedures are incorporated by reference in this Addendum, and Company agrees not at any time during the next five (5) years to substantially reduce the quantity and quality of support and maintenance services made available as set forth in such policies and procedures. In addition, the Company agrees that: (a) it will not increase the maintenance and support fee more than once per year; and (b) annual increases to the maintenance and support fee will not exceed the annual increase to the Consumer Price Index for All Urban Consumers.

7.4 Neither party may assign this Addendum or the License Agreement without the prior written consent of the other party. Any assignment attempted without the written consent of the other party shall be null and void. This Addendum and the License Agreement shall be binding upon and inure to the benefit of the successors of the parties and their permitted assigns.

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

7.6 Each party shall be entitled to setoff and deduct from any amounts owed to the other party pursuant to this Addendum all damages and expenses incurred or reasonably anticipated as a result of the other party's breach of this Addendum. The City shall be entitled to withhold all payments due to the Company during any period that the Company is in breach of this Addendum or the License Agreement.

7.7 The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Addendum shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of the Agreement can be determined and effectuated.

7.8 The Company shall ensure that its employees and agents will, whenever on the City's premises, comply with all City policies and obey all instructions and directions issued by the City regarding work on City premises

8. **Exhibits.** The following Exhibits are attached to this Addendum and incorporated herein by reference:

Exhibit A:
Exhibit B: Price Quote
Exhibit C: Functional Requirements

8.1 The City agrees to pay the Company a fixed price of $_____ for the license, services and maintenance described in this Addendum, the Exhibits and the License Agreement (the "Total Fee"). The Total Fee shall be allocated to products and services as specified in Exhibit B, and shall not be increased without a written amendment to this Addendum signed by the City. The City shall pay the Total Fee within 30 days after the later of: (a) the City's receipt of an accurate, properly submitted invoice; or (b) Acceptance of the Software. Company shall not be entitled to revoke the license for a failure to pay maintenance and support fees.

8.2 Company agrees to provide sufficient training to enable a person of ordinary skills and ability to fully utilize the Software.

8.3 Time is of the essence in implementing the Software. Company will install the Software and complete all data conversion, training and other services required under this Addendum within thirty days after the Effective Date.

8.4 Company will be deemed to have completed the data conversion services described in Exhibit B after the later of the following: (a) Company has performed all conversion services referenced in Exhibit B; and (b) Company has operated the Software with the converted data and provided a written justification accounting for each variance between the data the City provided and the data processed through the Software.

8.5 Throughout the warranty period and for as long as the City purchases maintenance and support, Company agrees to maintain the two most current versions of the Software in escrow with a source code escrow agent under a source code escrow agreement that is reasonably acceptable to the City, and to make and keep the City as a beneficiary under that agreement.

8.6 Section __ of the License Agreement is deleted and replaced with the following: Company's liability for damages to the City resulting from use of the Software shall not exceed the Total Fee plus any subsequent amounts paid by the City for maintenance and support. This limitation does not apply to the Company's indemnification obligations under Section 6 of this Addendum.

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the "Agreement") is made and entered into as of this ____ day of ____, 2006 (the “Effective Date”), by and between the City of Charlotte, a North Carolina municipal corporation (“the City”) and _____, a corporation doing business in North Carolina, (the "Company")

RECITALS

WHEREAS, the City and Company are contemplating or have entered into certain business relationships; and

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

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

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

AGREEMENT

1. ***DEFINITIONS*** As used in this Agreement, the following terms shall have the meanings set forth below:

1.1. *Confidential Information.* The term “Confidential Information” shall mean any information, in any medium, whether written, oral or electronic, obtained from the City or the Company or any of their respective suppliers, contractors or licensors which falls within any of the following general categories:

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

1.1.2. *Information marked “Confidential” or “Proprietary.”*

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

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

1.1.5. *Citizen or employee social security numbers collected by the City.*

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

1.1.7. *Local tax records of the City that contain information about a taxpayer's income or receipts.*

1.1.8. *Any attorney / client privileged information disclosed by either party.*

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

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

1.1.11. Building plans of city-owned buildings or structures, as well as any detailed security plans.

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

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

Categories 1.1.3 through 1.1.13 above constitute "Highly Restricted Information," as well as Confidential Information. The Company acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Agreement, and agrees that: (a) all provisions in this Agreement 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 Agreement, the Confidential Information shall include information disclosed or revealed within one year prior to the date of this Agreement.

2. ***RESTRICTIONS***. Each party shall keep the Confidential Information in the strictest confidence, in the manner set forth below:

2.1. Neither party shall copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information, except as authorized by written agreement of the parties or by the written consent of the other party.

2.2. Neither party shall, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information of the other to any third party, other than an agent, subcontractor or vendor of the City or Company having a need to know such Confidential Information for purpose of performing work contemplated by written agreements between the City and the Company, and who has executed a confidentiality agreement incorporating substantially the form of this the Agreement. Neither party

shall directly or indirectly, disclose, divulge, reveal, report or transfer Highly Restricted of the other to any third party without the other party's prior written consent.

2.3. Neither party shall use any Confidential Information of the other for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Agreement or other written agreements between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.

2.4. Neither party shall remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information of the other.

2.5. Each party shall use reasonable efforts (including but not limited to seeking injunctive relief where reasonably necessary) to prohibit its employees, vendors, agents and subcontractors from using or disclosing the Confidential Information in a manner not permitted by this Agreement.

2.6. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, the party upon which the demand is made shall assert this Agreement 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.

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 disclosing party or destroyed upon satisfaction of the purpose of the disclosure of such information.

2.8. Each party shall restrict employee access to the Confidential Information of the other party to those employees having a need to know for purposes of their jobs. For Company employees, "need to know" shall mean having a need to know in order to: (a) fulfill the Company's contractual obligations to the City, or (b) resolve a dispute with the City. For City employees, "need to know" shall mean a need to know in order to: (a) use, test, evaluate or manage services or products provided by the Company, (b) to fulfill the Company's obligations to the City, or (c) to resolve a dispute with the Company.

2.9. Each party shall take reasonable measures to prevent the use or disclosure of Confidential Information by its employees in a manner not permitted by this Agreement. The Company shall have each of its employees who will have access to the Confidential Information sign a confidentiality agreement which provides the City and its vendors, licensors, subcontractors, employees and taxpayers the same level of protection as provided by this Agreement.

3. ***EXCEPTIONS***. The disclosing party to this Agreement agrees that the receiving party ("Recipient") shall have no obligation with respect to any Confidential Information that the Recipient can establish:

3.1. was already known to Recipient prior to being disclosed by the disclosing party;

3.2. was or becomes publicly known through no wrongful act of Recipient;

3.3. was rightfully obtained by Recipient from a third party without similar restriction and without breach hereof;

3.4. was used or disclosed by Recipient with the prior written authorization of the other party;

3.5. was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, Recipient shall first give to the other party notice of such requirement or request;

3.6. was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the Recipient shall take reasonable steps to obtain an agreement or protective order providing that this Agreement will be applicable to all disclosures under the court order or subpoena.

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

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

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

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

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

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

For the Company:	For the City:
PHONE:	PHONE:
FAX:	FAX:
E-MAIL:	E-MAIL: @mail.charmeck.nc.us
With Copy To	With Copy To

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.

8. MISCELLANEOUS

8.1. *ENTIRE AGREEMENT.* This Agreement constitutes the entire agreement between the parties with respect to protection and disclosure of the Confidential Information. There are no other representations, understandings of agreements between the parties with respect to such subject matter. On the subject matter of this Agreement, it supersedes all prior agreements, negotiations, representations and proposals, written or oral.

8.2. *AMENDMENT*. No amendment or change to this Agreement shall be valid unless in writing and signed by both parties to this Agreement.

8.3. *GOVERNING LAW AND JURISDICTION*. North Carolina law shall govern interpretation of this Agreement and all other matters relating to this Agreement (all without regard North Carolina conflicts of laws principles). Any and all legal actions or proceedings relating to this Agreement shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By execution of this Agreement, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections which they may have with respect to venue in any court sitting in Mecklenburg County, North Carolina.

8.4. *BINDING NATURE AND ASSIGNMENT.* This Agreement shall bind the parties and their successors and permitted assigns. Neither party may assign any rights or obligations under this Agreement without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void.

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

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

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

8.8. *TITLES OF SECTIONS.* The section headings inserted herein are for convenience only and are not intended to be used as aids to interpretation and are not binding on the parties.

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

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

ATTESTED:

BY: _____ BY: _____

TITLE: _____ TITLE: _____

ATTESTED: CITY OF CHARLOTTE:

BY: _____ BY: _____
CITY CLERK