

Contract #: 2021000426

Citywide Document Management Services

Effective Date: November 1, 2020	City Vendor#: 27024
Between the City of Charlotte ("City") and Distribution Technology dba Record Storage Systems, ("Record Storage Systems")	
This cover sheet (" Cover Sheet ") and each of the attachments listed below (" Attachments ") together comprise Citywide Document Management Services (the " Contract ") entered into as of the Effective Date , between Distribution Technology dba Record Storage Systems a North Carolina corporation registered to do business in North Carolina and the City of Charlotte, a North Carolina municipal corporation.	
Service Terms General Conditions Price Schedule Scope of Services	Federal Contracting Terms Confidentiality Terms Cloud Technology Requirement CBI Forms Master Intergovernmental Purchasing Agreement
Term: This Contract will start on Effective Date and will continue for a period of three years (the " Initial Term ").	Renewals: The City will have the option to renew this Contract for up to two (2) one-year terms by giving notice to Record Storage Systems or by payment of an invoice during the renewal term.
<p>WHEREAS, the City on behalf of itself, South Carolina entities to include Aiken County, Beaufort County, Buffalo-Mt. Pisgah Fire Department, Burton Fire District, Charleston County, Cherokee Springs Fire Department, City of Charleston, City of Greenville, City of Greer, City of Loris, City of Marion, City of Mullins, City of Myrtle Beach, City of North Myrtle Beach, City of Spartanburg, City of West Columbia, Clarendon County, County of Lexington, Darlington County, Duncan Fire Department, Fairfield County, Florence County, Georgetown County, Georgetown County Water & Sewer District, Horry County, Lancaster County, Marion County, Oconee County, Orangeburg County, Richland County School District One, Rock Hill School District Three, Surfside Beach Fire Department, Town of Aynor, Town of Ft. Mill, Town of Pamplico, and Ware Shoals Fire Department, and all local government agencies and non-federal government agencies within Arizona, California, Connecticut, District of Columbia, Florida, Georgia, Illinois, Maryland, Massachusetts, Michigan, Missouri, New York, North Carolina, Ohio, Tennessee, Texas, Virginia, Washington, West Virginia, and Wisconsin, any city, county, local government, school district, private K-12 school, technical or vocational school, higher education institution (including community colleges, colleges and universities, both private and public), other government agencies or nonprofit organizations that elect to access the Contract (herein "Participating Public Agency") through the Charlotte Cooperative Purchasing Alliance (CCPA) issued a Request For Proposals (RFP # 269-2019-90) for Citywide Document Management Services dated May 22, 2019. This Request for Proposals together with all attachments and addenda, is referred to herein as the "RFP"; and</p> <p>Services. Record Storage Systems agrees to perform the services described in the Attachments ("Services") under the terms and conditions set forth in this Contract.</p> <p>Compensation. The City will pay for the Services at the rates set forth in the Price Schedule. These rates shall remain firm for the duration of this Contract, unless otherwise stated in the Price Schedule.</p> <p>Payment Cap: Notwithstanding any renewal, the City's payment</p>	<p>Email invoices to: cocap@charlottenc.gov</p> <p>-or-</p> <p>Mail invoices to the following:</p> <p>City of Charlotte A/P Attn: P.O. Box 37979 Charlotte, NC 28237-7979</p> <p>Each invoice shall include the <u>purchase order number and Contract Number</u> and shall be accompanied by a sales tax statement <u>or</u> shall have the sales tax amount shown clearly, along with the invoice total, on the face of the invoice.</p>

obligations under this Contract shall not exceed: \$ 350,000 (the "Payment Cap") absent a written amendment executed by the City. Capitalized terms used in this Contract have the meanings assigned in this Contract

City Business Contact

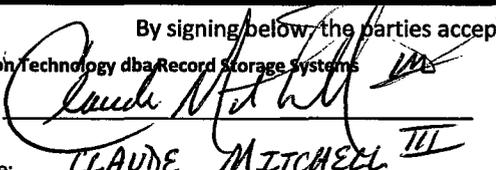
Kay Elmore
Procurement
6000 East Fourth Street
Charlotte, North Carolina 28202
Phone: 704-336-2524
Email: kelmore@ci.charlotte.nc.us

Vendor Business Contact

Ken Vaughan
Distribution Technology dba Record Storage Systems
14620 Carowinds Blvd.
Charlotte, North Carolina 28273
Phone: 704-361-4092
Email: kvaughan@recordstorage.com

By signing below, the parties accept and agree to the terms set forth in this Contract.

Distribution Technology dba Record Storage Systems

Signature: 

Print Name: CLAUDE MITCHELL III

Title: VP

Date: 2/22/2021

City of Charlotte

Signature: _____

Print Name: _____

Title: _____

Date: _____

RESERVED



**CITY OF
CHARLOTTE**
Digital Contract Routing Form
Non-Encumbered

Date Submitted: March 02, 2021

Submitted by: Tracey Keyes

Submitter email: Tracey.Keyes@charlottenc.gov

Contract #: 2021000426

Amendment #:

Contract Name: Citywide Document Management Services

Vendor Legal Name: Distribution Technology dba Records Storage Systems

Vendor #: 27024

REQUIRED ATTACHMENT(S):

Use the Paperclip icon to attach a full Contract Document Routing Packet for review by the authorized City individual with signature authority. The Routing Packet **MUST** include all required components per the direction provided at:

<https://cnet/kbus/finance/Finance/pm/Pages/Contract-Review.aspx>

The following signatures, once completed, shall be incorporated by reference into the contractual document identified above.

City of Charlotte

eSigned via SeamlessDocs.com

Victoria O. Johnson

Key: f98f2b8210e209b08904836a6d99eb691

SERVICE TERMS

This Attachment is incorporated into the Citywide Document Management Services (“**Contract**”) between the City of Charlotte (“**City**”) and Distribution Technology dba Record Storage Systems (“**Record Storage Systems**”). Capitalized terms not defined in this Attachment will have the meanings stated in the Contract.

1. **Services.** Record Storage Systems agrees to perform the services described in the Scope of Services Attachment (the “**Services**”). Additional Scope of Services Attachments may be added to this Contract by a written amendment, and once added shall become part of the “**Services**.”
2. **Expenses**
Record Storage Systems shall not be entitled to charge the City for any travel, mileage, meals, materials, or other costs or expenses associated with this Contract.
3. **Premium Rates.** Unless explicitly listed in the Price Schedule, Record Storage Systems will not charge the City at overtime, emergency, or other premium rates, regardless of the number of hours worked in a given day or week.
4. **Billing Records.** During the term of this Contract and for three (3) years after it terminates, Record Storage Systems will keep documentation sufficient to verify the amounts billed to the City. The City has the right to audit Record Storage Systems’ s time cards, invoices, reports and other documents relating to amounts charged under this Contract, and will not be required to pay for: (a) any time billed that was excessive in light of the result achieved, or (b) any Services that did not meet the standards and requirements referenced in this Contract. Record Storage Systems agrees to make such documents available for inspection and copying by the City in Charlotte, North Carolina between the hours of 9:00 a.m. to 5:00 p.m. Monday through Friday, within ten (10) days after the City requests them. 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. **Employment Taxes and Employee Benefits.** Record Storage Systems acknowledges and agrees that Record Storage Systems’ employees and subcontractors are not employees of the City. Record Storage Systems represents, warrants, and covenants that Record Storage Systems will pay all withholding tax, social security, Medicare, unemployment tax, worker’s compensation, and other payments and deductions that are required by law relating to provision of the Services. Record Storage Systems shall indemnify, defend, and hold harmless the City and the City’ officials, employees and agents from and against any and all claims, losses, damages, fines, penalties, obligations, liabilities and expenses, including but not limited to reasonable attorneys’ fees arising from Record Storage Systems any claim that an individual performing the Service is an employee of the City.
6. **City Ownership of Work Product.** The City will have exclusive ownership of all reports, documents, designs, ideas, materials, concepts, plans, creative works, software, data, programming code and other work product developed for or provided to the City in connection with this Contract, and all patent rights, copyrights, trade secret rights and other intellectual property rights relating thereto (collectively the “**Intellectual Property**”). Record Storage Systems hereby assign and transfers all rights in the Intellectual Property to the City. Record Storage Systems further agrees to execute and deliver such assignments and other documents as the City may later require to perfect, maintain, and enforce the City’s rights as sole owner of the Intellectual Property, including all rights under patent and copyright law. Record Storage Systems hereby appoints the City as attorney in fact to execute all such assignments and instruments and agrees that its appointment of the City as an attorney in fact is coupled with an interest and is irrevocable.
7. **License to Use Intellectual Property.** The City grants Record Storage Systems a royalty-free, non-exclusive license to use and copy the Intellectual Property to the extent necessary to perform this Contract. Record Storage Systems may not to use the Intellectual Property for other purposes without the City’s prior written consent, and Record Storage Systems agrees to treat the Intellectual Property and all City data with the same level of protection that Record Storage Systems afford Record Storage Systems’ own trade secrets and intellectual property.
8. **Contract Data.** The City shall have exclusive ownership of the following (collectively referred to as “**Contract Data**”): (a) all data produced or generated under this Contract for the benefit of the City or its customers; and (b) all data provided by, accessed through, or processed for the City under this Contract. Record Storage Systems will promptly provide the Contract Data to the City in machine readable format upon the City’s request at any time while this Contract is in effect or within three years after this Contract terminates.

9. **Company Will Not Sell or Disclose Contract Data.** Record Storage Systems will treat Contract Data as Confidential Information under this Contract. Record Storage Systems will not reproduce, copy, duplicate, disclose, or use the Contract Data in any manner except as authorized by the City in writing or expressly permitted by this Contract.
10. **Supporting Data.** If Record Storage Systems will be providing work product under this Contract that is based on an analysis of data Record Storage Systems will provide the City with all data supporting Record Storage Systems' analysis ("Supporting Data") in a machine-readable format, together with a written description of the methods of analysis. Excluding Confidential Information of Record Storage Systems (as defined in this Contract), the City shall be permitted to reproduce, copy, duplicate, disclose, or use the Supporting Data for any purpose, and it shall be treated as a public record under North Carolina law.
11. **City Resources.** The City is not required to provide any information, personnel, facilities, or other resources aside from what is specifically required in the Scope of Service unless the City can do so at no cost. When this Attachment requires the City to provide a resource, Record Storage Systems shall request it in writing in a timely manner. If Record Storage Systems will be delayed in performing due to any failure by the City to provide a resource required by this Contract, Record Storage Systems shall promptly notify in writing both the City Business Contact and Official Notice Recipients identified in the General Conditions. Failure or delay by the City to provide required resources will not excuse Record Storage Systems from any failure or delay in performance unless Record Storage Systems has followed these steps. The duration of any excused delay will be limited to the time period after Record Storage Systems has followed these steps.
12. **Compensation for Termination Without Cause.** If the City terminates this Contract without cause, the City shall pay Record Storage Systems for Services rendered through the date of termination at the rates set forth in the Price Schedule. The City's obligation to make such payments is conditioned upon Record Storage Systems having complied with the Section of General Conditions captioned "Obligations On Termination," and is subject to the City's right to inspect billing records and dispute any charges as provided under this Attachment.
13. **Removal and Replacement of Personnel.** "Key Personnel" are the individuals listed as such on the Scope of Service, and any other individuals whom the City reasonably deems integral to successful performance of the Services. Absent the City's written approval, Record Storage Systems will not: (i) remove Key Personnel from performance of this Contract or permit Record Storage Systems' subcontractors to remove Key Personnel from performance of this Contract; or (ii) materially reduce or allow Record Storage Systems' subcontractors to materially reduce the involvement of Key Personnel in performing this Contract. The City will have the right to interview and approve Key Personnel, and also to require the removal and replacement of Key Personnel if the City has reasonable grounds to believe that the individual is not suitable for the assignment, including without limitation insufficient experience, inadequate qualifications, lack of necessary skills, improper conduct, background check results, or other grounds. Upon receipt of a request for rejection, removal, or replacement of an individual, Record Storage Systems will promptly comply with the request and provide the City with the requisite background materials for a proposed alternate or successor. If Record Storage Systems does not believe the City has reasonable grounds for making the request, Record Storage Systems will notify the City in writing and the City will have the right to exercise its termination rights under the Contract, or to suspend the Contract and any payments due until such matter is resolved.
14. **Regeneration of Lost or Damaged Data.** If Record Storage Systems loses or damages any data in the City's possession, Record Storage Systems will, at Record Storage Systems' own expense, promptly replace or regenerate such data from the City's machine-readable supporting material, or obtain, at Record Storage Systems' own expense, a new machine-readable copy of lost or damaged data from the City's data sources.
15. **City Materials and Data Treated as Confidential.** Record Storage Systems will treat as confidential information all data and materials provided by or processed for the City in connection with this Contract. Record Storage Systems 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. **Reserved.**

GENERAL CONDITIONS

This Attachment is incorporated into the Citywide Document Management Services (“Contract”) between the City of Charlotte (“City”) and Distribution Technology dba Record Storage Systems (“Record Storage Systems”). Capitalized terms not defined in this Attachment will have the meanings stated in the Contract.

1. **PRIORITY OF ATTACHMENTS.** In the event of a conflict among the Attachments, the Federal Contracting Terms shall have first priority, and all other Attachments shall have priority in the order in which they are listed on the Cover Sheet.
2. **INVOICES.** Each invoice sent by Record Storage Systems shall detail all Services performed and delivered which are necessary to entitle Record Storage Systems to the requested payment under the terms of this Contract. All invoices must include an invoice number and the City purchase order number for purchases made under this Contract. Purchase order numbers will be provided by the City. Invoices must be submitted with lines matching those on the City-provided purchase order.
3. **PAYMENT TERMS.** The City will pay undisputed, properly submitted invoices within thirty (30) days after receipt. As a condition of payment, Record Storage Systems must invoice the City for Services within thirty (30) days after the Services are performed. Record Storage Systems WAIVES THE RIGHT TO CHARGE THE CITY FOR ANY SERVICES THAT HAVE NOT BEEN INVOICED WITHIN THIRTY (30) DAYS AFTER SUCH SERVICES WERE RENDERED.
4. **TERMINATION FOR CONVENIENCE.** The City may terminate this Contract at any time without cause by giving written notice to Record Storage Systems. The City shall pay for Services rendered through the date of termination, subject to Distribution Technology dba Record Storage Systems’ compliance with Section 5 of the General Conditions.
5. **TERMINATION FOR CAUSE.** Without limiting any other termination rights set forth in this Contract, either party may terminate this Contract for default if the other party fails to cure a material breach within thirty (30) days after receipt of written notice that identifies the breach and the intent to terminate if not cured. The City may terminate this Contract for default without a cure period if Record Storage Systems:
 - 5.1. Fails to obtain, maintain, or provide proof of the insurance policies and endorsements as required by this Contract; or
 - 5.2. Becomes more than ten (10) days late performing the Services; or
 - 5.3. Acts of fails to act in a way that creates a risk to safety or causes or is likely to cause the City to incur property damage, fines, or penalties.
6. **AUTHORITY TO TERMINATE.** Authority to terminate this Contract on behalf of the City rests with the City Manager and Deputy City Manager, or any designee of the forgoing having the same level of delegated signature authority as would have been required to execute the Contract.
7. **OBLIGATIONS ON TERMINATION.** Upon expiration or termination of this Contract, Record Storage Systems will promptly provide to the City, (i) all deliverables that are completed or in process as of the date of termination; and (ii) a statement of all Services performed through termination, together with such detail and documentation as is otherwise required under this Contract for payment. The expiration or termination of this Contract shall not relieve either party of its obligations regarding “Confidential Information”, as defined in the Section titled Confidentiality Terms.
8. **REPRESENTATIONS AND WARRANTIES.** Record Storage Systems represents, warrants, and covenants that: (a) all Services and deliverables will meet and comply with Contract requirements, applicable law, and accepted industry standards; (b) each person providing the Services has the qualifications, skills, experience, and knowledge necessary to perform the tasks assigned; (c) no services or deliverables provided under this Contract will infringe or misappropriate any patent, copyright, trademark, trade secret, or other intellectual property rights of any third party; (d) neither the execution nor the performance of this Contract will violate any third party contractual rights; (e) Record Storage Systems is a duly organized and validly existing entity of the type set forth in the first paragraph of this Contract, is in good standing under the laws of the state specified in the first paragraph of this Contract, and is registered to do business in North Carolina; and (f) Record Storage Systems has the requisite power and authority to execute and perform this Contract. Record Storage Systems and each person signing this Contract for Record Storage Systems represents and warrants that the execution, delivery, and performance of this Contract have been duly authorized by Record Storage Systems. Additional warranties may be set forth in the Attachments.
9. **REMEDIES.**
 - 9.1. **Right to Withhold Payment.** If Record Storage Systems breaches any provision of this Contract, the City may elect to withhold all payments due until the breach has been fully cured. Record Storage Systems and the City are each entitled to

setoff and deduct from any amounts owed to the other party under this Contract all damages and expenses incurred due to the other party's breach.

9.2. **Other Remedies.** The remedies set forth in this Contract are cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other remedy available at law or in equity. Additional remedies may be set forth in the Attachments.

9.3. **Liquidated Damages.** Record Storage Systems acknowledges and agrees that the City may incur costs if Record Storage Systems fails to meet the certain requirements set forth herein (including without limitation delivery times, inventory levels, accurate invoices, and reporting requirements). Record Storage Systems further acknowledges and agrees that: (a) the City may be damaged by such failures, including loss of goodwill and administrative costs; but that (b) 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, Record Storage Systems agrees to pay liquidated damages as follows:

Category	Description	Amount
Record loss	Failure to return a record when requested by City;/Deletion of record	\$125 per record
Record Damage	Damage to a City Record	\$75 per record

10. **INDEMNIFICATION.** To the fullest extent permitted by law, each party agrees to indemnify, defend, and hold harmless the other party from and against any claims, losses, damages, fines, penalties, royalties, obligations, liabilities, and expenses, including but not limited to reasonable attorneys' fees to the extent that they arise from actual or alleged:

10.1. Breach of contract, negligence or willful misconduct by either party, 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 to or destruction of any property whether real, personal, or intangible, and including data and other intellectual property;

10.2. Violation of any federal, state, or local law, ordinance, rule, regulation, guideline, or standard by either party, or by any service, product, or deliverable provided under this Contract;

10.3. Violation, misappropriation, or infringement of any copyright, trademark, patent, trade secret, or other proprietary rights with respect to any services products or deliverables provided under this Contract ("Infringement Claims");

If an Infringement Claim occurs, Record Storage Systems will 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 Record Storage Systems is unable to comply with the preceding sentence within thirty (30) days after the City is directed to cease use of a product or service, Record Storage Systems shall promptly refund to the City all amounts paid under this Contract.

In any case in which Record Storage Systems provides a defense to the City pursuant to this indemnity, the defense will be provided by attorneys reasonably acceptable to the City. The provisions of this Contract regarding indemnity will survive the expiration or termination of this Contract.

If this Contract is funded in full or in part by federal funds, the indemnity rights granted to the City in this Contract shall also extend to the U.S. Government agency that extends such funding, and to the agency's officers, officials, employees, agents, and independent contractors (excluding Record Storage Systems).

11. **INSURANCE.**

Record Storage Systems shall purchase and maintain, during the life of this Contract, with an insurance company acceptable to the City and authorized to do business in the State of North Carolina, the following insurance:

(a) 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 each occurrence/aggregate.

(b) Commercial General Liability

Bodily injury and property damage liability as shall protect Record Storage Systems 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 Company, any subcontractor or any person 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/completed operation, personal and advertising injury liability, and contractual liability assumed under the indemnity provision of this Contract.

- (c) **Workers' Compensation Insurance**
Meeting the statutory requirements of the State of North Carolina and Employers Liability - \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit, providing coverage for employees and owners.

Contracts including Electronic Document Storage:

Professional Liability, including Network Security and Privacy Liability-Professional Liability as shall protect the Company and Company's employees for negligent acts, errors or omissions in performing the services under this contract. Network Security and Privacy Liability as shall protect the Company and its employees from claims alleging from the failure: (1) to provide adequate electronic or physical security to safeguard against the theft, loss or other threat to confidential information; or, (2) to protect information of the City in any format. This policy shall be specific to the performance of this Contract and shall provide combined single limit each occurrence/aggregate of \$2,000,000. Policy will include acts of rogue employees and have a retroactive date of no later than the first date services under this contract are to be performed.

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

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 Record Storage Systems and/or subcontractor providing such insurance.

The City of Charlotte shall be named as additional insured under the commercial general liability insurance for operations and services rendered under this Contract. Certificates of all required insurance shall be furnished to the City within fourteen (14) calendar days after Contract award and prior to commencing any work. Certificates of insurance 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.

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

If any part of the Services under this Contract is sublet, the subcontractor shall be required to meet all insurance requirements as listed above. However, this will in no way relieve Record Storage Systems from meeting all insurance requirements or otherwise being responsible for the subcontractor.

- 12. **NOTICE.** Any notice, consent, waiver, authorization, or approval referenced in this Contract must be in writing, and delivered in person, by U.S. mail, overnight courier or electronic mail to the City and Record Storage Systems Contacts identified on the Cover Sheet (or as updated in writing from time to time). Notice of breach, default, termination, prevention of performance, delay in performance, modification, extension, or waiver must also be copied to the recipients listed below (the "**Official Notice Recipients**"), and if sent by electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier:

Phil Reiger	Adam Jones
Department of General Services	City Attorney's Office
600 East Fourth Street	600 East Fourth Street
Charlotte, NC 28202	Charlotte, NC 28202
704-336-4896	704-336-3012
preiger@charlottenc.gov	amjones@charlottenc.gov

Ken Vaughan
Record Storage Systems
14620 Carowinds Blvd.
Charlotte, NC 28273
Phone: 704-361-4092
kvaughan@recordstorage.com

Notice shall be effective upon receipt by the intended recipient. The parties may change their Official Notice Recipients by written notice to the other party.

- 13. **WORK ON CITY'S PREMISES.** Whenever on City premises, Record Storage Systems will obey all instructions and City policies applicable to City employees and contractors that Record Storage Systems is made aware of. If Record Storage Systems causes damage to the City's equipment or facilities, Record Storage Systems will promptly repair or replace such damaged items at Record Storage Systems' expense.

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

15. **REQUIRED BY CITY ORDINANCE: COMMERCIAL NON-DISCRIMINATION.** The City has adopted a Commercial Non-Discrimination Ordinance that is set forth in Section 2, Article V of the Charlotte City Code, and is available for review on the City's website (the "Non-Discrimination Policy"). As a condition of entering into this Contract Record Storage Systems 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, Record Storage Systems shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers, in connection with a City contract or contract solicitation process, nor shall Record Storage Systems retaliate against any person or entity for reporting instances of such discrimination. Record Storage Systems shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its subcontracting and supply opportunities on City contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace.

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

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

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

16. **REQUIRED BY STATE LAW.**

a. E-Verify. Record Storage Systems will comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and shall require each of its subcontractors to do so as well.

b. NC Prohibition on Contracts with Companies that Invest in Iran or Boycott Israel. Record Storage Systems certifies that: (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C. Gen. Stat. §147-86.58 (collectively, the "Treasurer's IDA List"); (ii) it has not been designated by the NC State Treasurer pursuant to N.C. Gen. Stat. §147-86.81 as a company engaged in the boycott of Israel (such designation being referred to as the "Treasurer's IB List"); and (iii) it will not take any action causing it to appear on the Treasurer's IDA List or the Treasurer's IB List during the term of this Contract.

17. **CHARLOTTE BUSINESS INCLUSION POLICY.** The City has adopted a CBI Policy, which is posted on the City's website at <https://charlottenc.gov/finance/procurement/cbi/Pages/library.aspx>. The parties agree that:

17.1. The terms of the City's CBI Policy, as revised from time to time, together with all rules and guidelines established under such program (collectively, the "CBI Policy") are incorporated into this Contract by reference; and

17.2. A violation of the CBI Policy shall constitute a material breach of this Contract, and shall entitle the City to exercise any of the remedies set forth in the CBI Policy, including but not limited to liquidated damages; and

17.3. Without limiting any of the other remedies the City has under the CBI Policy, the City shall be entitled to withhold periodic payments and final payment due to Record Storage Systems under this Contract until the City has received in a form satisfactory to the City all claim releases, payment

affidavits, and other documentation required by the City's CBI Policy, and in the event payments are withheld under this provision, Record Storage Systems waives any right to interest that might otherwise be warranted on such withheld amount under N.C. Gen. Stat. §143-134.1; and

- 17.4. The remedies set forth in the CBI Policy shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy; and
- 17.5. The City will incur costs if Record Storage Systems violates the CBI Policy, and such costs are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, Record Storage Systems agrees to pay the City liquidated damages at the rates set forth in the CBI Policy.
- 17.6. Record Storage Systems agrees to participate in any dispute resolution process specified by the City from time to time for the resolution of disputes arising from the CBI Policy.
- 17.7. Nothing in this Section shall be construed to relieve Record Storage Systems from any obligation it may have under N.C. Gen. Stat. §143-134.1 regarding the payment of subcontractors.
18. **RESERVED.**
19. **GENERAL.**
 - 19.1. **ENTIRE AGREEMENT/AMENDMENT.** This Contract is the parties' entire agreement regarding its subject matter. It supersedes all prior agreements, negotiations, representations, and proposals, written or oral. No change order, amendment, or other modification to this Contract will be valid unless in writing and signed by both Record Storage Systems and the City. Clicking "consent" or "agree" electronically when accessing software or a website will not constitute a writing sufficient to bind the City.
 - 19.2. **RELATIONSHIP OF THE PARTIES.** The parties' relationship under this Contract is solely that of independent contractors. Nothing contained in this Contract shall be construed to (i) give any party the power to direct or control the day-to-day administrative activities of the other; or (ii) constitute such parties as partners, co-owners or otherwise as participants in a joint venture. Neither party has power or authority to act for, bind, or otherwise create or assume any obligation on behalf of the other.
 - 19.3. **GOVERNING LAW AND VENUE.** North Carolina law will govern all matters relating to this Contract (without regard to North Carolina conflicts of law principles). Any legal actions or

proceedings relating to this Contract shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina, other than actions to enforce a judgment.

- 19.4. **ASSIGNMENT/SUBCONTRACTING.** Neither party may assign or subcontract any of its rights or obligations under this Contract without prior written consent of the other party. Unauthorized assignments shall be void.
- 19.5. **DELAY / CONSEQUENTIAL DAMAGES.** The City will not be liable to Record Storage Systems, its agents or any subcontractor for or any delay in performance by the City, or for any consequential, indirect, or special damages or lost profits related to this Contract.
- 19.6. **SEVERABILITY.** The invalidity of one or more provisions of this Contract will not affect the validity of the remaining provisions so long as the material purposes of the Contract can be achieved. If any provision of this Contract is held to be unenforceable, then both parties will be relieved of the unenforceable obligations, and this Contract shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.
- 19.7. **PUBLICITY.** Record Storage Systems may not identify or reference the City or this Contract in any advertising, sales promotion, or other materials without the City's prior written consent of the City *except*: (i) Record Storage Systems may list the City as a reference, and (ii) Record Storage Systems may identify the City as a customer in presentations to potential customers.
- 19.8. **WAIVER.** No waiver of any provision of this Contract shall be effective unless in writing and signed by the party waiving the rights. No delay or omission by either party to exercise any right or remedy it has under this Contract shall impair or be construed as a waiver of such right or remedy. 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.
- 19.9. **SURVIVAL.** Any provision of this Contract that contemplates performance or observance subsequent to termination or expiration of this Contract shall survive termination or expiration and continue in full force and effect for the period so contemplated including, but not limited to, provisions relating to warranties and warranty disclaimers, intellectual property ownership, indemnity, payment terms, and confidentiality.

- 19.10. TAXES. Record Storage Systems will pay all applicable federal, state, and local taxes that may be chargeable against the performance of the Services.
- 19.11. CONSTRUCTION OF TERMS. Both parties have carefully considered the particular language used in this Contract. The general rule of law that ambiguities are construed against the drafter will not apply.
- 19.12. DAYS. Unless specifically stated otherwise, all references to days in this Contract refer to calendar days rather than business days. Any references to "business days" shall mean the days that the City's main office at 600 East Fourth Street, Charlotte, NC, is open for the public to transact business.
- 19.13. CONFLICTS OF INTEREST. Record Storage Systems will not take any action that is or is likely to be perceived as conflict of interest under this Contract. Record Storage Systems has not made and will not make any gifts to City employees or officials in connection with this Contract.
- 19.14. COMPLIANCE WITH LAWS. Record Storage Systems and its subcontractors will comply with all local, state, and federal ordinances, statutes, laws, rules, regulations, and standards ("Applicable Law") in performing this Contract. Record Storage Systems represents and warrants that each deliverable provided under this Contract will comply with all Applicable Law, including without limitation the Americans With Disabilities Act.
- 19.15. PRE-AUDIT. No pre-audit certificate is required under N.C. Gen. Stat. §159-28(a) because this Contract is for an indefinite quantity with no minimum purchase requirement. Notwithstanding anything contained herein to the contrary, this Contract does not require the City to purchase a single product or service, and a decision by the City to not make any purchase hereunder will violate neither this Contract nor any implied duty of good faith and fair dealing. The City has no financial obligation under this Contract absent the City's execution of a valid and binding purchase order or contract addendum containing a pre-audit certificate.

PRICE SCHEDULE

This Attachment is attached and incorporated into the Citywide Document Management Services (the "Contract") between the City of Charlotte and Distribution Technology dba Record Storage Systems ("Record Storage Systems"). Capitalized terms not defined in this Attachment shall have the meanings assigned to such terms in the Contract. In the event of a conflict between this Attachment and the terms of the main body of the Contract or any other Attachment or appendix, the terms of this Attachment shall govern.

The Company shall provide the Services detailed in this Contract at rates set forth below.

1. Administrative Fees:

The Administrative Fee shall be paid no later than thirty (30) days after both parties mutually agree to the quarterly report outlining the CCPA spend. Record Storage Systems agreed to the Administrative Fee below:

5%

2. Scanning Services

Record Storage Systems shall provide Scanning Services at the pricing listed below:

Services	Unit Of Measure	Cost	Additional Information
Regular Scanning of 8½"x11" Records	Per Image	\$.030	Includes all Scanning, indexing, Quality Control, and Re-Filing of Records in City boxes.
Regular Scanning of 8½"x14" Records	Per Image	\$.035	Includes all Scanning, indexing, Quality Control, and Re-Filing of Records in City boxes.
Regular Scanning of 11"x17" Records	Per Image	\$.040	Includes all Scanning, indexing, Quality Control, and Re-Filing of Records in City boxes.
Bulk Scanning of 8½"x11" Records. * Include all Scanning, indexing, Quality Control, and Re-Filing of Records in City boxes. **Indicate Pricing by single project volume tier.	Per Image	\$.030	1 to 250,000 images
	Per Image	\$.0275	250,001 to 1,000,000 images
	Per Image	\$.025	1,000,001 & more images
Bulk Scanning of 8½"x14" Records. * Include all Scanning, indexing, Quality Control, and Re-Filing of Records in City boxes. **Indicate Pricing by single project volume tier.	Per Image	\$.035	1 to 250,000 images
	Per Image	\$.3250	250,001 to 1,000,000 images
	Per Image	\$.030	1,000,001 & more images
Bulk Scanning of 11"x17" Records. * Include all Scanning, indexing, Quality Control, and Re-Filing of Records in City boxes. **Indicate Pricing by single project volume tier.	Per Image	\$.040	10,000 to 500,000 images
	Per Image	\$.0375	500,001 to 1,000,000 images
	Per Image	\$.035	1,000,001 to 5,000,000 images
Setup/Preparation of Records	Per Hour	\$23.000	800 pages 1/3 box (1.2cft)
Transportation Fee	Per Trip	\$15.000	Pickup from City or deliver to City (round-trip) with 48 hr. notice
Storage in Records Mgmt Portal	Per Image / Per Month	\$50.000	1 to 10 [storage unit (Gigabyte, Terabyte, etc.)

Storage in Records Mgmt Portal	Per Image / Per Month	\$39.000	11 to 299 [storage unit (Gigabyte, Terabyte, etc.)]
Storage in Records Mgmt Portal	Per Image / Per Month	\$32.000	300 to 500 [storage unit (Gigabyte, Terabyte, etc.)]
Storage in Records Mgmt Portal	Per Image / Per Month	\$25.000	1 to 10 [storage unit (Gigabyte, Terabyte, etc.)]
Copy Record to CD - R	Per CD	\$35.000	700MB Encrypted
Copy Record to CD - RW	Per CD	\$35.000	700MB Encrypted
Copy Record to flash drive	Per Flash Drive	\$50.000	128MB Encrypted
Copy Record to portable hard drive	Per Hard Drive / Per Hr.	\$35.000	Client can supply device of choice

3. Storage Services

Record Storage Systems shall provide document storage services at the pricing listed below:

Storage Services	Unit Of Measure	Cost	Additional Information
Box Storage	Per Cubic Foot	\$.16	1 - 7.5k
		\$.15	7.501k - 25k
		\$.14	25.001k+
Vault Storage	Per Cubic Foot & Per Tape/CD	\$3.65 CF \$.25 Tape/CD	
Record Deliver and/or Pickup	Per Trip	\$16.00 + \$1/cu ft	Company shall split the fee for single trips to pick-up and/or deliver to multiple Departments at the same facility between each Department equally.
Next day delivery by noon	Per Trip	\$20.00 + \$1/cu ft	Company shall split the fee for single trips to pick-up and/or deliver to multiple Departments at the same facility between each Department equally. Call by 3pm for next day delivery by Noon.
Next day delivery by 5 p.m.	Per Trip	\$16.00 + \$1/cu ft	Company shall split the fee for single trips to pick-up and/or deliver to multiple Departments at the same facility between each Department equally. Call by 3pm for next day delivery by 5pm.

Half day delivery	Per Trip	\$20.00 + \$1/cu ft	Company shall split the fee for single trips to pick-up and/or deliver to multiple Departments at the same facility between each Department equally. Call by 10am for next day delivery same day by 5pm.
Deliver/Pickup - afterhours, weekends, holidays	Per Trip	\$75.000	2 hours minimum
Onsite access to City boxes in storage	Per Box	\$3.75 cu ft	
Retrieval/Re-file from storage location	Per Box	\$3.60 cu ft	
Box (1.2 cubic foot)	Per Box	\$3.95	
Indexing	Per Box	\$.09 field	
Permanently withdrawal of box/container	Per Box	\$2.65 cu ft	
Destruction charge for City records stored by Company	Per Box	\$2.50 cu ft	
Retrieval/Fax/Scan/Email/Refile of copy of stored records by Company	Per File / Per Box	\$21.00 up to 100 pgs same file	\$.05 per pg over 100
Retrieval/Fax/Scan/Email/Refile of copy of stored records to 3rd party by Company	Per File / Per Box	\$21.00 up to 100 pgs same file	\$.05 per pg over 100

4. Shredding Services:

Record Storage Services shall provide Scanning Services at the pricing listed below:

Shredding Services	Unit Of Measure	Cost	Additional Information
Paper, per bin at City Facility	Per Bin	\$5 Console \$7 Cart	add \$35 transportation fee per site
Paper, per bin at Company Facility	Per Bin	\$4 Console \$6 Cart	add \$35 transportation fee per site
Paper Shredding at City facility - not in bins	Per Pound	\$0.10	0 - 1000+ Lbs.
Paper Shredding at Company facility - not in bins	Per Pound	\$.10 \$.09 \$.08	0 - 499 Lbs. 500 - 999 Lbs. 1000 Lbs.
Uniforms	Per Bin / Per Weight	\$1.00 per lbs.	Specify bin capacity &/or weight
One-time purge/special request	Per Bin / Per Weight	\$5 Console \$7 Cart	Additional \$22.50 per hr. labor charge

5. Additional Services

Record Storage Services shall provide Additional Services at the pricing listed below:

Additional Services	Unit Of Measure	Cost	Additional Information
Destruction of Hard Drives	per Hard Drive		Pricing Depends on Quantity
Minimum Storage	Per Month	\$60.00	
Large Format Scanning	Each Sheet	\$1.10	

Document Imaging Software	see additional info		Unlimited Users - On Premise or Cloud; eForms & Workflow
Professional Liability Surcharge	Per Month	\$900 added to monthly storage fee	Only applies if existing Professional Liability coverage insufficient for city

SCOPE OF SERVICES

This Attachment is attached and incorporated into the Citywide Document Management Services (the "Contract") between the City of Charlotte and Distribution Technology dba Record Storage Systems ("Record Storage Systems"). Capitalized terms not defined in this Attachment shall have the meanings assigned to such terms in the Contract. In the event of a conflict between this Attachment and the terms of the main body of the Contract or any other Attachment or appendix, the terms of this Attachment shall govern.

1. General Scope.

The Company shall supply Document Management Services including, but not limited to:

- Scanning;
- Storage; and/or
- Shredding.

2. General Service Components.

Each Service has specific requirements listed below. The following service components are required by the Company across all Services identified in this Contract:

- The Company shall setup and invoice each Department under a separate account. Each Department has the discretion to further separate invoicing by division, project, or other grouping system. If a Company is providing multiple Services to one Department, a consolidated invoice for all Services shall be requested by the specific Department.
- The Company shall allow Service requests via telephone, email and/or web portal.
- The Company shall utilize a web-based Records Management Portal that allows users to locate Records (electronic and paper), edit the Records database and produce a variety of reports on demand. The Records Management Portal shall meet the following requirements, at a minimum:

Type of Record	Requirement
Electronic	Secure storage of the City's electronic Records upon request in a web-hosted repository on a dedicated server or cloud hosting solution
Electronic	Back-up of Records Management Portal on a remote server or computer with a network connection, in order to prevent any potential loss of City's electronic Records
Electronic	Immediate secure access by City to Records through a secured web browser
Electronic/Paper	Querying, reporting on location of boxes, cartons and/or Records and indexing and secure web-based search functionality to allow the City to search for, locate and retrieve documents 24/7.
Electronic/Paper	Configurable querying and reporting options and ability to export reports in a searchable format, such as Microsoft Excel
Electronic	If Company proposes a cloud hosted solution, it should meet all Cloud Technology Requirements detailed in the Sample Contract
Paper	Editing of Records database information as needed

3. Scanning Services.

The Company shall maintain the following requirements in performing Scanning Services:

a. Service Requirements.

- Pickup and securely transport Records to the scanning facility as requested by the City;
- Maintain a facility to capture and image the source material (Records) in a central location;
- Prepare Records for scanning, including removal of fasteners, separation of folded forms, and/or paste-up of small documents;

- Scan, index, Quality Control, and Re-File Records in City boxes;
- Deliver scanned electronic Records to the City; and
- Return/deliver original Records to the City as required.

b. Formatting.

The Company shall format Records in such a way as to minimize or eliminate the possibility of such Record becoming obsolete or inaccessible over time. Given technology advances, it is possible that a very common format in use today, may not be in existence five (5) years from now. Therefore, it is critical that the data be coded in such a way that it will continue to be readable in the future. The file formats and protocols utilized must be approved by the respective Department.

c. Quality Control.

All documents scanned at the Company shall be put into their quality control terminal where the Company reviews 100% of the images. Any images flagged as poor contrast, bent corners, double feeds, etc. will be pulled from the original boxes, rescanned and sent back through Quality Control.

d. Security.

The Company shall ensure the security of the Records and the data contained therein throughout the project workflow, including Records that contain confidential information and sensitive data protected by law (e.g. HIPAA).

e. Other Media for storing Records

Companies shall also be capable of providing the following media for retainage of electronic Records, at a minimum:

- Flash drive; and
- Portable hard drive.

The Company shall supply additional media options as technology advances and additional options become accessible. Drives provided by Companies shall meet all IT requirements for City Departments.

In addition, the Company shall provide the appropriate equipment and storage for various media, which the City uses to house their Records. This media shall include flash drives, portable hard drives, microfilm/microfiche and CDs.

f. Document Retention.

The Company must retain a copy of all images and data for six (6) months of the later of Contract termination or expiration. In the event of disaster or data loss at the City, on request, the Company shall transmit a copy of the missing images to the City at no cost to the City. If the Company is unable to satisfy this request, all expenses for reprocessing the documents shall be incurred by the Company.

4. Storage Services.

The Company shall provide Storage Services shall maintain the following requirements:

a. Service Requirements.

- Provide Storage of City Records twenty-four (24) hours a day, 365 days a year;
- Pickup, accept, and deliver Records as requested by a City Department, including delivery, all labor, materials, fuel, handling, and resources necessary to complete request;
- Pickup and process all Records to include bar-coding, labeling, data entry, and inventorying of boxes/cartons to be stored at the Company's Facility; and
- Maintain all Records in an appropriate storage facility(ies) meeting all requirements detailed in Section 3.4.2, to minimize deterioration of Records and/or boxes.
- Provide appropriate equipment and storage to read Records in various types of media, such as microfilm/microfiche or CDs.

b. Facility Requirements.

The Company's Storage Facility shall:

- Comply with all North Carolina Records requirements per any state statutes regarding Storage, retention and Records destruction procedures;
- Be located within a fifty (50) mile radius from the address of the requesting department;
- Be an individual structure separated from other buildings and external hazards to ensure safety from fire, flood and other disasters;
- Be located above the local flood plain and constructed of concrete block or steel that meets all national fire code prevention standards;

- Secure record center is an ambient temperature facility with high output exhaust fans for air flow movement during warmer seasons. A climate-controlled storage is available inside of the Company's secure data vault. The vault temperature rests at 62 degrees F, +/- 4 degrees and humidity between 35% to 45%. Cardboard boxes are not permitted within the data vault. Any materials stored in the data vault will be kept in plastic containers to protect the integrity of data stored;
- Be of fire retardant, chemically neutral, steel construction;
- Shall store City boxes on shelving 3 ft. high or above. The typical bottom shelving is one (1) inch from the floor. The facility floor is purposefully designed to ensure that in the unlikely event of a disaster, water never rises above 1 inch due to the ground slope and drainage system;
- Meet all codes of the American Disabilities Act ("ADA");
- Have no water stream or other piping in the Records Storage area other than pipes for the sprinkler system;
- Have firewalls that are structurally sound and capable of withstanding impact and imposed loads if severe fire exposure would cause collapse of the framing on one wall;
- Have only openings in fire walls that are protected on each side by fire doors suitable for Class A openings;
- Have a non-combustible roof;
- Possess a twenty-four (24) hour security system with interior and exterior security;
- Have a remote sprinkler system that meets all national, county, and local fire code standards with smoke detectors and heat sensors;
- Be clean, well-organized, and free of rodents and pest infestation; and
- Have areas separate from other Company customers for all City departments that use the Services.
- The City shall have the right to inspect, at any time during normal business hours from (8am-5pm) Monday through Friday without prior notification, the operation of any or all Storage facilities the Company uses to determine if the facility meets or continues to meet the standards for Storage of public Records, as established by the National Archives and Record Administration regulation (1228.228) and the American Records Management Associations, that such facility is properly shelved, fully secured and equipped with fire safety systems, motion alarms and smoke and heat detector/alarms to prevent loss from theft and fire and to audit Records stored and invoice charges.

c. **Box Requirements.**

Companies shall not require that the City use the Companies' Record Storage boxes if the City's chosen boxes meet the industry standard size, but the Companies shall make Storage boxes available for purchase by the City on an as-needed basis.

The City will consider any box or Record not located and delivered in the expected timeline to be lost by the Company. In the case of any box deemed by the City to be lost, the Company shall promptly refund all Storage fees for said box since last / most recent Company Acceptance.

The City shall not pay any Re-box fees after initial Company Acceptance of a box. The Company is responsible for any/all damage occurring to any of the City's property stored on the Company's premises. Any potentially damaged box shall be inspected by City for the integrity of the Records contained therein, prior to Re-box.

d. **Retrieving and Releasing Records.**

Companies shall perform the following services as directed by the City:

- i. Retrieving Records from another City Company or Storage Facility location (all Records are physically located in Mecklenburg County):
 - Retrieve Records for Storage;
 - Re-index boxes/containers as needed for Storage;
 - Report to the City any boxes damaged during transport and relocation that need Re-boxing prior to performing Re-boxing and Storage in accordance with 3.6.3. above; and
 - Provide additional related Services as required by the City.
- ii. Releasing Records to another Company:
 - Verify conditions of boxes and Records in accordance with 3.4.3. above, prior to any Re-boxing, and communicate with the City as needed, prior to releasing Records to new City Company;
 - Release Records to another City Company that has been directed to retrieve Records, as indicated above; and
 - Provide additional related Services as required by the City.

5. **Shredding Services.**

Companies supplying Shredding Services shall comply with the following minimum service requirements:

- Provide all labor, personnel, equipment, supplies, secured vehicles, fuel, materials, supervision, and other related services and supplies to provide secure confidential shredding Services either onsite or offsite as required for various City Departments;
- Contact Department to arrange appropriate date and time for shredding Services prior to each visit;
- Shredding of paper, staples, and compact discs (CD's);
- Provide a Certificate of Destruction to the Department in which Services are provided upon request by the City Department;
- Provide one-time purges or one-time bin needs for special events at the City; and
- Provide Uniform Shredding of Public Safety or other uniforms as necessary, in accordance with Price Schedule stated above in this Contract.

6. Disaster Recovery.

Companies must have the capability to recover from natural, human-caused, and electronic disasters (including security compromises) that could interrupt service to the City. The Company's solution includes:

- Procedures for off-site Storage of Records;
- Capabilities and availability of alternate processing, communications, and operations facilities;
- Plans for maintaining business processes, including communications with the City;
- Estimated time to recover from disaster events, and service level expectations for business continuity following a disaster;
- Cost to the City, if any, for disaster recovery services; and
- Documented disaster recovery and business continuity plan, including dates of disaster recovery tests and schedule for future tests.

7. Reporting.

a. General Reporting Requirements.

i. CCPA Quarterly Reports.

The Company shall provide quarterly usage reports in Excel format to City Procurement no later than the 30th day of January, April, July, and October. Reports must be designed in such a manner that the information captured on the purchase request shall also be reflected in the quarterly report. The reports must include but not limited to the City department, Participating Public Agency name, purchase order number, purchase order date, category name, Product/Service description, product number, unit of measure, quantity, list price, percentage discount, fixed unit price, and extended price for all Products and Services purchased under the Contract. The City and Participating Public Agency reserves the right to request additional information.

ii. Monthly and Annual Reports.

Provide monthly and annual reports of all Scanning, Storage, and/or Shredding Services provided by the Companies and City.

b. Environmental Reporting Requirements.

Companies shall furnish quarterly and annual environmental impact reports showing a summary of the ordering and history of each City Department for the previous quarter to each Department. The report must show at minimum, description and total volume of each service utilized during the period, reporting period, City Department, City Contact Person, and total dollars expended per Department. The City reserves the right to request additional information, if required, when reviewing contract activity.

8. Environmental Purchasing Requirements.

The Company shall provide the following responses to the environmental attributes in this Contract:

Environmental Attributes	Company Response
Recycled Content	Record Storage Systems document storage boxes are made with 100% recyclable cardboard and paper.
Recyclability	Record Storage Systems boxes are made with 100% recyclable cardboard material.
Life Cycle Management	Record Storage Systems boxes are made with 100% recycle material and are very durable in quality. They are made to protect and sustain the life of your hard copy records. As such, there is no defined limit to how many times the boxes can be reused. We also offer refurbished boxes to clients as a cost-effective alternative.
End of Life Management	Record Storage Systems does accept storage boxes back at the end of their life and is committed to responsible destruction and recycling practices of all materials and products.

FEDERAL CONTRACTING TERMS

This Attachment is attached and incorporated into the Citywide Document Management Services (the "Contract") between the City of Charlotte and Distribution Technology dba Record Storage Systems ("Record Storage Systems"). Capitalized terms not defined in this Attachment shall have the meanings assigned to such terms in the Contract. In the event of a conflict between this Attachment and the terms of the main body of the Contract or any other Attachment or appendix, the terms of this Attachment shall govern.

1. **Debarment and Suspension.** Record Storage Systems represents and warrants that, as of the Effective Date of the Contract, neither Record Storage Systems nor any subcontractor or subconsultant performing work under this Contract (at any tier) is included on the federally debarred bidder's list listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." If at any point during the Contract term Record Storage Systems or any subcontractor or subconsultant performing work at any tier is included on the federally debarred bidder's list, Record Storage Systems shall notify the City immediately.
2. **Record Retention.** Record Storage Systems certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. Record Storage Systems further certifies that it will retain all records as required by 2 CFR § 200.333 for a period of three (3) years after it receives City notice that the City has submitted final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.
3. **Procurement of Recovered Materials.** Record Storage Systems represents and warrants that in its performance under the Contract, Record Storage Systems shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
4. **Clean Air Act and Federal Water Pollution Control Act.** Record Storage Systems agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
5. **Energy Efficiency.** Record Storage Systems certifies that Record Storage Systems will be in compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
6. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Record Storage Systems certifies that:
 - a. No federal appropriated funds have been paid or will be paid, by or on behalf of Record Storage Systems, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal Loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of and Federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, Record Storage Systems shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)].
 - c. Record Storage Systems shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and

contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

- d. Record Storage Systems' completed Byrd Anti-Lobbying Certification is incorporated herein as provided in this Attachment below.
7. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** If the Contract is in excess of \$100,000 and involves the employment of mechanics or laborers, Record Storage Systems must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, Record Storage Systems is required to compute the wages of every mechanic and laborer on the basis of a standard work week of forty (40) hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of forty (40) hours in the work week. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or purchases of transportation or transmission of intelligence.
8. **Right to Inventions.** If the federal award is a "funding agreement" under 37 CFR 401.2 and the City wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment of performance or experimental, developmental or research work thereunder, the City must comply with 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
9. **DHS Seal, Logo, and Flags.** Record Storage Systems shall not use the Department of Homeland Security ("DHS") seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
10. **Federal Government Not a Party.** The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the City, Record Storage Systems, or any other party pertaining to any matter resulting from the Contract.

Section 6
Required Forms

**REQUIRED FORM 6 – CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND
OTHER RESPONSIBILITY MATTERS
RFP # 269-2019-090**

Citywide Document Management Services

The bidder, contractor, or subcontractor, as appropriate, certifies to the best of its knowledge and belief that neither it nor any of its officers, directors, or managers who will be working under the Contract, or persons or entities holding a greater than (ten percent) 10% equity interest in it (collectively "Principals"):

1. Are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency in the United States;
2. Have within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state anti-trust or procurement statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are presently indicted for or otherwise criminally or civilly charged by a government entity, (federal, state or local) with commission of any of the offenses enumerated in paragraph 2 of this certification; and
4. Have within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award or in some instances, criminal prosecution.

I hereby certify as stated above:

KEO VAUGHAN
(Print Name)

ACCOUNT MANAGER
Title


Signature

6/18/20
Date

I am unable to certify to one or more the above statements. Attached is my explanation. [Check box if applicable]

(Print Name)

Signature

Title

Date

Section 6
Required Forms

REQUIRED FORM 7 – BYRD ANTI-LOBBYING CERTIFICATION

RFP # 269-2019-090

Citywide Document Management Services

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of and Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)].
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including all subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

RECORD STORAGE SYSTEMS (the "Company") certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Company understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

KEU VAUGHAN
(Print Name)

KEU VAUGHAN
Authorized Signature

6/18/20
Date

RECORD STORAGE SYSTEMS
Company Name

PO. Box 7123
Address

CHARLOTTE NC 28241
City/State/Zip

TRANSIT FEDERAL TERMS

This Attachment is attached and incorporated into the Citywide Document Management Services (the "Contract") between the City of Charlotte and Distribution Technology dba Record Storage Systems ("Record Storage Systems"). Capitalized terms not defined in this Attachment shall have the meanings assigned to such terms in the Contract. In the event of a conflict between this Attachment and the terms of the main body of the Contract or any other Attachment or appendix, the terms of this Attachment shall govern.

1. THE COMPANY SHALL COMPLY WITH ALL FEDERAL REQUIREMENTS.

- A. The Company acknowledges and understands that this Contract will be financed at least partially with funding from the federal government. The Company further acknowledges and understands that this Contract is therefore subject to: (1) all applicable federal laws, (2) all applicable federal regulations, (3) all applicable federal policies, (4) the conditions and requirements of all federal grants that in any way will fund any part of the work under this Contract, and (5) the most recent Federal Transit Administration's "Master Agreement," including any certifications or contract provisions that the Master Agreement requires to be included in this Contract. For purposes of these Federal Contracting Requirements, items (1) through (5) in the immediately preceding sentence, as those items may be amended or updated from time to time, are referred to collectively as "Federal Law."
- B. All provisions of Federal Law are incorporated into this Contract by reference and are fully binding on the Company as if they were recited here verbatim. The Company shall ensure that all provisions of Federal Law are incorporated into all subcontracts (of every tier) and in all contracts with those supplying any materials, equipment, or other products related in any way to this Contract, such that all subcontractors of every tier and all suppliers are contractually required to comply with all provisions of Federal Law.
- C. The Company at all times shall: (1) fully comply with all provisions of Federal Law, (2) ensure that all work under this Contract (including, by example only, all subcontracted work) fully complies with all provisions of Federal Law, and (3) ensure that no aspect of the Company's performance under this Contract would cause the City or any of its officials, employees, or agents to be at any risk of violating any provision of Federal Law. In addition, the Company shall not perform any act, fail to perform any act, or refuse to comply with any City request to the extent that doing any of those things would create any risk of the City or any of its officials, employees, or agents being in violation of any provision of Federal Law.
- D. These Federal Contracting Requirements identify and summarize many provisions of Federal Law. However, the Company acknowledges and agrees that the Company is fully and ultimately responsible for identifying and learning about all provisions of Federal Law. If these Federal Contracting Requirements omit any provision or requirement of Federal Law, the Company shall remain fully responsible for identifying and learning about that provision or requirement and for fully satisfying the Company's obligations under Article 1.1.C of these Federal Contracting Requirements with respect to that provision or requirement. The Company shall not be excused from ensuring full compliance with any provision or requirement of Federal Law because that provision or requirement is omitted from these Federal Contracting Requirements, nor shall the Company have any claim or remedy against the City because any such provision or requirement has been so omitted.
- E. By executing this Contract, the Company represents to the City and covenants with the City that, as of the date that this Contract takes effect, the Company has fully complied with all provisions of Federal Law and that the Company shall continue to fully comply with all provisions of Federal Law at all times while this Contract is in effect.
- F. Notwithstanding any other provision in this Contract, the Company and the City agree that Federal Law and these Federal Contracting Requirements take priority over all other Contract provisions. This means that, if a conflict arises between another Contract provision and any provision of Federal Law or of these Federal Contracting Requirements, such that the Company cannot satisfy both provisions, the Company shall fully comply with the provision of Federal Law or of these Federal Contracting Requirements. In such a situation, the Company shall disregard the other, conflicting Contract provision, but the Company shall do so only to the minimal extent needed to comply fully with Federal Law and with these Federal Contracting

Requirements, and the Company otherwise shall fully comply with that conflicting Contract provision to the extent possible.

- G. The Company and the City agree that, in any situation where the Company can comply with both another Contract provision and with a provision of Federal Law or of these Federal Contracting Requirements, even if the two provisions address the same subject matter (e.g., if another Contract provision imposes an obligation on the Company beyond those obligations imposed by Federal Law), that will not be deemed a conflict. Rather, in such a situation, the Company shall fully comply with Federal Law, with these Federal Contracting Requirements, and with the other Contract provision.

2. ACCESS TO CONTRACT RECORDS.

- A. For purposes of this Article 2 of these Federal Contracting Requirements, "Contract Records" means all documents (whether in hard copy, digital, or other format) that refer or relate to any aspect of this Contract or to the Company's performance under this Contract. By example only (and not for purposes of limitation), Contract Records include all of the following to the extent that they refer or relate to any aspect of this Contract or to the Company's performance under this Contract: subcontracts, contracts with suppliers and other third parties, invoices and other billing records, audits and other financial and accounting records, memos, letters, and emails.
- B. For purposes of this Article 2 of these Federal Contracting Requirements, "Retention End Date" means the later of:
 - (a) The third anniversary of the date on which this Contract is terminated or expires, or
 - (b) If, on or before that third anniversary, the Company has received notice (from the City or otherwise) of one or more lawsuits, legal proceedings, disputes, audits, or investigations related in any way to this Contract, the date on which the City later notifies the Company in writing that all such lawsuits, legal proceedings, disputes, audits, and investigations have fully and finally concluded. The City and the Company intend for all Contract Records to be retained, maintained, and made available for inspection and copying until all such lawsuits, legal proceedings, disputes, audits, and investigations have fully and finally concluded, even if that requires

retaining, maintaining, and making those records available after the third anniversary of this Contract's termination or expiration.

- C. Through and including the Retention End Date, (a) the Company shall retain and maintain all Contract Records that the Company ever creates, receives, or otherwise possesses or controls so that those Contract Records are always complete, legible, and readily accessible, (b) as the City may request from time to time, the Company shall promptly make any and all Contract Records available for inspection and copying by the City, by the federal government, and by their respective Companies and agents, and (c) the Company shall comply with all requirements imposed by 2 C.F.R. §200.333.
- D. Through and including the Retention End Date, the Company shall ensure that each subcontractor (of every tier) and each supplier providing any material, equipment, or other product shall: (a) retain and maintain all Contract Records that the subcontractor or supplier ever creates, receives, or otherwise possesses or controls so that those Contract Records are always complete, legible, and readily accessible, (b) as the City may request from time to time, promptly make any and all Contract Records in that subcontractor's or that supplier's possession or control available for inspection and copying by the City, by the federal government, and by their respective Companies and agents, and (c) comply with all requirements imposed by 2 C.F.R. §200.333.
- E. In addition to taking all other necessary and appropriate steps to satisfy its obligations under Article 2.B(2) of these Federal Contracting Requirements, the Company shall ensure that each subcontract (of every tier) and each supplier contract includes provisions requiring that the subcontractor or the supplier retain, maintain, and make available Contract Records as required by Article 2.B(2).
- F. This Article 2 will survive this Contract's termination or expiration regardless of how, when, or under what circumstances this Contract is terminated or expires.

3. RESERVED.

4. CIVIL RIGHTS LAWS AND REGULATIONS.

The Company acknowledges that the City must comply with all applicable federal civil rights laws and regulations and with 49 U.S.C. § 5323(h) (3) to the extent that the statute is applicable. The Company

acknowledges and agrees that "Federal Law" for purposes of Article 1.1 of these Federal Contracting Requirements includes all applicable federal civil rights laws and regulations, as they may be amended from time to time. Some of those civil rights laws and regulations are identified and summarized below, and the Company acknowledges that its obligations under Article 1.1 of these Federal Contracting Requirements include an obligation to fully comply with the laws and regulations identified below and to ensure that all suppliers and all subcontractors (of every tier) fully comply with those laws and regulations. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 4, the Company shall ensure that each subcontract (of every tier) and each supplier contract includes provisions requiring that the subcontractor or the supplier fully comply with this Article 4 and with all applicable federal civil rights laws and regulations. Applicable federal civil rights laws and regulations include, by example only and not for purposes of limitation:

- A. **Nondiscrimination.** 49 U.S.C. § 5332 and its implementing regulations, which prohibit discriminating against any employee or any applicant for employment because of race, color, religion, national origin, sex, disability, or age.
- B. **Race, Color, Religion, National Origin, Sex.** Federal laws and regulations requiring that all job applicants must be employed, and all employees must be treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). For example, a person's race, color, religion, national origin, or sex cannot be considered for purposes of hiring; promotion; demotion or transfer; recruitment or recruitment advertising; layoff or termination; determining rates of pay or other forms of compensation; or selection for training, including apprenticeship. The laws and regulations imposing these requirements include for example Title VII of the Civil Rights Act (42 U.S.C. § 2000e *et seq.*); 49 U.S.C. § 5332 and its implementing regulations; United States Department of Labor regulations ("Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor") found in 41 C.F.R., Chapter 60; and Executive Order No. 11246 ("Equal Employment Opportunity in Federal Employment") dated September 24, 1965 and found at 42 U.S.C. § 2000e.
- C. **Age.** Federal laws and regulations prohibit discriminating against current or prospective employees on the basis of age. These laws and regulations include for example the Age

Discrimination in Employment Act (29 U.S.C. §§ 621-634); United States Equal Employment Opportunity Commission (U.S. EEOC) regulations ("Age Discrimination in Employment Act") found in 29 C.F.R. part 1625; the Age Discrimination Act of 1975 (42 U.S.C. § 6101 *et seq.*); United States Department of Health and Human Services regulations ("Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance") found in 45 C.F.R. part 90; and 49 U.S.C. § 5332 and the regulations implementing that statute.

- D. **Disabilities.** Federal laws and regulations prohibit discriminating against individuals on the basis of disability. These laws and regulations include for example Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794); the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*); the Architectural Barriers Act of 1968 (42 U.S.C. § 4151 *et seq.*); and 49 U.S.C. § 5332 and the regulations implementing that statute.
 - E. **Access to Services for Persons with Limited English Proficiency.** The Company shall facilitate compliance with, and shall ensure that all suppliers and all subcontractors (of every tier) facilitate compliance with: (1) Executive Order No. 13166 ("Improving Access to Services for Persons with Limited English Proficiency"), found at 42 U.S.C. § 2000d-1 note and (2) applicable provisions of the United States Department of Transportation Notice ("DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons") found at 70 Fed. Reg. 74087 and dated December 14, 2005.
 - F. **Environmental Justice.** The Company shall facilitate compliance with, and shall ensure that all suppliers and all subcontractors (of every tier) facilitate compliance with: (1) Executive Order No. 12898 ("Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations") found at 42 U.S.C. § 4321 note and (2) United States Department of Transportation Order 5620.3 ("Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations") found at 62 Fed. Reg. 18377 *et seq.* and dated April 15, 1997.
- 5. EMPLOYEE PROTECTIONS.**
- A. The Company shall comply with all federal laws, regulations, and requirements providing wage and hour protections for nonconstruction employees, including Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant

parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5. The Company also shall comply with the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 et seq. to the extent that the FLSA applies to employees performing work with federal assistance involving commerce and as the federal government otherwise determines applicable

- B. The Company shall ensure that every subcontractor (of all tiers) and all suppliers fully comply with the laws and regulations referenced in Article 1.5.A of these Federal Contracting Requirements. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 5.B, the Company shall ensure that each subcontract (of every tier) and each supplier contract includes provisions requiring that the subcontractor or the supplier fully comply with this Article 5 and with all with all of the laws and regulations referenced in Article 5.A.

6. ENERGY CONSERVATION.

The Company shall fully comply with the standards and policies related to energy efficiency in the state energy conservation plan issued under the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321, *et seq.* The Company also shall ensure that each supplier and each subcontractor (of every tier) fully complies with those same standards and policies. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 6, the Company shall ensure that each subcontract (at every tier) and each supplier contract includes provisions requiring that the subcontractor or the supplier fully comply with this Article 6.

7. GOVERNMENT-WIDE DEBARMENT & SUSPENSION.

- A. The Company shall fully comply with, and shall facilitate the City's compliance with, those United States Department of Transportation regulations entitled "Nonprocurement Suspension and Debarment," which are found in 2 C.F.R. part 1200 and which adopt and supplement the United States Office of Management and Budget's "Guidelines to Agencies on Government Wide Debarment and Suspension (Nonprocurement)," which are found in 2 C.F.R. part 180. The Company acknowledges that these regulations govern: (1) every contract at any tier

under which compensation of \$25,000 or more will be paid, (2) every contract at any tier for a federally required audit (irrespective of the contract amount), and (3) every contract at any tier that must be approved by the FTA (irrespective of the contract amount).

- B. The Company shall ensure that it and all of its officers, principals, affiliates, suppliers, and subcontractors (of every tier) are fully eligible, without limitation, to participate in this federally funded Contract and are not currently declared by any federal department or agency to be:
 - a) Debarred from participation in any federally assisted award;
 - b) Suspended from participation in any federally assisted award;
 - c) Proposed for debarment from participation in any federally assisted award;
 - d) Declared ineligible to participate in any federally assisted award;
 - e) Voluntarily excluded from participation in any federally assisted award; or
 - f) Disqualified from participation in any federally assisted Award.
- C. The Company at all times shall fully comply with the regulations in 2 C.F.R. part 180, subpart C, as supplemented by the regulations in 2 C.F.R. part 1200.
- D. The Company shall ensure that, at all times, all suppliers and all subcontractors (of every tier) fully comply with all provisions of this Article 7 to the same extent that the Company is required to do so. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 7.D, the Company shall ensure that each subcontract (at every tier) and each supplier contract includes provisions requiring that the subcontractor or the supplier fully comply with this Article 7.
- E. By executing this Contract, the Company certifies to the City that the Company has fully complied as of the date that this Contract takes effect with all provisions in this Article 7 and that the Company shall continue to fully comply with all provisions in this Article 7 at all times while this Contract remains in effect. The Company acknowledges and agrees that the certification provided by the Company under this Article 7.E is a material representation of fact on which the City shall rely. If at any time this certification is found by the City to be false or inaccurate in any

way, that shall be deemed a material breach of this Contract by the Company, and in such a situation the City may pursue any and all remedies available to it under this Contract and otherwise at law. Additionally, the Company acknowledges that, if such a breach happens, the federal government also may choose to pursue any and all remedies available to it, including for example seeking the suspension and/or debarment of the Company.

8. NO GOVERNMENT OBLIGATION TO THIRD PARTIES.

- A. The City and the Company acknowledge and agree that the federal government is not a party to this Contract and that the federal government shall not, because of this Contract, have any obligations or liabilities to the City, to the Company, or to anyone else. The City and the Company acknowledge and agree that the first sentence of this paragraph shall not be affected by the federal government concurring in, or approving of, the solicitation or award of this Contract unless the federal government explicitly consents in writing to being a party to this Contract.
- B. The Company shall ensure that each subcontract (of every tier) and each supplier contract includes a provision in which the parties to that subcontract or supplier contract acknowledge and agree that the federal government is not a party to that subcontract or supplier contract and that the federal government shall not, because of that subcontract or supplier contract, have any obligations or liabilities to that subcontract's or supplier contract's parties or to anyone else.

9. PROGRAM FRAUD & FALSE OR FRAUDULENT STATEMENTS & RELATED ACTS.

- A. The Company shall fully comply with all provisions of the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. §§3801 *et seq.*) and with the United States Department of Transportation regulations entitled "Program Fraud Civil Remedies" that are found in 49 CFR Part 31.
- B. By executing this Contract, the Company certifies to the City the complete truthfulness and total accuracy of every statement that the Company has made, has caused to be made, shall make, or shall cause to be made that relates in any way to this Contract. The Company acknowledges and agrees that the certification provided by the Company under this Article 9.B is a material representation of fact on which the City will rely. If at any time this certification is found by the City to be false or inaccurate in any way, that shall be

deemed a material breach of this Contract by the Company, and in such a situation the City may pursue any and all remedies available to it under this Contract and/or otherwise at law. Additionally, the Company acknowledges that, if such a breach happens, the federal government also may choose to pursue any and all remedies available to it, including for example imposing penalties on the Company under the Program Fraud Civil Remedies Act of 1986, 18 U.S.C. §1001, and/or 49 U.S.C. §5307(n)(1).

- C. The Company shall ensure that, at all times, all suppliers and all subcontractors (of every tier) fully comply with all provisions of this Article 9 to the same extent that the Company is required to do so. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 9.C, the Company shall ensure that each subcontract and each supplier contract includes provisions requiring that the subcontractor or the supplier fully comply with this Article 9.

10. RECYCLED PRODUCTS.

- A. When procuring any items designated in Subpart B of 40 C.F.R. Part 247, the Company shall fully comply with all requirements imposed by: (1) the Resource Conservation and Recovery Act (RCRA) §6002, as amended and now found in 42 U.S.C. 6962, (2) 40 CFR Part 247, and (3) Executive Order 12873.
- B. The Company shall ensure that all suppliers and all subcontractors (of every tier) fully comply with the requirements of Article 10.A of these Federal Contracting Requirements to the same extent that the Company is required to do so. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 10.B, the Company shall ensure that each subcontract and each supplier contract includes provisions requiring that the subcontractor or the supplier fully comply with Article 10.A just as the Company is required to do.

11. SAFE OPERATION OF MOTOR VEHICLES.

- A. The Company shall adopt and promote on-the-job seat belt use policies and programs for its employees and for anyone else who shall operate any vehicles in relation to this Contract, regardless of whether those vehicles are owned or leased by the Company, the City, or another person or entity.
- B. The Company shall adopt and enforce workplace safety policies to minimize crashes caused by distracted drivers. These policies shall include

policies that ban and discourage text messaging by anyone operating a vehicle in relation to this Contract, regardless of whether those vehicles are owned or leased by the Company, the City, or another person or entity.

12. FEDERAL CHANGES.

- A. The Company at all times shall fully comply with all applicable FTA regulations, policies, procedures, and directives, including for example those listed or by reference in the FTA Master Agreement, as they may be issued or amended from time to time. Any failure by the Company to do so shall be a material breach of this Contract by the Company.
- B. The Company shall ensure that all suppliers and all subcontractors (of every tier) at all times fully comply with all applicable FTA regulations, policies, procedures, and directives to the same extent that the Company is required to do so. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 12.B, the Company shall ensure that each subcontract (of every tier) and each supplier contract includes provisions requiring that the subcontractor or the supplier fully comply with this Article 12 just as the Company is required to do.

13. INCORPORATION OF FTA TERMS.

- A. The Company and the City acknowledge and agree that the United States Department of Transportation requires certain provisions (the "Applicable FTA Clauses") to be included in this Contract because this Contract is funded at least partially with federal funds. The Applicable FTA Clauses are specified in Federal Law and are also summarized in FTA Circular 4220.1F, as it may be amended or superseded from time to time. The City and the Company have tried to expressly include all Applicable FTA Clauses in these Federal Contracting Requirements or elsewhere in this Contract. However, the City and the Company agree that, if any of the Applicable FTA Clauses have not been expressly included in this Contract, those Applicable FTA Clauses are nonetheless deemed incorporated into this Contract by reference and shall be fully binding on the Company as if they had been expressly included in this Contract.
- B. Notwithstanding any other provision in this Contract, the Company and the City agree that the Applicable FTA Clauses shall take priority over all other Contract provisions. This means that, if a conflict arises between another Contract

provision and any provision of the Applicable FTA Clauses, such that the Company cannot satisfy both, the Company shall fully comply with the Applicable FTA Clauses. In such a situation, the Company shall disregard the other, conflicting Contract provision, but the Company shall do so only to the minimal extent needed to comply fully with the Applicable FTA Clauses, and the Company otherwise shall fully comply with that conflicting provision. In contrast, in any situation where the Company can comply with both another Contract provision and with the Applicable FTA Clauses, even if these provisions address the same matter (for example, if another Contract provision imposes an obligation on the Company beyond those imposed by the Applicable FTA Clauses), that will not be deemed a conflict, and in such a situation the Company shall fully comply with the Applicable FTA Clauses and with the other Contract provision.

- C. The Company at all times shall: (1) fully comply with all provisions of the Applicable FTA Clauses, (2) ensure that all of the work under this Contract (including, by example only and not for purposes of limitation, all subcontracted work) fully complies with all provisions of the Applicable FTA Clauses, and (3) ensure that no aspect of the work under this Contract and no aspect of the Company's performance under this Contract would cause the City or any of its officials, employees, or agents to violate any provision of the Applicable FTA Clauses. In addition, the Company shall not perform any act, fail to perform any act, or refuse to comply with any City request to the extent that doing any of those things would create a risk of the City or any of its officials, employees, or agents being in violation of any provision in the Applicable FTA Clauses.
- D. The Company shall ensure that all provisions of the Applicable FTA Clauses (including of any Applicable FTA Clauses not expressly included in this Contract) are incorporated into all subcontracts (of any tier) and in all contracts with those supplying any materials, equipment, or other products such that all subcontractors of every tier and all suppliers are contractually required to comply with all provisions of the Applicable Federal Clauses.

14. FEDERAL ACQUISITION REGULATIONS (F.A.R.) COMPLIANCE.

To the extent that this Contract provides for or allows for any adjustment to the Company's compensation based on costs or expenses incurred by the Company, any such adjustment will be determined based solely on any costs or expenses that: (A) are incurred in full

compliance with all of this Contract's provisions, (B) for which the City is clearly required under this Contract to reimburse the Company, (C) are allowable, allocable, and reasonable, as those terms are defined and used in the Contract Cost Principles of the Federal Acquisition Regulations (F.A.R.) System (found in 48 CFR, Ch.1, Pt.31), including as those principles may be further defined or implemented by regulations or guidance adopted by the federal government, and (D) are otherwise allowed under applicable law.

15. CLEAN AIR.

- A. The Company shall fully comply with all applicable standards, orders, and regulations issued under the Clean Air Act (42 U.S.C. §§ 7401, *et. seq.*, as amended). The Company shall promptly notify the City if the Company receives notice of any possible or actual violation (a "Clean Air Act Violation") of the Clean Air Act or of any of those standards, orders, or regulations, and the Company shall provide the City with all information that the Company has about the actual or possible violation. The Company acknowledges and agrees that the City may be required by law to report (or that the City may choose to report, even if not required by law) any actual or possible Clean Air Act Violation to the FTA, to one or more EPA Regional Offices, and/or to other governmental entities, and the Company shall not be entitled to any remedy because the City does so.
- B. The Company shall ensure that all subcontracts (of every tier) and all contracts with those supplying any materials, equipment, or other products include provisions: (1) requiring each subcontractor and each supplier to promptly notify the Company and the City if the subcontractor or supplier receives notice of any possible or actual Clean Air Act Violation and to provide the Company and the City with all information that the subcontractor or supplier has about the actual or possible violation and (2) in which each subcontractor and each supplier acknowledges and agrees that the City may be required by law to report (or that the City may choose to report, even if not required by law) any actual or possible Clean Air Act Violation to the FTA, to one or more EPA Regional Offices, and/or to other governmental entities and that the subcontractor or supplier shall have no claim, right, or remedy against the City or against any City official, employee, or agent because the City does so.

16. CLEAN WATER.

- A. The Company shall fully comply with all applicable standards, orders, and regulations issued under the Water Pollution Control Act (33 U.S.C. §§1251, *et. seq.*, as amended). The Company shall promptly notify the City if the Company receives notice of any possible or actual violation (a "Clean Water Act Violation") of the Water Pollution Control Act or of any of those standards, orders, or regulations, and the Company shall provide the City with all information that the Company has about the actual or possible violation. The Company acknowledges and agrees that the City may be required by law to report (or that the City may choose to report, even if not required by law) any actual or possible Clean Water Act Violation to the FTA, to one or more EPA Regional Offices, and/or to other governmental entities, and the Company shall not be entitled to any remedy because the City does so.
- B. The Company shall ensure that all subcontracts (of any tier) and all contracts with those supplying any materials, equipment, or other products include provisions: (1) requiring each subcontractor and each supplier to promptly notify the Company and the City if the subcontractor or supplier receives notice of any possible or actual Clean Water Act Violation and to provide the Company and the City with all information that the subcontractor or supplier has about the actual or possible violation and (2) in which each subcontractor and each supplier acknowledges and agrees that the City may be required by law to report (or that the City may choose to report, even if not required by law) any actual or possible Clean Water Act Violation to the FTA, to one or more EPA Regional Offices, and/or to other governmental entities and that the subcontractor or supplier shall have no claim, right, or remedy against the City or against any City official, employee, or agent because the City does so.

17. LOBBYING.

- A. The Company shall fully comply with 31 U.S.C. 1352, as amended; with any regulations implementing that statute; and with any non-superseded guidance about that statute issued by the federal government (this statute, those regulations, and that guidance together are the "Byrd Anti-Lobbying Amendment").
- B. The Company shall ensure that each subcontractor (of every tier) and all of those supplying any materials, equipment, or other products fully comply with all requirements imposed by the Byrd Anti-Lobbying Amendment. In addition to taking any other steps necessary

and appropriate to satisfy its obligations under this Article 17.B, the Company shall ensure that all subcontracts (of every tier) and all contracts with those supplying any materials, equipment, or other products include provisions requiring each subcontractor and each supplier to fully comply with all requirements imposed by the Byrd Anti-Lobbying Amendment and by this Article 17.

C. In addition to complying with all other requirements of the Byrd Anti-Lobbying Amendment, in order to comply fully with the Byrd Anti-Lobbying Amendment for purposes of this Article 17, the Company and each subcontractor and supplier must file one or more certifications as required by 49 CFR Part 20 (entitled "New Restrictions on Lobbying").

1. In addition to all other consequences and implications provided by law for filing such a certification, when a subcontractor files one, the subcontractor is deemed to certify to the Company or subcontractor at the tier immediately above it that the certifying subcontractor has not, and shall not, use any federal funds to pay any person, entity, or organization to influence or attempt to influence an officer or employee of any governmental agency, any member of Congress, any officer or employee of Congress, or any employee of a member of Congress concerning or in connection with any federal contract, federal grant, or any other award covered by the Byrd Anti-Lobbying Amendment.

2. When filing such a certification, the Company and each subcontractor and supplier also shall disclose along with that certification the name of any registrant under the Lobbying Disclosure Act of 1995 who has been paid non-federal funds to make lobbying contacts on the certifier's behalf concerning or in connection with any federal contract, federal grant, or any other award covered by the Byrd Anti-Lobbying Amendment. All of these disclosures shall be made on forms designated by the City. Each subcontractor and supplier shall promptly forward to the Company or subcontractor at the tier immediately above it all such disclosures that the subcontractor or supplier receives from anyone involved in any way in the work under this Contract (e.g., lower-tier subcontractors), and the Company shall promptly provide the City with the Company's own disclosures and

with all such disclosures that the Company receives from subcontractors and suppliers.

18. CONTRACT WORK HOURS & SAFETY STANDARDS ACT.

A. No laborer or mechanic, during any workweek in which he is involved in any way with work under this Contract, may work more than forty (40) hours unless he is paid at least one and one-half times his base pay rate for all hours over forty (40) that he works during that workweek. The obligations imposed by this Article 18.A shall be referred to as the "Overtime Requirements."

B. The Company shall ensure that the Overtime Requirements are fully satisfied with respect to any individual who performs any part of the work under this Contract, including for example with respect to any such individual who is employed by a subcontractor of any tier.

C. Any violation of the Overtime Requirements by the Company or by any subcontractor or supplier shall be: (1) a material breach of this Contract by the Company and (2) a material breach by that subcontractor or that supplier of its subcontract or its supplier contract.

1. If such a breach happens, in addition to all other remedies provided by this Contract or by the law, the Company and any subcontractor or supplier that violated the Overtime Requirements shall be jointly and severally liable to the laborer or mechanic at issue for all wages that were not paid to that laborer or mechanic in accordance with the Overtime Requirements.

2. If such a breach happens, in addition to all other remedies provided by this Contract or by the law, the Company and any subcontractor or supplier that violated the Overtime Requirements shall be jointly and severally liable to the federal government for liquidated damages. Those liquidated damages shall be computed with respect to each individual laborer or mechanic who was underpaid, including each underpaid watchman and guard, as follows: Ten dollars (\$10.00) for each calendar day that each mechanic or laborer was required or permitted to work more than forty (40) hours during a workweek without being paid in accordance with the Overtime Requirements.

3. Whether or not the federal government asks or instructs the City to do so, the City may withhold (or may cause to be withheld) from

any moneys owed to the Company and/or to any subcontractor or supplier that violated the Overtime Requirements such sums that the City determines may be necessary to satisfy any liabilities of the Company and/or that subcontractor or supplier for the unpaid wages and/or for the liquidated damages contemplated by this Article 18. These sums may be withheld from any moneys owed to the Company and/or to that subcontractor or supplier under: (1) this Contract, (2) any subcontract or supplier contract, and/or (3) any other contract or subcontract, under which the compensation to be paid shall be funded at least partially with federal funds.

D. The Company shall ensure that the Company, all subcontractors (of every tier), and all suppliers shall: (i) prepare and maintain complete and accurate payroll records that fully comply with this Article 18 and with all industry standard accounting and employment practices and (ii) maintain all of those payroll records and make them available for inspection and copying as required for Contract Records under Article 2 of these Federal Contracting Requirements.

1. These payroll records must include payroll information for all individuals who perform any of the work under this Contract, including by example for all guards and watchmen who perform any of that work.
2. These payroll records must contain the following information for each employee: (a) his name and address, (b) his social security number, (c) his employment classifications, (d) the hourly or other rates at which he was paid, (e) the number of hours that he worked each day and each week, (f) detailed information about the deductions made from his pay, and (g) the actual wages paid to him.

E. The Company shall allow the City, the FTA, the federal Department of Labor, and any of their agents or representatives to interview during working hours any employees or other personnel who have performed, are performing, or are expected to perform any part of the work under this Contract. The Company also shall ensure that all subcontractors (of every tier) and all suppliers allow such interviews to be conducted.

F. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 18 to ensure that all subcontractors and all suppliers fully comply with this Article 18, the Company shall ensure that all subcontracts

(of any tier) for any part of the work under this Contract and all contracts with those supplying any materials, equipment, or other products include provisions requiring each subcontractor and each supplier to fully comply with Article 1.18 of these Federal Contracting Requirements.

19. PROCUREMENT OF RECOVERED MATERIALS.

A. The Company shall fully comply with Section 6002 of the Solid Waste Disposal Act, as that statute has been amended by the Resource Conservation and Recovery Act and by any other legislation.

B. In addition to taking all other steps necessary and appropriate to satisfy its obligations under Article 19.A of these Federal Contracting Requirements, the Company shall do all of the following:

1. Ensure that, whenever any material or product is procured for or related to this Contract, and that material or product is listed or identified in those Environmental Protection Agency (EPA) regulations in 40 CFR Part 247, the material or item is procured so that it contains the highest percentage of recovered materials that is practicable while still maintaining a satisfactory level of competition in the procurement process. Except to the extent that Federal Law may otherwise provide, the requirements of this Article 19.B.1 shall apply only where the purchase price of a particular material or product exceeds \$10,000 or where the value of the quantity of that material or product acquired during the preceding fiscal year exceeded \$10,000.
2. Ensure that all solid waste management services used for or in relation to the work under this Contract are procured in a manner that ensures that those services shall maximize energy and resource recovery.
3. Establish an affirmative program for the procurement of recovered materials identified in those Environmental Protection Agency (EPA) regulations in 40 CFR Part 24.

C. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 19 of these Federal Contracting Requirements, the Company shall ensure that all subcontracts (of every tier) and all contracts with those supplying any materials, equipment, or other products include provisions requiring each subcontractor and each supplier to fully comply with this Article 19 to the same extent that the Company must do so and to facilitate, support,

and cooperate in the Company's compliance with this Article 19.

20. DHS SEAL, LOGO, AND FLAGS.

The Company shall not use, and the Company shall ensure that no subcontractor or supplier uses, any Department of Homeland Security ("DHS") seals, logos, crests, or flags, or the likeness of any DHS agency official, without specific, express, and written pre-approval to do so from DHS. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 20 to ensure that all subcontractors and all suppliers fully comply with this Article 20, the Company shall ensure that all subcontracts (of every tier) and all contracts with those supplying any materials, equipment, or other products include provisions requiring each subcontractor and each supplier to fully comply with this Article 20 of these Federal Contracting Requirements.

21. FLY AMERICA.

- A. The Company shall fully comply with Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. §40118, as amended) and those United States General Services Administration regulations entitled "Use of U.S. Flag Air Carriers" that are found at 41 C.F.R. §§ 301-10.131 through 301-10.143 (together, this statute and those regulations shall be referred to as the "Air Travel Requirements").
- B. The Company shall ensure that all subcontractors (of every tier) and all suppliers fully comply with the Air Travel Requirements and with this Article 21 of these Federal Contracting Requirements. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 21.B, the Company shall ensure that all subcontracts (of every tier) and all contracts with those supplying any materials, equipment, or other products include provisions requiring each subcontractor and each supplier to fully comply with this Article 21 and with the Air Travel Requirements.
- C. In addition to taking all other steps necessary and appropriate to fully comply with the Air Travel Requirements, the Company and all subcontractors and suppliers shall use only U.S.-flag air carriers for any international air transportation that is used to transport any person or any property for or in relation to this Contract. The requirements of this Article 21.C shall not apply, however, to the extent that any needed air transportation is not provided by any U.S.-flag air carriers.

22. CARGO PREFERENCE.

- A. Whenever shipping any equipment, material, other product, or other commodity needed for or otherwise related to this Contract, the Company shall use privately owned U.S.-flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers). This requirement, however, shall apply only to the extent that privately-owned U.S.-flag commercial vessels are available for such shipping at fair and reasonable rates for U.S.- flag commercial vessels.
- B. Within twenty (20) days after the date of loading for a shipment originating within the United States, and within thirty (30) days after the date of loading for a shipment originating outside of the United States, the Company shall provide complete and legible copies of a rated, "on-board" commercial ocean bill-of-lading in English for that shipment to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the City (through the Company in the case of a subcontractor's bill-of-lading).
- C. The Company shall ensure that all subcontractors (of every tier) and all suppliers fully comply with the requirements of Article 23.A and Article 23.B of these Federal Contracting Requirements to the same extent that the Company must comply with them. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 22.C, the Company shall ensure that all subcontracts (of every tier) and all contracts with those supplying any materials, equipment, or other products include provisions requiring each subcontractor and each supplier to fully comply with Article 22.A and Article 22.B.

23. CONFORMANCE WITH ITS NATIONAL ARCHITECTURE.

The Company shall fully comply, to the extent applicable, with the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 and as amended by MAP-21 23 U.S.C. § 517(d), note and shall fully follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg.1455 et seq., January 8, 2001, and any subsequent further implementing directives, except to the extent FTA determines otherwise in writing.

DBE PROVISIONS AND FORMS

This Attachment is attached and incorporated into the Citywide Document Management Services (the "Contract") between the City of Charlotte and Distribution Technology dba Record Storage Systems ("RECORD STORAGE SYSTEMS"). Capitalized terms not defined in this Attachment shall have the meanings assigned to such terms in the Contract. In the event of a conflict between this Attachment and the terms of the main body of the Contract or any other Attachment or appendix, the terms of this Attachment shall govern.

1. DISADVANTAGED BUSINESS ENTERPRISE ("DBE") CONTRACT PROVISIONS AND FORMS.

THE DBE GOAL FOR THIS CONTRACT IS: 0.0%

This Contract is subject to the requirements of 49 C.F.R. Part 26

Participation by DBE in Department of Transportation Financial Assistance Programs.

- (a) Policy. As a recipient of funds from the Federal Transit Administration ("FTA"), the City has established a Disadvantaged Business Enterprise Program ("DBE Program") in accordance with regulations of the U.S. Department of Transportation ("DOT"), 49 C.F.R. Part 26 and has committed to ensuring compliance on all FTA-funded projects through monitoring, reporting, and goalsetting.

The DBE Program is incorporated into and made a part of the Bidding Documents and resulting Contract.

Copies of the DBE Program may be obtained online at <http://charmeck.org/city/charlotte/cats/about/Business/procurement/Pages/dbesbe.aspx>; under "City of Charlotte's DBE Program (document)" on the www.ridetransit.org "Doing Business with CATS as a DBE/SBE" page.

It is the policy of the City to ensure that DBEs, as defined in 49 C.F.R. Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. The City's objectives are as follows:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 C.F.R. Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The CATS Civil Rights Officer has been designated as the DBE Liaison Officer ("DBELO"). In that capacity, he/she is responsible for implementing all aspects of the DBE Program. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the City in its financial assistance agreements with the DOT.

- (b) DBE Assurances. The Contractor and its subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of this DOT-assisted Contract. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the City deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

1. The paragraph above shall be included in each subcontract the Contractor signs with any subcontractor, both DBE or non-DBE subcontractors.

- (c) Prompt Payment. The Contractor is required to pay each subcontractor (DBEs and non-DBEs) under this Contract for satisfactory performance of its contract no later than seven (7) days from receipt of each progress payment or final payment the full amount the Contractor receives from the City for each subcontractor's work and materials under the subcontract. Any delay or postponement of payment from the above referenced time frame may result in liquidated damages and/or sanctions as stipulated in Contract Documents. Exceptions may occur only for good cause following written approval by the City. The Contractor is required to return retainage payments to each subcontractor within seven (7) after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City.

1. The paragraphs above apply to both DBE and non-DBE subcontractors.

2. For purposes of this Section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the City. When the City has made incremental acceptance of a portion of the Contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) DBE Goal. **Although the City has not established a DBE goal for this Contract**, DBE firms and small businesses shall have an equal opportunity to participate in this Contract. The Contractor shall adhere to the following:

1. Take affirmative steps to use as many of the race-neutral means of achieving DBE participation identified in 49 CFR 26.51(b) as practicable to afford opportunities to DBEs to participate in this Contract. A race-neutral measure is one that is, or can be, used to assist all small businesses.
2. A DBE firm must perform commercially useful function, i.e. must be responsible for the execution of a distinct element of the work and must carry out its responsibility by performing, managing and supervising the work; and
3. A DBE firm must be certified by NC-DOT before its participation is reportable under paragraph (d) below.

(e) Report to the City. Even though no separate goal has been set for this Contract, the Bidder must submit its proposed DBE (if any) and non-DBE utilization on **LIST OF SUBCONTRACTORS/SUPPLIERS – FORM A** listing **ALL** subcontractors and suppliers that will be providing goods or services under the Contract. This form is to include all subcontractors the Bidder proposes to use, not just the DBE subcontractors (if any). Bidders are required to list the names, contact information, annual gross receipts, age of firm, respective scope of work/service to be performed, NAICS Code, NCDOT Reporting Number, the dollar values of each subcontract that the Bidder proposes for participation in the Contract work, and the dollar value of total DBE participation for the Contract.

LIST OF SUBCONTRACTORS/SUPPLIERS – FORM A is attached in this DBE Forms and Provisions Attachment.

Even though no separate goal has been set for this Contract, the Contractor shall report its DBE participation obtained through race-neutral means throughout the period of performance. The Contractor shall submit a monthly report on DBE Participation with each request for payment from the City. Such information shall be provided for both DBE and non-DBE

subcontractors on **MONTHLY PAYMENT TO SUBCONTRACTORS/SUPPLIERS –FORM B**. Failure to submit this form with every request for payment will result in delays in payment. The **MONTHLY PAYMENT TO SUBCONTRACTORS/SUPPLIERS – FORM B** is provided on the [CATS DBE Website](#).

(f) Records. On request, the Contractor shall make available for inspection, and assure that its subcontractors make available for inspection:

1. Records of prompt payments made in accordance with paragraph (c) above;
2. The names and addresses of DBE subcontractors, vendors, and suppliers under this Contract;
3. The dollar amount and nature of work of each DBE subcontractor;
4. The social/economic disadvantaged category of the DBE firms, i.e. Black American, Hispanic American, Native American, Subcontinent Asian American, Asian Pacific American, Non-Minority Women, or Other; and
5. Other related materials and information.

(g) The Contractor must promptly notify the City whenever a DBE subcontractor performing work related to this Contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor shall also promptly notify the City of a DBE subcontractor's inability or unwillingness to perform and provide reasonable documentation. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of City.

(h) A directory of DBEs may be accessed at the following website:

<https://partner.ncdot.gov/VendorDirectory/default.htm>!

INFORMATION

If you have any questions concerning the required documentation listed above, or concerning the DBE requirements in general, contact:

CATS Civil Rights Officer

Arlanda Rouse,
Charlotte Area Transit System
600 East Fourth Street
Charlotte, NC 28202
704-432-2566
arouse@charlottenc.gov

LIST OF SUBCONTRACTORS- FORM A – Continuation
Project DBE and non-DBE Subcontractor / Supplier Utilization Commitment
Federal Disadvantaged Business Opportunity Program.

Note: This form is required if providing a project funded by FTA funds.

If your company failed to meet the DBE Utilization Goal for this Project, you MUST attach documentation of your company's Good Faith Efforts with your Proposal/Project Plan.

Company Name: _____ **Project Name:** _____

Subcontractor/Supplier's Name & Address	Contact Person	Age of Firm	Description of Work	NAICS Code	NCDOT Reporting #	Total Projected \$	% of Bid Amount
Annual Gross Receipts: <input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Over \$5M							
Annual Gross Receipts: <input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Over \$5M							
Annual Gross Receipts: <input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Over \$5M							
Annual Gross Receipts: <input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Over \$5M							
Annual Gross Receipts: <input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Over \$5M							
Annual Gross Receipts: <input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Over \$5M							

AVIATION FEDERAL TERMS

This Attachment is attached and incorporated into the Citywide Document Management Services (the "Contract") between the City of Charlotte and Distribution Technology dba Record Storage Systems ("Record Storage Systems"). Capitalized terms not defined in this Attachment shall have the meanings assigned to such terms in the Contract. In the event of a conflict between this Attachment and the terms of the main body of the Contract or any other Attachment or appendix, the terms of this Attachment shall govern.

1. **Security and Credentialing.** All Company employees must adhere to the CLT Security Handbook and the Airport Security Plan: https://assets.ctfassets.net/jaw4bomip9l3/3f5RM1D2EWDLZTkB3Ejoed/a0523fe094084ba1fc6a53c68ec16b29/CLT_Security_Standards_-_200417_Corr_Final.pdf.

The Company's employees must apply and qualify for an airport security badge prior to employment. The standards adopted by the Transportation Security Administration for the issuance of these security badges are captured in Title 49 of the Code of Federal Regulations, Part 1542.

When five (5) or more Company employees require a security badge to perform the Work, the Company must designate at least one (1) as an 'authorized signer'. The authorized signer must hold a valid CLT badge and is responsible for all required training and the completion of all required documents and process steps to secure and retain valid CLT badges for the employees. CLT security badge requirements are accessible at: <https://www.cltairport.com/business/credentialing>.

2. **NON-DISCRIMINATION.** As a condition of entering into this Contract, the Company represents and warrants that it will fully comply with the City's Commercial Non-Discrimination Policy, as described in Section 2, Article V of the Charlotte City Code, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the Company shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, age or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors or suppliers in connection with a City contract or contract solicitation process, nor shall the Company retaliate against any person or entity for reporting instances of such discrimination. The Company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on City contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace. The Company

understands and agrees that a violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of the Company from participating in City contracts or other sanctions.

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

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

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

3. **FEDERAL CIVIL RIGHTS REQUIREMENTS.**

- 3.1. **General Civil Rights.** The Company agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded

from participating in any activity conducted with or benefiting from Federal assistance. This provision binds the companies from the solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964. This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon. In these cases the provision obligates the party or any transferee for the longer of the following periods:

- 3.2. the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- 3.3. the period during which the airport sponsor or any transferee retains ownership or possession of the property.
- 3.4. Civil Rights – Title VI Assurances. During the performance of this contract, the Company, for itself, its assignees, and successors in interest (hereinafter referred to as the “Company”) agrees as follows:
 - 3.4.1. Compliance with Regulations: The Company (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time. The current version of the Title VI List of Pertinent Nondiscrimination Statutes and Authorities is included in Section 24 below.
 - 3.4.2. Non-discrimination: The Company, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of

equipment. The Company will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

- 3.4.3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Company for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Company of the Company’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- 3.4.4. Information and Reports: The Company will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Company is in the exclusive possession of another who fails or refuses to furnish the information, the Company will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- 3.4.5. Sanctions for Noncompliance: In the event of a Company’s noncompliance with the Non-discrimination provisions of this

contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to: (i)Withholding payments to the Company under the contract until the Company complies; and/or (ii)Cancelling, terminating, or suspending a contract, in whole or in part.

3.4.6. Incorporation of Provisions: The Company will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Company will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Company becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Company may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Company may request the United States to enter into the litigation to protect the interests of the United States.

4. **TITLE VI LIST OF PERTINENT NONDISCRIMINATION AUTHORITIES.** During the performance of this contract, the Company, for itself, its assignees, and successors in interest (hereinafter referred to as the "Company") agrees to comply with the following non-discrimination statutes and authorities, as may be amended from time to time and including but not limited to:

- 4.1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 4.2. 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The

Department of Transportation— Effectuation of Title VI of The Civil Rights Act of 1964);

- 4.3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- 4.4. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- 4.5. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- 4.6. Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- 4.7. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- 4.8. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- 4.9. The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- 4.10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging

programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- 4.11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
 - 4.12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).
5. **INSURANCE.** The Company shall provide and maintain at its expense during the term of this Contract the following program(s) of insurance covering its operations. Such insurance shall be provided by insurer(s) satisfactory to the City as approved by the City's Risk Management Division and evidence of such programs satisfactory to the City shall be delivered to the City on or before the effective date of this Contract. Such evidence shall specifically identify this Contract and shall contain the express condition that **the City is to be given written notice within ten (10) days of any modification or termination of any program of insurance.**
- 5.1. **Automobile Liability.** Evidence of current automobile insurance (attach copy of automobile Policy declarations Page(s) in the case of Personal Auto) which show the vehicle and coverage amounts as the appropriate one of the following:
 - 5.1.1. If the Company owns or leases commercial vehicles to provide goods or perform a service under this Contract, Automobile Liability must be provided at a limit of not less than \$1,000,000 per accident, combined single limit, each occurrence, for bodily injury and property damage liability covering all owned, non-owned, and hired vehicles.
 - 5.1.2. If the Company does not own or lease any vehicles, but has employees using their vehicles to perform a service under this Contract, Company must

provide Hired/non-owned Automobile Liability coverage at a limit of not less than \$1,000,000 per occurrence aggregate.

- 5.1.3. If the Company does not own or lease any commercial vehicles to perform services under this Contract, and has no employees using their vehicles to perform services under this Contract, but uses his or her own personal vehicle to perform services under this Contract, Personal Automobile Liability may be provided at limits of not less than \$100,000 each person, \$300,000 each accident and property damage liability of \$50,000.
 - 5.1.4. If the Company is trucking fuel, the Automobile Liability coverage shall be broadened to include pollution coverage on covered autos, and a copy of endorsement CA 99 48 shall be provided to the City. Company must also supply the City with evidence of motor carrier endorsement MCS-90 as required by the Federal Motor Carrier Safety Administration's Motor Carrier Act.
 - 5.1.5. However, if the Company has access to the Aircraft Operation Area (AOA), all automobile liability insurance limits shall increase to \$5,000,000.00 per accident, combined single limit, each occurrence.
- 5.2. **Commercial General Liability.** Insurance with a limit not less than \$1,000,000 [\$5,000,000 (inside the fence)] per occurrence/aggregate including coverage for bodily injury, property damage, products and completed operations, personal/advertising injury liability and contractual liability.
 - 5.3. **Worker's Compensation and Employers Liability.** Insurance meeting the statutory requirements of the State of North Carolina and any applicable Federal laws; and, Employers' Liability - \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit. **If the Company does not employ more than 2 full time employees, Company must attest this fact on company letterhead and include such letter in this Contract.**

6. **OTHER INSURANCE REQUIREMENTS.**

- 6.1. "City of Charlotte, 600 East Fourth St. Charlotte, NC 28202" shall be named as an additional insured under the commercial general liability insurance for operations or services rendered under this Contract.
- 6.2. 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 and furnished the City with proof of insurance coverage by certificates of insurance accompanying the Contract.
- 6.3. The Company shall not allow any subcontractor to commence work until all such subcontractors have obtained the same insurance coverages as described above.
- 6.4. All insurance policies shall be written by insurers qualified to do business in the State of North Carolina. If any of the coverage

conditions are met by a program of self-insurance, the Company must submit evidence of the right to self-insure as provided by the State of North Carolina.

- 6.5. The Company insurance shall be primary of any self-funding and/or insurance otherwise carried by the City for all loss or damages arising from the Company's operations under this Contract. The Company and each of its subcontractors shall and does waive all rights of subrogation against the City and each of the Indemnitees.

The City shall be exempt from, and in no way liable for any sums of money that may represent a deductible or self-insured retention in any insurance policy. The payment of the deductible/retention shall be the sole responsibility of the Company and/or subcontractor.

CONFIDENTIALITY TERMS

This Attachment is incorporated into the Contract for Services ("**Contract**") between the City of Charlotte ("**City**") and Distribution Technology dba Record Storage Systems ("**Record Storage Systems**"). Capitalized terms not defined in this Attachment will have the meanings stated in the Contract.

1. "**CONFIDENTIAL INFORMATION**" means any information, in any medium, whether written, oral, or electronic, obtained or accessed in connection with the Contract that is not subject to mandatory disclosure as a public record under North Carolina law, including without limitation the following:

- Trade secrets of the City and its suppliers, contractors, and licensors, including software and technical materials.
- *Information marked "Confidential" or "Proprietary"*
- *Computer security information of the City, including passwords, codes, configurations, security standards and protocols, and other network, device, and system security features*
- *Building plans of City-owned buildings and structures*
- *Plans to prevent or respond to terrorist activity, including vulnerability and risk assessments, potential targets, specific tactics or specific security or emergency procedures, the disclosure of which would jeopardize the safety of government personnel or the general public or the security of any governmental facility, structure, or information storage system(s).*
- *Information contained in the City's personnel files, as defined by N.C. Gen. Stat. §160A-168 (which includes all information gathered by the City about employees, except information which is a matter of public record under North Carolina law)*
- *Personal identifying information of individuals, such as social security numbers, bank account numbers, credit and debit card numbers, birth dates, PIN numbers and passwords*
- *Billing information of customers maintained in connection with the City providing utility services*
- *Attorney / client privileged information disclosed by either party*
- *Names and address of individuals who have received a rehabilitation grant to repair their homes.*
- *Information relating to criminal investigations conducted by the City, and records of criminal intelligence information compiled by the City*

The Confidential Information listed in

italics above is "Highly Restricted Information," which subject to additional restrictions as set forth herein. Confidential Information includes information disclosed prior to execution of this Contract as well as information disclosed after execution.

2. **RESTRICTIONS.**

- 2.1. **Record Storage Systems** shall not copy, modify, enhance, compile, or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information, except as authorized by the City in writing.
- 2.2. Record Storage Systems shall not, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information to any third party, other than an agent, subcontractor or vendor of the City or Record Storage Systems having a need to know such Confidential Information for purpose of performing work contemplated by written contracts between the City and Record Storage Systems, and who has executed a confidentiality agreement containing substantially the same protections set forth herein. Notwithstanding the forgoing, Record Storage Systems shall not directly or indirectly, disclose, divulge, reveal, report or transfer Highly Restricted of the other to any third party without the City's prior written consent
- 2.3. Record Storage Systems shall not use any Confidential Information for its own benefit or for the benefit of a third party, except to the extent such use is authorized in writing by the City, or is for the purpose for which such Confidential Information is being disclosed.
- 2.4. Record Storage Systems shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information.
- 2.5. Record Storage Systems shall use reasonable efforts to prohibit its employees, vendors, agents, and subcontractors from using or disclosing the Confidential Information in a manner not permitted by this Contract.
- 2.6. If any demand is made in litigation, arbitration, or any other proceeding for disclosure of Confidential Information, Record Storage Systems shall immediately notify the City, and will

reasonably assist the City's effort to seek a protective order or other appropriate relief to prevent or restrict any disclosure of Confidential Information.

- 2.7. Record Storage Systems will restrict employee access to the Confidential Information to those employees who need to know in order to: (a) fulfill Record Storage Systems' contractual obligations to the City, or (b) resolve a dispute with the City. Record Storage Systems will have each employee who will have access to the Confidential Information sign a confidentiality agreement including protections substantially identical to those set forth herein.
- 2.8. Record Storage Systems shall comply with the City's Restricted Data Policy, a copy of which is posted on the City's website, and with any instructions or procedures issued by the City from time to time regarding Highly Restricted Information.
- 2.9. Record Storage Systems shall ensure that each person who obtains access to Confidential Information through Record Storage Systems (including but not limited to Record Storage Systems' employees and subcontractors) has undergone training sufficient to understand his or her responsibilities with respect to this Contract and the City's Restricted Data Policy.

2.10. All materials containing Confidential Information shall be returned to the City or destroyed upon satisfaction of the purpose of the disclosure of such information.

3. **EXCEPTIONS.** Record Storage Systems shall have no obligation with respect to Confidential Information that Record Storage Systems can establish:
 - Was already known to Record Storage Systems prior to being disclosed by the City;
 - Was or becomes publicly known through no wrongful act of Record Storage Systems;
 - Was rightfully obtained by Record Storage Systems from a third party without similar restriction and without breach hereof;
 - Was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, Record Storage Systems shall first give to the City notice of such requirement or request;
 - Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that Record Storage Systems shall immediately notify the City prior to disclosure, and reasonably assist the City in seeking a protective order providing that this Contract will be applicable to all disclosures under the court order or subpoena.

CLLOUD TECHNOLOGY REQUIREMENTS

This Attachment is attached and incorporated into the Citywide Document Management Services (the "Contract") between the City of Charlotte and Distribution Technology dba Record Storage Systems ("Record Storage Systems"). Capitalized terms not defined in this Attachment shall have the meanings assigned to such terms in the Contract. In the event of a conflict between this Attachment and the terms of the main body of the Contract or any other Attachment or appendix, the terms of this Attachment shall govern.

1. **CLOUD SERVICES.** This Attachment sets forth the terms and conditions under which Record Storage Systems agrees to provide the Cloud Services. Record Storage Systems will complete the following tasks as part of day to day management of these Cloud Services on all environments (dev, test, prod, etc.). For all Cloud Services Record Storage Systems will be responsible for any third party support required.
 - 1.1. OPERATIONS.
 - 1.1.1. Record Storage Systems will be fully responsible for all infrastructure and Software implementation and maintenance. The City's responsibilities will be limited to end-user administration of the Cloud Services.
 - 1.1.2. Record Storage Systems will provide a Cloud Services configuration that provides average City on site response time of 1 second to any end user inquiry or submission. Maximum response time to any end user inquiry or submission will be 5 seconds. Extended deviations from these performance targets will be treated as priority two or priority one incidents according to language established in the Service Level Agreement section.
 - 1.1.3. Communications between Record Storage Systems and any other hosted vendor services will be routed through the City's network rather than directly connecting from vendor to vendor. The City is responsible for network integrations to all third party products.
 - 1.2. BACKUP AND RECOVERY.
 - 1.2.1. As a part of the Cloud Services, Record Storage Systems is responsible for maintaining a backup of Contract Data, for an orderly and timely recovery of such data in the event that the Cloud Services may be interrupted.
 - 1.2.2. Record Storage Systems shall maintain a contemporaneous backup of Contract Data that can be recovered within 2 hours at any point in time.
 - 1.2.3. Backup strategy shall ensure that the City will never have any more than 15 minutes of data loss in the event of a required recovery or failover to the disaster recovery installation.
 - 1.2.4. Record Storage Systems will acquire City authorization before performing any recovery operation that will result in any Contract Data loss.
 - 1.2.5. Additionally, Record Storage Systems shall store a backup of Contract Data in a remote facility (physically separate from the production facility) no less than daily, maintaining the security of Contract Data, the security requirements of which are further described herein.
 - 1.3. MAINTENANCE AND UPGRADES.
 - 1.3.1. SCOPE. Record Storage Systems maintenance and upgrade responsibilities include all Record Storage Systems-delivered customizations, modifications, integrations, and configurations.
 - 1.3.2. SCHEDULED MAINTENANCE. Record Storage Systems will conduct regular maintenance and upgrades only during scheduled times. The agreed upon scheduled time for maintenance and upgrades is Saturday nights from 11pm to Sunday mornings 11:00am EST (the "Scheduled Maintenance Window"). Record Storage Systems must receive authorization from the City before performing any scheduled maintenance.
 - 1.3.3. UNSCHEDULED MAINTENANCE. In the event that Record Storage Systems determines that any unscheduled maintenance is necessary, Record Storage Systems must contact the City to get authorization before performing the unscheduled maintenance.
 - 1.3.4. RELEASE UPGRADES. Unless the City directs otherwise in writing, Record Storage Systems will upgrade to new releases within 1 year of release. Record Storage Systems will closely coordinate these upgrades with the City, including scheduled time and expected duration. Maintenance activities will be completed within the Scheduled Maintenance Window defined above.

2. LICENSE GRANT.

2.1. Record Storage Systems grants the City and its Affiliates a royalty free, non-exclusive, license to use and access the Software through the Cloud Services for as long as the City purchases services.

2.2. Pursuant to this license, the City and its Affiliates may:

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

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

2.2.3. Integrate the Software and the Documentation using its own resources or through a third party.

2.3. *RESTRICTIONS ON USE.* The City shall not use, copy, disclose or distribute the Software except as permitted by this License.

2.4. *THIRD PARTY ACCESS.* The City may allow access to the Software and Documentation by third party Contractors to modify, improve, enhance, update, integrate and make derivative works of the Software and the Documentation,; provided that such third parties execute an agreement containing provisions substantially similar to those set forth in the Confidentiality Agreement

2.5. *DELIVERY, TESTING AND ACCEPTANCE.*

2.5.1. *DELIVERY.* Record Storage Systems shall cause the Software to be delivered, configured and integrated at the times set forth in the Scope of Implementation Services, the Project Schedule and the Project Plan. Any breach by Record Storage Systems under the Contract shall constitute a breach of this license.

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

2.6. Any configurations and/or integrations created by Record Storage Systems shall become part of the Software. Licensing of the Software shall remain subject to the terms of the Contract and any software license that may be included in the Contract at all times, provided that such license terms shall not restrict the City's ability to use the Cloud Services as provided in this Exhibit.

2.7. As these Cloud Services are hosted by Record Storage Systems, licensing of the Software to the City includes licensing and maintenance for any and all necessary components required for the Cloud Services to operate (hardware, Platform Software, etc.)

2.8. The City may, at its sole option, cancel the Cloud Services and bring the Software on premise or the City may hire a third party to host the Software at no penalty to the City .

3. LICENSE FROM THE CITY. The City grants Record Storage Systems the non-exclusive, non-transferable, license to copy, store, record, transmit, maintain, display, view, print or otherwise use Contract Data solely to the extent necessary to provide the Cloud Services to the City and its Affiliates.

4. ON PREMISE THIRD-PARTY SOFTWARE. The City agrees to use the following software produced by third parties to access the Cloud Services; "browser" software that supports a data security protocol compatible with the protocol used by Record Storage Systems [, list other software here as applicable]. Record Storage Systems is responsible for notifying the City of any upgrades, fixes or enhancements to any such third party software required to access services provided by Record Storage Systems.

5. MODIFICATION TO OR DISCONTINUATION OF SERVICES.

5.1 The City acknowledges that Record Storage Systems may periodically, with written authorization from the City, need to modify, temporarily or permanently, the Cloud Services (or any part thereof).

5.1.1 In the event that Record Storage Systems modifies the Cloud Services in a manner that removes or disables a feature or functionality on which the City materially relies, Record Storage Systems, at the City's request, shall use commercially reasonable efforts to substantially restore such functionality to the City. [NOTE: If the City will be making a substantial investment in infrastructure or services to implement the Software or to enable use of

the Cloud Services, then this clause needs to be modified to state that Record Storage Systems “shall substantially restore....”].

5.1.2 Without limiting any other rights the City has to terminate the Contract, in the event that Record Storage Systems is unable to substantially restore such functionality, the City shall have the right, at its option, to either (i) terminate the Cloud Services and receive a pro-rata refund of the fees paid for use of the Cloud Services which was paid for by the City, but not yet furnished by Record Storage Systems as of the date of such termination, or (ii) terminate the Cloud Services as provided in the preceding subpart (i) and terminate the Contract as provided in Section 7 of the General Terms.

5.2 The City also acknowledges that Record Storage Systems reserves the right to discontinue offering the Services. However, because moving to another solution may be a substantial effort for the City, Record Storage Systems agrees to give the City as much written notice as possible, but not less than 180 days, before discontinuing the Services.

5.2.1 In the event that Record Storage Systems discontinues offering the Services, the City shall receive a pro-rata refund of the fees paid for use of the Cloud Services which was paid for by the City, but not yet furnished by Record Storage Systems as of the date of such termination. [NOTE: Where the City is making a substantial investment in infrastructure or services, add the following: “If Record Storage Systems discontinues offering the Services within the first five years of the Contract term, the City shall be entitled to a pro rata refund of all fees paid to Record Storage Systems for the implementation of the Services.”]

6. SERVICE LEVEL AGREEMENT.

6.1. AVAILABILITY. Outside of Scheduled Maintenance, Record Storage Systems guarantees 99.9% or greater uptime. Availability will be calculated per month, as follows:

$$\frac{(\text{Service Time} - \text{Non-excluded Downtime} - \text{Excluded Downtime})}{(\text{Service Time} - \text{Excluded Downtime})} * 100$$

6.1.1. “Service Time” is the total minutes for a given calendar month

6.1.2. “Excluded Downtime” is all unavailability caused by (1) scheduled or mutually agreed upon downtime; (2) downtime on non-production systems; (3) failure of City’s Internet access or City-managed connectivity components; or (4) equipment or software managed by the City

6.1.3. “Non-excluded Downtime” is all downtime that is not Excluded Downtime

6.2. OTHER SERVICE LEVEL DEFINITIONS.

6.2.1. “Resolution” means the problem was completely repaired and that no further actions are necessary

6.2.2. “Workaround” means a temporary repair established to allow the City to continue use of the Cloud Services, until a permanent Resolution can be implemented

6.3. SERVICE LEVEL REPORTS. Service Provider will provide monthly Service Level Reports, which will include performance and availability statistics. Record Storage Systems will perform the performance and availability calculations, but will provide the source data to the City on request, in the event that the City would like to validate the results.

6.4. SERVICE LEVELS REVIEWS. Service Provider and Customer will meet as often as shall be reasonably requested by the City, but no more than monthly, to review the performance of Record Storage Systems as it relates to the Service Levels further described below.

6.5. Record Storage Systems will monitor all aspects of Cloud Services availability and will notify the City of any outage within 30 minutes of discovery via telephone and email for any Priority 1 outage, and by email for any Priority 2 or below outage.

6.6. The City shall assign an initial priority level for each problem reported, either verbally or in writing, based on the conditions described below. Record Storage Systems will work with the City to upgrade or downgrade the level of a particular problem to a different priority level, if after examining the problem there is reason to do so. Notwithstanding the foregoing, Record Storage Systems shall not upgrade or reduce the level of priority of a particular error to a different priority without the City’s consent, which consent may not be unreasonably withheld or delayed.

6.7. REMEDIES FOR FAILURE TO MEET RESOLUTION AND WORKAROUND TIMES. The City shall be entitled to invoke the following remedies for Record Storage Systems’ failure to meet the Workaround times or Resolution times stated below. Such amounts shall be in the form of a refund for amounts paid, or, at Record Storage Systems’ option, service credit for amounts payable during the year in question, provided that if there are no amounts payable during the year in question, Record Storage Systems shall provide the City with a refund of amounts paid for such year. Workarounds and resolutions must be agreed to by the City to be considered valid. The requirements set forth in the following chart apply to Cloud Services in the production environment, and not to testing or development environments.

Priority One: Critical	<p>Priority One applies if the problem results in:</p> <ul style="list-style-type: none"> • Cloud Service down with no workaround, or performance degraded by more than 10% from contractual performance standards (measured end-to-end) for > 15 minutes and multiple users are impacted, OR • Loss of data or data corruption, OR • Jeopardized safety or security.
Service Level	<ul style="list-style-type: none"> • Immediate email escalation to Technical Support, followed by warm handoff • Resolution Time: 8 Hours • Workaround Time: 1 Hour • Target Updates: Every 30 minutes until Resolution
Service Level Credit	<ul style="list-style-type: none"> • Six percent (6%) of the annual Cloud Services Fees paid or payable by the City for each instance where Record Storage Systems fails to address a Priority One problem within the Resolution and Workaround times specified above. • For each 24 hour period that a Priority One Defect continues beyond the Resolution or Workaround times stated above, an additional six percent (6%) of the annual Cloud Services Fees paid or payable by the City.
Termination Trigger	<p>Without limiting any other rights the City has to terminate the Contract, the City may exercise the right to terminate this Contract immediately for default upon written notice to Record Storage Systems in the event that a Priority One problem continues in duration without either a Resolution or Workaround for more than 24 hours after it is first reported by the City. In the event of such termination, the City shall receive a pro-rata refund of the fees paid for use of the Cloud Services which was paid for by the City, but not yet furnished by Record Storage Systems as of the date of such termination.</p>

Priority Two: High	<p>Priority Two applies if the problem results in:</p> <ul style="list-style-type: none"> • Production Service is severely impaired making use of the Service difficult, complicated, cumbersome, or slow and multiple users or records are impacted, OR • The Service is at risk because of a known vulnerability.
Service Level	<ul style="list-style-type: none"> • Immediate email escalation to Technical Support, followed by warm handoff • Resolution Time: 24 Hours • Workaround Time: 2 Hours • Target Updates: Every hour until Resolution
Service Level Credit	<ul style="list-style-type: none"> • Six percent (6%) of the annual Cloud Services Fees paid or payable by the City for each instance where Record Storage Systems fails to address a Priority Two problem within the Resolution and Workaround times specified above. • For each 48 hour period that a Priority Two Defect continues beyond the Resolution or Workaround times stated above, an additional six percent (6%) of the annual Cloud Services Fees paid or payable by the City.
Termination Trigger	<p>Without limiting any other rights the City has to terminate the Contract, the City may exercise the right to terminate this Contract immediately for default upon written notice to Record Storage Systems in the event that a Priority Two problem continues in duration without either a Resolution or Workaround for more than 120 hours after it is first reported by the City. In the event of such termination, the City shall receive a pro-rata refund of the fees paid for use of the Cloud Services which was paid for by the City, but not yet furnished by Record Storage Systems as of the date of such termination.</p>

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

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

MASTER INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT

This Charlotte Cooperative Purchasing Alliance (CCPA) Master Intergovernmental Cooperative Purchasing Agreement will allow a Participating Public Agency to purchase commodities and/or services from any and all CCPA Contracts, under the same terms, conditions and prices as stated in each contract competitively solicited and awarded by the City of Charlotte, North Carolina ("Contracting Agent") on behalf of itself and all other public agencies. It is hereby agreed to by CCPA and the Participating Public Agency (Participants) that:

1. CCPA has followed procurement procedures for products and/or services offered by this Agreement in accordance with CCPAs governing procurement statutes and regulations.
2. The cooperative use of bids obtained by a party to this agreement shall be in accordance with the terms and conditions of the bid, except as modification of those terms and conditions is otherwise allowed or required by applicable law.
3. It is the sole responsibility of each Participating Public Agency to follow their state procurement statutes as it pertains to cooperative purchasing, and the rules and regulations that govern each Participant's procurement practices.
4. CCPA cooperative purchasing contracts are available to Participating Public Agencies "as is," and CCPA is under no obligation to revise the terms, conditions, scope, price, and/or other conditions of the contract for the benefit of the Participants.
5. It is the sole responsibility of the Participating Public Agency to accept delivery of products and/or services, and the Participants hereby agree to make timely payments to each Company for products and/or services received pursuant to this Agreement. Any dispute which may arise between the Participating Public Agency and the Company are to be resolved between the Participating Public Agency and the Company.
6. The City of Charlotte shall not be held liable for any costs, damages, expenses, fees, or liabilities incurred by any other Participating Public Agency as a result of any contract or other arrangement entered into between that Participant and the Company.
7. The procuring party shall not use this agreement as a method for obtaining additional concessions or reduced prices for similar products or services.
8. This Agreement incorporates all Contracts, covenants and understandings between CCPA and the Participating Public Agency. No prior Agreement or understanding, verbal or otherwise, by the parties or their agents, shall be valid or enforceable unless embodied in this Agreement. This Agreement shall not be altered, changed, or amended except by written revision or addendum executed by both parties.
9. This agreement is non-exclusive and shall not in any way preclude Participating Public Agencies from entering into similar agreements and/or arrangements with other Cooperative Purchasing Programs, or from acquiring similar goods and services from other sources.
10. This agreement shall take effect after the Participating Public Agency submits the competed electronic CCPA registration and shall remain in effect until termination by a party giving 30 days written notice to the other party.

DESCRIPTIONS (Continued from Page 1)

Record Storage Systems

Cyber Liability Policy #CPA0113741-50 12/31/2020-12/31/2021; \$100,000 occurrence; \$1,000 deductible

Hired Car Physical Damage Policy #CPA0113741-50 12/31/2020-12/31/2021 \$1,000 deductible

Trailer Interchange Physical Damage Trailers Coverage #CPA0113741-50 12/31/2020-12/31/2021; \$1,000 collision deductible

Employee Dishonesty Crime Policy #105589097 12/31/2020-12/31/2021 \$500,000 limit; \$25,000 deductible

This Certificate is issued for insured operations usual to trucking and warehousing.

For Information Only

Certificate Holder City of Charlotte is An Additional Insured on the policy For General Liability