

PROFESSIONAL SERVICES AGREEMENT

CONTRACT NO: 1484-13949

Section No.: 14-6TDES-01-ES

FOR

TRAFFIC DATA-ANALYSIS SOFTWARE

BETWEEN



**COOK COUNTY GOVERNMENT
DEPARTMENT OF TRANSPORTATION AND HIGHWAYS**

AND

MIDWESTERN SOFTWARE SOLUTIONS LLC d/b/a MS2

**(Based on State Of North Carolina, City of Charlotte
Contract No. 1400047)**

AGREEMENT

This Agreement is made and entered into by and between the County of Cook, a public body corporate of the State of Illinois, on behalf of Office of the Chief Procurement Officer hereinafter referred to as "County" and Midwestern Software Solutions LLC d/b/a/ MS2, a Michigan corporation doing business in North Carolina hereinafter referred to as "Consultant", pursuant to the execution by the Chief Procurement Officer.

BACKGROUND

Whereas, the County, pursuant to Section 34-140 (the "Reference Contract Ordinance") of the Cook County Procurement Code, states: "If a governmental agency has awarded a contract through a competitive method for the same or similar supplies, equipment, goods or services as that sought by the County, the Procurement may be made from that vendor at a price or rate at least as favorable as that obtained by that government agency without utilizing a competitive procurement method set forth in this Procurement Code;" and

Whereas, the State Of North Carolina solicited a formal Request for Proposal process for Traffic Data-Analysis Software, and the Consultant was identified as the qualified and best value provider for the services; and

Whereas, the State Of North Carolina entered into a contract on August 9, 2013 for the provision of services by the Consultant for the County relative to Traffic Data-Analysis Software, a copy of which is attached hereto as Attachment "1" for reference purposes only, but such attachment is not made part of or incorporated into this Agreement; and

Whereas, the County wishes to leverage the procurement efforts of the State of North Carolina; and

Whereas, this Agreement made and entered into by and between the County of Cook, a public body corporate of the State of Illinois, herein after the "County" and MS2, herein after the "Consultant"; and

Whereas, the County, through the Department of Transportation and Highways and Bureau of technology, desires certain similar services of the Consultant; and

Whereas, County Offices, Departments, and Agencies may utilize this Agreement for specific contracted procurement efforts; and

Whereas, the Consultant agrees to provide to the County Traffic Data-Analysis Software, incorporated as Exhibit 2, Scope of Services and Exhibit 3, License Agreement; and

Whereas, the Consultant warrants that it is ready, willing and able to deliver these services set forth in Exhibit 2, Scope of Services and Exhibit 3 License Agreement, all on pricing and payment terms equivalent to or more favorable to the County than those contained in the State of North Carolina Contract No. 1400047 as set forth in Attachment 1, and incorporated herein by reference; and

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the sufficiency of which is acknowledged by each of the Parties, the Consultant and the County agree and the information set forth is incorporated by reference herein.

INCORPORATION OF BACKGROUND INFORMATION

The Background Information set forth above is incorporated and made a part of this Agreement by reference.

TERMS AND CONDITIONS

ARTICLE 1) INCORPORATION OF BACKGROUND

The Background information set forth above is incorporated by reference as if fully set forth here.

ARTICLE 2) DEFINITIONS

a) Definitions

The following words and phrases have the following meanings for purposes of this Agreement:

"Additional Services" means those services which are within the general scope of Services of this Agreement, but beyond the description of services required under Article 3, and all services reasonably necessary to complete the Additional Services to the standards of performance required by this Agreement. Any Additional Services requested by the Department require the approval of the Chief Procurement Officer in a written modification to this Agreement before Consultant is obligated to perform those Additional Services and before the County becomes obligated to pay for those Additional Services.

"Agreement" means this Professional Services Agreement, including all exhibits attached to it and incorporated in it by reference, and all amendments, modifications or revisions made in accordance with its terms.

"Chief Procurement Officer" means the Chief Procurement Officer for the County of Cook and any representative duly authorized in writing to act on his behalf.

"Department" means the Cook County Using Department.

"Services" means, collectively, the services, duties and responsibilities described in Article 3 of this Agreement and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement.

"Subconsultant" means any person or entity with whom Consultant contracts to provide any part of the Services, including subconsultants and subconsultants of any tier, suppliers and materials providers, whether or not in privity with Consultant.

b) Interpretation

- i) The term "**include**" (in all its forms) means "include, without limitation" unless the context clearly states otherwise.
- ii) All references in this Agreement to Articles, Sections or Exhibits, unless otherwise expressed or indicated are to the Articles, Sections or Exhibits of this Agreement.
- iii) Words importing persons include firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.
- iv) Any headings preceding the text of the Articles and Sections of this Agreement, and any table of contents or marginal notes appended to it, are solely for convenience or reference and do not constitute a part of this Agreement, nor do they affect the meaning, construction or effect of this Agreement.
- v) Words importing the singular include the plural and vice versa. Words of the masculine gender include the correlative words of the feminine and neuter genders.
- vi) All references to a number of days mean calendar days, unless expressly indicated otherwise.

c) Incorporation of Exhibits

The following attached Exhibits are made a part of this Agreement:

- Exhibit 1 Special Conditions
- Exhibit 2 Scope of Services
- Exhibit 3 License Agreement
- Exhibit 4 Price Proposal
- Exhibit 5 Evidence of Insurance
- Exhibit 6 Economic Disclosure Statement

ARTICLE 3) DUTIES AND RESPONSIBILITIES OF CONSULTANT

a) Scope of Services

This description of Services is intended to be general in nature and is neither a complete description of Consultant's Services nor a limitation on the Services that Consultant is to provide under this Agreement. Consultant must provide the Services in accordance with the standards of performance set forth in Section 3c. The Services that Consultant must provide include, but are not limited to, those described in Exhibit 1, Scope of Services, which is attached to this Agreement and incorporated by reference as if fully set forth here.

b) Deliverables

In carrying out its Services, Consultant must prepare or provide to the County various Deliverables. "**Deliverables**" include work product, such as written reviews, recommendations, reports and analyses, produced by Consultant for the County.

The County may reject Deliverables that do not include relevant information or data, or do not include all documents or other materials specified in this Agreement or reasonably necessary for the purpose for which the County made this Agreement or for which the County intends to use the Deliverables. If the County determines that Consultant has failed to comply with the foregoing standards, it has 30 days from the discovery to notify Consultant of its failure. If Consultant does not correct the failure, if it is possible to do so, within 30 days after receipt of notice from the County specifying the failure, then the County, by written notice, may treat the failure as a default of this Agreement under Article 9.

Partial or incomplete Deliverables may be accepted for review only when required for a specific and well-defined purpose and when consented to in advance by the County. Such Deliverables will not be considered as satisfying the requirements of this Agreement and partial or incomplete Deliverables in no way relieve Consultant of its commitments under this Agreement.

c) Standard of Performance

Consultant must perform all Services required of it under this Agreement with that degree of skill, care and diligence normally shown by a consultant performing services of a scope and purpose and magnitude comparable with the nature of the Services to be provided under this Agreement. Consultant acknowledges that it is entrusted with or has access to valuable and confidential information and records of the County and with respect to that information, Consultant agrees to be held to the standard of care of a fiduciary.

Consultant must assure that all Services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed, if required by law. Consultant must provide copies of any such licenses. Consultant remains responsible for the professional and technical accuracy of all Services or Deliverables furnished, whether by Consultant or its Subconsultants or others on its behalf. All Deliverables must be prepared in a form and content satisfactory to the Department and delivered in a timely manner consistent with the requirements of this Agreement.

If Consultant fails to comply with the foregoing standards, Consultant must perform again, at its own expense, all Services required to be re-performed as a direct or indirect result of that failure. Any review, approval, acceptance or payment for any of the Services by the County does not relieve Consultant of its responsibility for the professional skill and care and technical accuracy of its Services and Deliverables. This provision in no way limits the County's rights against Consultant either under this Agreement, at law or in equity.

d) Personnel

i) Adequate Staffing

Consultant must, upon receiving a fully executed copy of this Agreement, assign and maintain during the term of this Agreement and any extension of it an adequate staff of competent personnel that is fully equipped, licensed as appropriate, available as needed, qualified and assigned exclusively to perform the Services. Consultant must include among its staff the Key Personnel and positions as identified below. The level of staffing may be revised from time to time by notice in writing from Consultant to the County and with written consent of the County, which consent the County will not withhold unreasonably. If the County fails to object to the revision within 14 days after receiving the notice, then the revision will be considered accepted by the County.

ii) Key Personnel

Consultant must not reassign or replace Key Personnel without the written consent of the County, which consent the County will not unreasonably withhold. "Key Personnel" means those job titles and the persons assigned to those positions in accordance with the provisions of this Section 3.d(ii). The Department may at any time in writing notify Consultant that the County will no longer accept performance of Services under this Agreement by one or more Key Personnel listed. Upon that notice Consultant must immediately suspend the services of the key person or persons and must replace him or them in accordance with the terms of this Agreement. A list of Key Personnel is found in Exhibit 1, Scope of Services.

iii) Salaries and Wages

Consultant and Subconsultants must pay all salaries and wages due all employees performing Services under this Agreement unconditionally and at least once a month without deduction or rebate on any account, except only for those payroll deductions that are mandatory by law or are permitted under applicable law and regulations. If in the performance of this Agreement Consultant underpays any such salaries or wages, the Comptroller for the County may withhold, out of payments due to Consultant, an amount sufficient to pay to employees underpaid the difference between the salaries or wages required to be paid under this Agreement and the salaries or wages actually paid these employees for the total number of hours worked. The amounts withheld may be disbursed by the Comptroller for and on account of Consultant to the respective employees to whom they are due. The parties acknowledge that this Section 3.d(iii) is solely for the benefit of the County and that it does not grant any third party beneficiary rights.

e) Minority and Women's Business Enterprises Commitment

In the performance of this Agreement, including the procurement and lease of materials or

equipment, Consultant must abide by the minority and women's business enterprise commitment requirements of the Cook County Ordinance, (Article IV, Section 34-267 through 272) except to the extent waived by the Compliance Director. Consultant's completed MBE/WBE Utilization Plan evidencing its compliance with this requirement are a part of this Agreement, in Section 1 of the Economic Disclosure Statement, upon acceptance by the Compliance Director. Consultant must utilize minority and women's business enterprises at the greater of the amounts committed to by the Consultant for this Agreement in accordance with Section 1 of the Economic Disclosure Statement.

f) Insurance

Consultant must provide and maintain at Consultant's own expense, during the term of this Agreement and any time period following expiration if Consultant is required to return and perform any of the Services or Additional Services under this Agreement, the insurance coverages and requirements specified below, insuring all operations related to this Agreement.

i) Insurance To Be Provided

(1) Workers Compensation and Employers Liability

Workers Compensation Insurance, as prescribed by applicable law, covering all employees who are to provide a service under this Agreement and Employers Liability coverage with limits of not less than \$500,000 each accident or illness.

(2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$2,000,000 per occurrence for bodily injury, personal injury and property damage liability. Coverages must include the following: All premises and operations, products/completed operations, separation of insureds, defense and contractual liability (with no limitation endorsement). Cook County is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the Services.

Subconsultants performing Services for Consultant must maintain limits of not less than \$1,000,000 with the same terms in this Section 3.i(2).

(3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with Services to be performed, Consultant must provide Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence limit, for bodily injury and property damage. The County is to be named as an additional insured on a primary, non-contributory basis.

(4) Professional Liability

When any professional consultants perform Services in connection with this Agreement, Professional Liability Insurance covering acts, errors or omissions must be maintained with limits of not less than \$2,000,000. Coverage must include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of Services on this Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of 2 years.

Subconsultants performing Services for Consultant must maintain limits of not less than \$1,000,000 with the same terms in this Section 3.i(3).

(5) Valuable Papers

When any designs, drawings, specifications and documents are produced or used under this Agreement, Valuable Papers Insurance must be maintained in an amount to insure against any loss whatsoever, and must have limits sufficient to pay for the re-creation and reconstruction of such records.

ii) **Additional Requirements**

(1) Consultant must furnish the County of Cook, Cook County, Office of the Chief Procurement Officer, 118 N, Clark St., Room 1018, Chicago, IL 60602, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. Consultant must submit evidence of insurance on the County Insurance Certificate Form (copy attached as Exhibit 4) or equivalent prior to Agreement award. The receipt of any certificate does not constitute agreement by the County that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the County to obtain certificates or other insurance evidence from Consultant is not a waiver by the County of any requirements for Consultant to obtain and maintain the specified coverages. Consultant must advise all insurers of the provisions in this Agreement regarding insurance. Non-conforming insurance does not relieve Consultant of the obligation to provide insurance as specified in this Agreement. Nonfulfillment of the insurance conditions may constitute a violation of this Agreement, and the County retains the right to terminate this Agreement or to suspend this Agreement until proper evidence of insurance is provided.

(1) The insurance must provide for 60 days prior written notice to be given to the County in the event coverage is substantially changed, canceled or non-renewed. All deductibles or self-insured retentions on referenced insurance coverages must be borne by Consultant. Consultant

agrees that insurers waive their rights of subrogation against the County of Cook, its employees, elected officials, agents or representatives.

(2) The coverages and limits furnished by Consultant in no way limit Consultant's liabilities and responsibilities specified within this Agreement or by law. Any insurance or self-insurance programs maintained by the County of Cook apply in excess of and do not contribute with insurance provided by Consultant under this Agreement.

(3) The required insurance is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

(4) Consultant must require all Subconsultants to provide the insurance required in this Agreement, or Consultant may provide the coverages for Subconsultants. All Subconsultants are subject to the same insurance requirements as Consultant unless otherwise specified in this Agreement. If Consultant or Subconsultant desires additional coverages, the party desiring the additional coverages is responsible for its acquisition and cost.

(5) The County's Risk Management Office maintains the right to modify, delete, alter or change these requirements. "**Risk Management Office**" means the Risk Management Office, which is under the direction of the Director of Risk Management and is charged with reviewing and analyzing insurance and related liability matters for the County.

g) Indemnification

The Consultant covenants and agrees to indemnify and save harmless the County and its commissioners, officials, employees, agents and representatives, and their respective heirs, successors and assigns, from and against any and all costs, expenses, attorney's fees, losses, damages and liabilities incurred or suffered directly or indirectly from or attributable to any claims arising out of or incident to the performance or nonperformance of the Contract by the Consultant, or the acts or omissions of the officers, agents, employees, Consultants, subconsultants, licensees or invitees of the Consultant. The Consultant expressly understands and agrees that any Performance Bond or insurance protection required of the Consultant, or otherwise provided by the Consultant, shall in no way limit the responsibility to indemnify the County as hereinabove provided.

h) Confidentiality and Ownership of Documents

Consultant acknowledges and agrees that information regarding this Contract is confidential and shall not be disclosed, directly, indirectly or by implication, or be used by Consultant in any way, whether during the term of this Contract or at any time thereafter, except solely as required in the course of Consultant's performance hereunder. Consultant shall comply with the applicable privacy laws and regulations affecting County and will not disclose any of County's records, materials, or other data to any third party. Consultant shall not have the right to compile and distribute statistical analyses and reports utilizing data derived from information or data obtained

from County without the prior written approval of County. In the event such approval is given, any such reports published and distributed by Consultant shall be furnished to County without charge.

All documents, data, studies, reports, work product or product created as a result of the performance of the Contract (the "Documents") shall be included in the Deliverables and shall be the property of the County of Cook. It shall be a breach of this Contract for the Consultant to reproduce or use any documents, data, studies, reports, work product or product obtained from the County of Cook or any Documents created hereby, whether such reproduction or use is for Consultant's own purposes or for those of any third party. During the performance of the Contract Consultant shall be responsible of any loss or damage to the Documents while they are in Consultant's possession, and any such loss or damage shall be restored at the expense of the Consultant. The County and its designees shall be afforded full access to the Documents and the work at all times.

i) Patents, Copyrights and Licenses

If applicable, Consultant shall furnish the Chief Procurement Officer with all licenses required for the County to utilize any software, including firmware or middleware, provided by Consultant as part of the Deliverables. Such licenses shall be clearly marked with a reference to the number of this County Contract. Consultant shall also furnish a copy of such licenses to the Chief Procurement Officer. Unless otherwise stated in these Contract documents, such licenses shall be perpetual and shall not limit the number of persons who may utilize the software on behalf of the County.

Consultant agrees to hold harmless and indemnify the County, its officers, agents, employees and affiliates from and defend, at its own expense (including reasonable attorneys', accountants' and consultants' fees), any suit or proceeding brought against County based upon a claim that the ownership and/or use of equipment, hardware and software or any part thereof provided to the County or utilized in performing Consultant's services constitutes an infringement of any patent, copyright or license or any other property right.

In the event the use of any equipment, hardware or software or any part thereof is enjoined, Consultant with all reasonable speed and due diligence shall provide or otherwise secure for County, at the Consultant's election, one of the following: the right to continue use of the equipment, hardware or software; an equivalent system having the Specifications as provided in this Contract; or Consultant shall modify the system or its component parts so that they become non-infringing while performing in a substantially similar manner to the original system, meeting the requirements of this Contract.

j) Examination of Records and Audits

The Consultant agrees that the Cook County Auditor or any of its duly authorized representatives

shall, until expiration of three (3) years after the final payment under the Contract, have access and the right to examine any books, documents, papers, canceled checks, bank statements, purveyor's and other invoices, and records of the Consultant related to the Contract, or to Consultant's compliance with any term, condition or provision thereof. The Consultant shall be responsible for establishing and maintaining records sufficient to document the costs associated with performance under the terms of this Contract.

The Consultant further agrees that it shall include in all of its subcontracts hereunder a provision to the effect that the subconsultant agrees that the Cook County Auditor or any of its duly authorized representatives shall, until expiration of three (3) years after final payment under the subcontract, have access and the right to examine any books, documents, papers, canceled checks, bank statements, purveyor's and other invoices and records of such subconsultant involving transactions relating to the subcontract, or to such subconsultant's compliance with any term, condition or provision thereunder or under the Contract.

In the event the Consultant receives payment under the Contract, reimbursement for which is later disallowed by the County, the Consultant shall promptly refund the disallowed amount to the County on request, or at the County's option, the County may credit the amount disallowed from the next payment due or to become due to the Consultant under any contract with the County.

To the extent this Contract pertains to Deliverables which may be reimbursable under the Medicaid or Medicare Programs, Consultant shall retain and make available upon request, for a period of four (4) years after furnishing services pursuant to this Agreement, the contract, books, documents and records which are necessary to certify the nature and extent of the costs of such services if requested by the Secretary of Health and Human Services or the Comptroller General of the United States or any of their duly authorized representatives. If Consultant carries out any of its duties under the Agreement through a subcontract with a related organization involving a value of cost of \$10,000.00 or more over a 12 month period, Consultant will cause such subcontract to contain a clause to the effect that, until the expiration of four years after the furnishing of any service pursuant to said subcontract, the related organization will make available upon request of the Secretary of Health and Human Services or the Comptroller General of the United States or any of their duly authorized representatives, copies of said subcontract and any books, documents, records and other data of said related organization that

are necessary to certify the nature and extent of such costs. This paragraph relating to the retention and production of documents is included because of possible application of Section 1861(v)(1)(I) of the Social Security Act to this Agreement; if this Section should be found to be inapplicable, then this paragraph shall be deemed inoperative and without force and effect.

k) Subcontracting or Assignment of Contract or Contract Funds

Once awarded, this Contract shall not be subcontracted or assigned, in whole or in part, without the advance written approval of the Chief Procurement Officer, which approval shall be

granted or withheld at the sole discretion of the Chief Procurement Officer. In no case, however, shall such approval relieve the Consultant from its obligations or change the terms of the Contract. The Consultant shall not transfer or assign any Contract funds or any interest therein due or to become due without the advance written approval of the Chief Procurement Officer. The unauthorized subcontracting or assignment of the Contract, in whole or in part, or the unauthorized transfer or assignment of any Contract funds, either in whole or in part, or any interest therein, which shall be due or are to become due the Consultant shall have no effect on the County and are null and void.

Prior to the commencement of the Contract, the Consultant shall identify in writing to the Chief Procurement Officer the names of any and all subconsultants it intends to use in the performance of the Contract. The Chief Procurement Officer shall have the right to disapprove any subconsultant. Identification of subconsultants to the Chief Procurement Officer shall be in addition to any communications with County offices other than the Chief Procurement Officer. All subconsultants shall be subject to the terms of this Contract. Consultant shall incorporate into all subcontracts all of the provisions of the Contract which affect such subcontract. Copies of subcontracts shall be provided to the Chief Procurement Officer upon request.

The Consultant must disclose the name and business address of each subconsultant, attorney, lobbyist, accountant, consultant and any other person or entity whom the Consultant has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Consultant is not required to disclose employees who are paid or estimated to be paid. The Consultant is not required to disclose employees who are paid solely through the Consultant's regular payroll. "Lobbyist" means any person or entity who undertakes to influence any legislation or administrative action on behalf of any person or entity other than: 1) a not-for-profit entity, on an unpaid basis, or (2), himself. "Lobbyist" also means any person or entity any part of whose duties as an employee of another includes undertaking to influence any legislative or administrative action. If the Consultant is uncertain whether a disclosure is required under this Section, the Consultant must either ask the County, whether disclosure is required or make the disclosure.

The County reserves the right to prohibit any person from entering any County facility for any reason. All Consultants and subconsultants of the Consultant shall be accountable to the Chief Procurement Officer or his designee while on any County property and shall abide by all rules and regulations imposed by the County.

D) Professional Social Services

In accordance with 34-146, of the Cook County Procurement Code, all Consultants or providers providing services under a Professional Social Service Contracts or Professional Social Services Agreements, shall submit an annual performance report to the Using Agency, i.e., the agency for whom the Consultant or provider is providing the professional social services, that includes but is not limited to relevant statistics, an empirical analysis where applicable, and a written narrative

describing the goals and objectives of the contract or agreement and programmatic outcomes. The annual performance report shall be provided and reported to the Cook County Board of Commissioners by the applicable Using Agency within forty-five days of receipt. Failure of the Consultant or provider to provide an annual performance report will be considered a breach of contract or agreement by the Consultant or provider, and may result in termination of the Contract or agreement.

For purposes of this Section, a Professional Social Service Contract or Professional Social Service Agreement shall mean any contract or agreement with a social service provider, including other governmental agencies, nonprofit organizations, or for profit business enterprises engaged in the field of and providing social services, juvenile justice, mental health treatment, alternative sentencing, offender rehabilitation, recidivism reduction, foster care, substance abuse treatment, domestic violence services, community transition services, intervention, or such other similar services which provide mental, social or physical treatment and services to individuals. Said Professional Social Service Contracts or Professional Social Service Agreements do not include CCHHS managed care contracts that CCHHS may enter into with health care providers.

ARTICLE 4) TERM OF PERFORMANCE

a) Term of Performance

This Agreement takes effect when approved by the Cook County Board and its term shall begin on December 15, 2014 and continue until December 14, 2019 or until this Agreement is terminated in accordance with its terms, whichever occurs first.

b) Timeliness of Performance

i) Consultant must provide the Services and Deliverables within the term and within the time limits required under this Agreement, pursuant to the provisions of Section 4.a and Exhibit 1. Further, Consultant acknowledges that **TIME IS OF THE ESSENCE** and that the failure of Consultant to comply with the time limits described in this Section 4.b may result in economic or other losses to the County.

ii) Neither Consultant nor Consultant's agents, employees or Subconsultants are entitled to any damages from the County, nor is any party entitled to be reimbursed by the County, for damages, charges or other losses or expenses incurred by Consultant by reason of delays or hindrances in the performance of the Services, whether or not caused by the County.

c) Agreement Extension Option

The Chief Procurement Officer may at any time before this Agreement expires elect to extend this Agreement for up to zero (0) additional one-year periods under the same terms and

conditions as this original Agreement, except as provided otherwise in this Agreement, by notice in writing to Consultant. After notification by the Chief Procurement Officer, this Agreement must be modified to reflect the time extension in accordance with the provisions of Section 10.c.

ARTICLE 5) COMPENSATION

a) Basis of Payment

The County will pay Consultant according to the Price Proposal in the attached Exhibit 4 for the successful completion of services.

b) Method of Payment

All invoices submitted by the Consultant shall be in accordance with the cost provisions according to the Schedule of Compensation in the attached Exhibit 2. The invoices shall contain a detailed description of the Deliverables for which payment is requested. All invoices shall reflect the amounts invoiced by and the amounts paid to the Consultant as of the date of the invoice, and shall be submitted together with a properly completed County Voucher form (29A). Invoices for new charges shall not include "past due" amounts, if any, which amounts must be set forth on a separate invoice. No payments shall be made with respect to invoices which do not include the County Voucher form or which otherwise fail to comply with the requirements of this paragraph. Consultant shall not be entitled to invoice the County for any late fees or other penalties.

c) Funding

The source of funds for payments under this Agreement is identified in Exhibit 3 Price Proposal. Payments under this Agreement must not exceed the dollar amount shown in Exhibit 3 without a written amendment in accordance with Section 10.c.

d) Non-Appropriation

If no funds or insufficient funds are appropriated and budgeted in any fiscal period of the County for payments to be made under this Agreement, then the County will notify Consultant in writing of that occurrence, and this Agreement will terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted. Payments for Services completed to the date of notification will be made to Consultant. No payments will be made or due to Consultant and under this Agreement beyond those amounts appropriated and budgeted by the County to fund payments under this Agreement.

e) Taxes

Federal Excise Tax does not apply to materials purchased by the County by virtue of Exemption Certificate No. 36-75-0038K. Illinois Retailers' Occupation Tax, Use Tax and Municipal Retailers' Occupation Tax do not apply to deliverables, materials or services purchased by the County by virtue of statute. The price or prices quoted herein shall include any and all other federal and/or state, direct and/or indirect taxes which apply to this Contract. The County's State of Illinois Sales Tax Exemption Identification No. is E-9998-2013-05.

f) Price Reduction

If at any time after the contract award, Consultant makes a general price reduction in the price of any of the Deliverables, the equivalent price reduction based on similar quantities and/or considerations shall apply to this Contract for the duration of the Contract period. For purposes of this Section 5.f., Price Reduction, a general price reduction shall include reductions in the effective price charged by Consultant by reason of rebates, financial incentives, discounts, value points or other benefits with respect to the purchase of the Deliverables. Such price reductions shall be effective at the same time and in the same manner as the reduction Consultant makes in the price of the Deliverables to its prospective customers generally.

g) Consultant Credits

To the extent the Consultant gives credits toward future purchases of goods or services, financial incentives, discounts, value points or other benefits based on the purchase of the materials or services provided for under this Contract, such credits belong to the County and not any specific using department. Consultant shall reflect any such credits on its invoices and in the amounts it invoices the County.

ARTICLE 6) DISPUTES

Any dispute arising under the Contract between the County and Consultant shall be decided by the Chief Procurement Officer. The complaining party shall submit a written statement detailing the dispute and specifying the specific relevant Contract provision(s) to the Chief Procurement Officer. Upon request of the Chief Procurement Officer, the party complained against shall respond to the complaint in writing within five days of such request. The Chief Procurement Officer will reduce her decision to writing and mail or otherwise furnish a copy thereof to the Consultant. The decision of the Chief Procurement Officer will be final and binding. Dispute resolution as provided herein shall be a condition precedent to any other action at law or in equity. However, unless a notice is issued by the Chief Procurement Officer indicating that additional time is required to review a dispute, the parties may exercise their contractual remedies, if any, if no decision is made within sixty (60) days following notification to the Chief Procurement Officer of

a dispute. No inference shall be drawn from the absence of a decision by the Chief Procurement Officer. Notwithstanding a dispute, Consultant shall continue to discharge all its obligations, duties and responsibilities set forth in the Contract during any dispute resolution proceeding unless otherwise agreed to by the County in writing.

ARTICLE 7) COMPLIANCE WITH ALL LAWS

The Consultant shall observe and comply with the laws, ordinances, regulations and codes of the Federal, State, County and other local government agencies which may in any manner affect the performance of the Contract including, but not limited to, those County Ordinances set forth in the Certifications attached hereto and incorporated herein. Assurance of compliance with this requirement by the Consultant's employees, agents or subconsultants shall be the responsibility of the Consultant.

The Consultant shall secure and pay for all federal, state and local licenses, permits and fees required hereunder.

ARTICLE 8) SPECIAL CONDITIONS

a) Warranties and Representations

In connection with signing and carrying out this Agreement, Consultant:

- i) warrants that Consultant is appropriately licensed under Illinois law to perform the Services required under this Agreement and will perform no Services for which a professional license is required by law and for which Consultant is not appropriately licensed;
- ii) warrants it is financially solvent; it and each of its employees, agents and Subconsultants of any tier are competent to perform the Services required under this Agreement; and Consultant is legally authorized to execute and perform or cause to be performed this Agreement under the terms and conditions stated in this Agreement;
- iii) warrants that it will not knowingly use the services of any ineligible consultant or Subconsultant for any purpose in the performance of its Services under this Agreement;
- iv) warrants that Consultant and its Subconsultants are not in default at the time this Agreement is signed, and have not been considered by the Chief Procurement Officer to have, within 5 years immediately preceding the date of this Agreement, been found to be in default on any contract awarded by the County ;

v) represents that it has carefully examined and analyzed the provisions and requirements of this Agreement; it understands the nature of the Services required; from its own analysis it has satisfied itself as to the nature of all things needed for the performance of this Agreement; this Agreement is feasible of performance in accordance with all of its provisions and requirements, and Consultant warrants it can and will perform, or cause to be performed, the Services in strict accordance with the provisions and requirements of this Agreement;

vi) represents that Consultant and, to the best of its knowledge, its Subconsultants are not in violation of the provisions of the Illinois Criminal Code, 720 ILCS 5/33E as amended; and

vii) acknowledges that any certification, affidavit or acknowledgment made under oath in connection with this Agreement is made under penalty of perjury and, if false, is also cause for termination under Sections 9.a and 9.c.

b) Ethics

i) In addition to the foregoing warranties and representations, Consultant warrants:

(1) no officer, agent or employee of the County is employed by Consultant or has a financial interest directly or indirectly in this Agreement or the compensation to be paid under this Agreement except as may be permitted in writing by the Board of Ethics.

(2) no payment, gratuity or offer of employment will be made in connection with this Agreement by or on behalf of any Subconsultants to the prime Consultant or higher tier Subconsultants or anyone associated with them, as an inducement for the award of a subcontract or order.

c) Joint and Several Liability

If Consultant, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination of them), then under this Agreement, each and without limitation every obligation or undertaking in this Agreement to be fulfilled or performed by Consultant is the joint and several obligation or undertaking of each such individual or other legal entity.

d) Business Documents

At the request of the County, Consultant must provide copies of its latest articles of incorporation, by-laws and resolutions, or partnership or joint venture agreement, as applicable.

e) Conflicts of Interest

i) No member of the governing body of the County or other unit of government and no other officer, employee or agent of the County or other unit of government who exercises any functions or responsibilities in connection with the Services to which this Agreement pertains is permitted to have any personal interest, direct or indirect, in this Agreement. No member of or delegate to the Congress of the United States or the Illinois General Assembly and no Commissioner of the Cook County Board or County employee is allowed to be admitted to any share or part of this Agreement or to any financial benefit to arise from it.

ii) Consultant covenants that it, and to the best of its knowledge, its Subconsultants if any (collectively, "**Consulting Parties**"), presently have no direct or indirect interest and will not acquire any interest, direct or indirect, in any project or contract that would conflict in any manner or degree with the performance of its Services under this Agreement.

iii) Upon the request of the County, Consultant must disclose to the County its past client list and the names of any clients with whom it has an ongoing relationship. Consultant is not permitted to perform any Services for the County on applications or other documents submitted to the County by any of Consultant's past or present clients. If Consultant becomes aware of a conflict, it must immediately stop work on the assignment causing the conflict and notify the County.

iv) Without limiting the foregoing, if the Consulting Parties assist the County in determining the advisability or feasibility of a project or in recommending, researching, preparing, drafting or issuing a request for proposals or bid specifications for a project, the Consulting Parties must not participate, directly or indirectly, as a prime, subconsultant or joint venturer in that project or in the preparation of a proposal or bid for that project during the term of this Agreement or afterwards. The Consulting Parties may, however, assist the County in reviewing the proposals or bids for the project if none of the Consulting Parties have a relationship with the persons or entities that submitted the proposals or bids for that project.

v) The Consultant further covenants that, in the performance of this Agreement, no person having any conflicting interest will be assigned to perform any Services or have access to any confidential information, as defined in Section 3.h of this Agreement. If the County, by the Chief Procurement Officer in his reasonable judgment, determines that any of Consultant's Services for others conflict with the Services Consultant is to render for the County under this Agreement, Consultant must terminate such other services immediately upon request of the County.

vi) Furthermore, if any federal funds are to be used to compensate or reimburse Consultant under this Agreement, Consultant represents that it is and will remain in compliance with federal restrictions on lobbying set forth in Section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal year 1990, 31 U.S.C. § 1352, and related rules and regulations set forth at 54 Fed. Reg. 52,309 ff. (1989), as amended. If federal funds are to be

used, Consultant must execute a Certification Regarding Lobbying, which will be attached as an exhibit and incorporated by reference as if fully set forth here.

f) Non-Liability of Public Officials

Consultant and any assignee or Subconsultant of Consultant must not charge any official, employee or agent of the County personally with any liability or expenses of defense or hold any official, employee or agent of the County personally liable to them under any term or provision of this Agreement or because of the County's execution, attempted execution or any breach of this Agreement.

ARTICLE 9) EVENTS OF DEFAULT, REMEDIES, TERMINATION, SUSPENSION AND RIGHT TO OFFSET

a) Events of Default Defined

The following constitute events of default:

- i) Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by Consultant to the County.
- ii) Consultant's material failure to perform any of its obligations under this Agreement including the following:
 - (a) Failure due to a reason or circumstances within Consultant's reasonable control to perform the Services with sufficient personnel and equipment or with sufficient material to ensure the performance of the Services;
 - (b) Failure to perform the Services in a manner reasonably satisfactory to the Chief Procurement Officer or inability to perform the Services satisfactorily as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors;
 - (c) Failure to promptly re-perform within a reasonable time Services that were rejected as erroneous or unsatisfactory;
 - (d) Discontinuance of the Services for reasons within Consultant's reasonable control; and
 - (e) Failure to comply with any other material term of this Agreement, including the provisions concerning insurance and nondiscrimination.

- iii) Any change in ownership or control of Consultant without the prior written approval of the Chief Procurement Officer, which approval the Chief Procurement Officer will not unreasonably withhold.
- iv) Consultant's default under any other agreement it may presently have or may enter into with the County during the life of this Agreement. Consultant acknowledges and agrees that in the event of a default under this Agreement the County may also declare a default under any such other Agreements.
- (v) Failure to comply with Article 7 in the performance of the Agreement.
- (vi) Consultant's repeated or continued violations of County ordinances unrelated to performance under the Agreement that in the opinion of the Chief Procurement Officer indicate a willful or reckless disregard for County laws and regulations.

b) Remedies

The occurrence of any event of default permits the County, at the County's sole option, to declare Consultant in default. The Chief Procurement Officer may in his sole discretion give Consultant an opportunity to cure the default within a certain period of time, which period of time must not exceed 30 days, unless extended by the Chief Procurement Officer. Whether to declare Consultant in default is within the sole discretion of the Chief Procurement Officer and neither that decision nor the factual basis for it is subject to review or challenge under the Disputes provision of this Agreement.

The Chief Procurement Officer will give Consultant written notice of the default, either in the form of a cure notice ("**Cure Notice**"), or, if no opportunity to cure will be granted, a default notice ("**Default Notice**"). If the Chief Procurement Officer gives a Default Notice, he will also indicate any present intent he may have to terminate this Agreement, and the decision to terminate (but not the decision not to terminate) is final and effective upon giving the notice. The Chief Procurement Officer may give a Default Notice if Consultant fails to effect a cure within the cure period given in a Cure Notice. When a Default Notice with intent to terminate is given as provided in this Section 9.b and Article 11, Consultant must discontinue any Services, unless otherwise directed in the notice, and deliver all materials accumulated in the performance of this Agreement, whether completed or in the process, to the County. After giving a Default Notice, the County may invoke any or all of the following remedies:

- i) The right to take over and complete the Services, or any part of them, at Consultant's expense and as agent for Consultant, either directly or through others, and bill Consultant for the cost of the Services, and Consultant must pay the difference between the total amount of this bill and the amount the County would have paid Consultant under the terms and conditions of this

Agreement for the Services that were assumed by the County as agent for the Consultant under this Section 9.b;

- ii) The right to terminate this Agreement as to any or all of the Services yet to be performed effective at a time specified by the County;
- iii) The right of specific performance, an injunction or any other appropriate equitable remedy;
- iv) The right to money damages;
- v) The right to withhold all or any part of Consultant's compensation under this Agreement;
- vi) The right to consider Consultant non-responsible in future contracts to be awarded by the County.

If the Chief Procurement Officer considers it to be in the County's best interests, he may elect not to declare default or to terminate this Agreement. The parties acknowledge that this provision is solely for the benefit of the County and that if the County permits Consultant to continue to provide the Services despite one or more events of default, Consultant is in no way relieved of any of its responsibilities, duties or obligations under this Agreement, nor does the County waive or relinquish any of its rights.

The remedies under the terms of this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy is cumulative and is in addition to any other remedies, existing now or later, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any event of default impairs any such right or power, nor is it a waiver of any event of default nor acquiescence in it, and every such right and power may be exercised from time to time and as often as the County considers expedient.

c) Early Termination

In addition to termination under Sections 9.a and 9.b of this Agreement, the County may terminate this Agreement, or all or any portion of the Services to be performed under it, at any time by a notice in writing from the County to Consultant. The County will give notice to Consultant in accordance with the provisions of Article 11. The effective date of termination will be the date the notice is received by Consultant or the date stated in the notice, whichever is later. If the County elects to terminate this Agreement in full, all Services to be provided under it must cease and all materials that may have been accumulated in performing this Agreement, whether completed or in the process, must be delivered to the County effective 10 days after the date the notice is considered received as provided under Article 11 of this Agreement (if no date is given) or upon the effective date stated in the notice.

After the notice is received, Consultant must restrict its activities, and those of its Subconsultants, to winding down any reports, analyses, or other activities previously begun. No costs incurred after the effective date of the termination are allowed. Payment for any Services actually and satisfactorily performed before the effective date of the termination is on the same basis as set forth in Article 5, but if any compensation is described or provided for on the basis of a period longer than 10 days, then the compensation must be prorated accordingly. No amount of compensation, however, is permitted for anticipated profits on unperformed Services. The County and Consultant must attempt to agree on the amount of compensation to be paid to Consultant, but if not agreed on, the dispute must be settled in accordance with Article 6 of this Agreement. The payment so made to Consultant is in full settlement for all Services satisfactorily performed under this Agreement.

Consultant must include in its contracts with Subconsultants an early termination provision in form and substance equivalent to this early termination provision to prevent claims against the County arising from termination of subcontracts after the early termination. Consultant will not be entitled to make any early termination claims against the County resulting from any Subconsultant's claims against Consultant or the County to the extent inconsistent with this provision.

If the County's election to terminate this Agreement for default under Sections 9.a and 9.b is determined in a court of competent jurisdiction to have been wrongful, then in that case the termination is to be considered to be an early termination under this Section 9.c.

d) Suspension

The County may at any time request that Consultant suspend its Services, or any part of them, by giving 15 days prior written notice to Consultant or upon informal oral, or even no notice, in the event of emergency. No costs incurred after the effective date of such suspension are allowed. Consultant must promptly resume its performance of the Services under the same terms and conditions as stated in this Agreement upon written notice by the Chief Procurement Officer and such equitable extension of time as may be mutually agreed upon by the Chief Procurement Officer and Consultant when necessary for continuation or completion of Services. Any additional costs or expenses actually incurred by Consultant as a result of recommencing the Services must be treated in accordance with the compensation provisions under Article 5 of this Agreement.

No suspension of this Agreement is permitted in the aggregate to exceed a period of 45 days within any one year of this Agreement. If the total number of days of suspension exceeds 45 days, Consultant by written notice may treat the suspension as an early termination of this Agreement under Section 9.c.

e) Right to Offset

i) In connection with performance under this Agreement:

The County may offset any excess costs incurred:

- (i) if the County terminates this Agreement for default or any other reason resulting from Consultant's performance or non-performance;
- (ii) if the County exercises any of its remedies under Section 9.b of this Agreement; or
- (iii) if the County has any credits due or has made any overpayments under this Agreement.

The County may offset these excess costs by use of any payment due for Services completed before the County terminated this Agreement or before the County exercised any remedies. If the amount offset is insufficient to cover those excess costs, Consultant is liable for and must promptly remit to the County the balance upon written demand for it. This right to offset is in addition to and not a limitation of any other remedies available to the County.

f.) Delays

Consultant agrees that no charges or claims for damages shall be made by Consultant for any delays or hindrances from any cause whatsoever during the progress of any portion of this Contract.

g.) Prepaid Fees

In the event this Contract is terminated by either party, for cause or otherwise, and the County has prepaid for any Deliverables, Consultant shall refund to the County, on a prorated basis to the effective date of termination, all amounts prepaid for Deliverables not actually provided as of the effective date of the termination. The refund shall be made within fourteen (14) days of the effective date of termination.

ARTICLE 10) GENERAL CONDITIONS

a) Entire Agreement

i) General

This Agreement, and the exhibits attached to it and incorporated in it, constitute the entire agreement between the parties and no other warranties, inducements, considerations, promises or

interpretations are implied or impressed upon this Agreement that are not expressly addressed in this Agreement.

ii) No Collateral Agreements

Consultant acknowledges that, except only for those representations, statements or promises expressly contained in this Agreement and any exhibits attached to it and incorporated by reference in it, no representation, statement or promise, oral or in writing, of any kind whatsoever, by the County, its officials, agents or employees, has induced Consultant to enter into this Agreement or has been relied upon by Consultant, including any with reference to: (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Agreement; (ii) the nature of the Services to be performed; (iii) the nature, quantity, quality or volume of any materials, equipment, labor and other facilities needed for the performance of this Agreement; (iv) the general conditions which may in any way affect this Agreement or its performance; (v) the compensation provisions of this Agreement; or (vi) any other matters, whether similar to or different from those referred to in (i) through (vi) immediately above, affecting or having any connection with this Agreement, its negotiation, any discussions of its performance or those employed or connected or concerned with it.

iii) No Omissions

Consultant acknowledges that Consultant was given an opportunity to review all documents forming this Agreement before signing this Agreement in order that it might request inclusion in this Agreement of any statement, representation, promise or provision that it desired or on that it wished to place reliance. Consultant did so review those documents, and either every such statement, representation, promise or provision has been included in this Agreement or else, if omitted, Consultant relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Agreement in its entirety without claiming reliance on it or making any other claim on account of its omission.

b) Counterparts

This Agreement is comprised of several identical counterparts, each to be fully signed by the parties and each to be considered an original having identical legal effect.

c) Modifications and Amendments

The parties may during the term of the Contract make modifications and amendments to the Contract but only as provided in this section. Such modifications and amendments shall only be made by mutual agreement in writing.

In the case of Contracts not approved by the Board, the Chief Procurement Officer may amend a

contract provided that any such amendment does not extend the Contract by more than one (1) year, and further provided that the total cost of all such amendments does not increase the total amount of the Contract beyond \$150,000. Such action may only be made with the advance written approval of the Chief Procurement Officer. If the amendment extends the Contract beyond one (1) year or increases the total award amount beyond \$150,000, then Board approval will be required.

No County department or employee thereof has authority to make any modifications or amendments to this Contract. Any modifications or amendments to this Contract made without the express written approval of the Chief Procurement Officer is void and unenforceable.

Consultant is hereby notified that, except for modifications and amendments which are made in accordance with this Section 10.c., Modifications and Amendments, no County department or employee thereof has authority to make any modification or amendment to this Contract.

d) Governing Law and Jurisdiction

This Contract shall be governed by and construed under the laws of the State of Illinois. The Consultant irrevocably agrees that, subject to the County's sole and absolute election to the contrary, any action or proceeding in any way, manner or respect arising out of the Contract, or arising from any dispute or controversy arising in connection with or related to the Contract, shall be litigated only in courts within the Circuit Court of Cook County, State of Illinois, and the Consultant consents and submits to the jurisdiction thereof. In accordance with these provisions, Consultant waives any right it may have to transfer or change the venue of any litigation brought against it by the County pursuant to this Contract.

e) Severability

If any provision of this Agreement is held or considered to be or is in fact invalid, illegal, inoperative or unenforceable as applied in any particular case in any jurisdiction or in all cases because it conflicts with any other provision or provisions of this Agreement or of any constitution, statute, ordinance, rule of law or public policy, or for any other reason, those circumstances do not have the effect of rendering the provision in question invalid, illegal, inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions in this Agreement invalid, illegal, inoperative or unenforceable to any extent whatsoever. The invalidity, illegality, inoperativeness or unenforceability of any one or more phrases, sentences, clauses or sections in this Agreement does not affect the remaining portions of this Agreement or any part of it.

f) Assigns

All of the terms and conditions of this Agreement are binding upon and inure to the benefit of the parties and their respective legal representatives, successors and assigns.

g) Cooperation

Consultant must at all times cooperate fully with the County and act in the County's best interests. If this Agreement is terminated for any reason, or if it is to expire on its own terms, Consultant must make every effort to assure an orderly transition to another provider of the Services, if any, orderly demobilization of its own operations in connection with the Services, uninterrupted provision of Services during any transition period and must otherwise comply with the reasonable requests and requirements of the Department in connection with the termination or expiration.

h) Waiver

Nothing in this Agreement authorizes the waiver of a requirement or condition contrary to law or ordinance or that would result in or promote the violation of any federal, state or local law or ordinance.

Whenever under this Agreement the County by a proper authority waives Consultant's performance in any respect or waives a requirement or condition to either the County's or Consultant's performance, the waiver so granted, whether express or implied, only applies to the particular instance and is not a waiver forever or for subsequent instances of the performance, requirement or condition. No such waiver is a modification of this Agreement regardless of the number of times the County may have waived the performance, requirement or condition. Such waivers must be provided to Consultant in writing.

i) Independent Consultant

This Agreement is not intended to and will not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, corporation or other formal business association or organization of any kind between Consultant and the County. The rights and the obligations of the parties are only those expressly set forth in this Agreement. Consultant must perform under this Agreement as an independent Consultant and not as a representative, employee, agent, or partner of the County.

This Agreement is between the County and an independent Consultant and, if Consultant is an individual, nothing provided for under this Agreement constitutes or implies an employer-employee relationship such that:

- i) The County will not be liable under or by reason of this Agreement for the payment of any compensation award or damages in connection with the Consultant performing the Services required under this Agreement.

ii) Consultant is not entitled to membership in the County Pension Fund, Group Medical Insurance Program, Group Dental Program, Group Vision Care, Group Life Insurance Program, Deferred Income Program, vacation, sick leave, extended sick leave, or any other benefits ordinarily provided to individuals employed and paid through the regular payrolls of the County.

iii) The County is not required to deduct or withhold any taxes, FICA or other deductions from any compensation provided to the Consultant.

j) Governmental Joint Purchasing Agreement

Pursuant to Section 4 of the Illinois Governmental Joint Purchasing Act (30 ILCS 525) and the Joint Purchase Agreement approved by the Cook County Board of Commissioners (April 9, 1965), other units of government may purchase goods or services under this contract.

ARTICLE 11) NOTICES

All notices required pursuant to this Contract shall be in writing and addressed to the parties at their respective addresses set forth below. All such notices shall be deemed duly given if hand delivered or if deposited in the United States mail, postage prepaid, registered or certified, return receipt requested. Notice as provided herein does not waive service of summons or process.

If to the County: Cook County Department of Transportation Highways
69 W. Washington Suite 2304
Chicago, Illinois 60602
Attention: Department Director

and

Cook County Chief Procurement Officer
118 North Clark Street. Room 1018
Chicago, Illinois 60602
(Include County Contract Number on all notices)

If to Consultant: MS2
3815 Plaza Drive
Ann Arbor, MI 48108
Attention: Ben Chen, Principal

Changes in these addresses must be in writing and delivered in accordance with the provisions of this Article 11. Notices delivered by mail are considered received three days after mailing in accordance with this Article 11. Notices delivered personally are considered effective upon receipt. Refusal to accept delivery has the same effect as receipt.

ARTICLE 12) AUTHORITY

Execution of this Agreement by Consultant is authorized by a resolution of its Board of Directors, if a corporation, or similar governing document, and the signature(s) of each person signing on behalf of Consultant have been made with complete and full authority to commit Consultant to all terms and conditions of this Agreement, including each and every representation, certification and warranty contained in it, including the representations, certifications and warranties collectively incorporated by reference in it.

EXHIBIT 1
SPECIAL CONDITIONS

CONTENTS

SC-01	COUNTY DATA
SC-02	INCIDENT RESPONSE
SC-03	DATA RETENTION AND DISPOSITION
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SC-05	AUDITS AND INVESTIGATIONS
SC-06	INTELLECTUAL PROPERTY INDEMNIFICATION
SC-07	LIMITATION OF LIABILITY

SC-01 COUNTY DATA

For purposes of this Agreement, "County Data" means all data provided by the County to Consultant, provided by third parties to the Consultant for purposes relating to this Agreement, or otherwise encountered by Consultant for purposes relating to this Agreement, including, without limitation, all data sent to Consultant by the County and/or stored by Consultant on any media relating to the Agreement, including metadata about such data. To the extent there is any uncertainty as to whether any data constitutes County Data, the data in question shall be treated as County Data. Consultant IP is not County Data.

County Data, or any derivatives thereof, provided to Consultant or contained in any Consultant repository shall be and remain the sole and exclusive property of the County. Data created or collected from a third party on behalf of the County by the Consultant as part of this agreement, shall become the property of the County. Consultant is provided a license to County Data hereunder for the sole and exclusive purpose of providing services under this agreement, including a limited non-exclusive, non-transferable license to store, record, transmit, and display County Data only to the extent necessary in the provisioning of the services under this agreement. Except for approved subconsultants, Consultant is prohibited from disclosing County Data to any third party without prior, specific written approval from the County. Consultant shall not use the County Data for any purpose other than that of rendering the Services under this Agreement, nor sell, assign, lease, dispose of or otherwise exploit County Data. Consultant shall not possess or assert any lien or other right against or to County Data.

All County Data, both in motion and at rest, shall be stored only within the continental United States.

The County has secured all necessary licenses, consents, permissions, waivers, and releases for the use of the data that the County provides, including without limitation, all trademarks, logos, names and likenesses contained therein, without any obligation by Consultant to pay any fees, residuals, guild payments, or other compensation of any kind to any person or entity. The County's use, publication, and display of the data that the County provides on the County's new website will not infringe any copyright, patent, trademark, trade secret, or other proprietary or intellectual property right of any person or entity or constitute a defamation, invasion of privacy or violation of any right of publicity or any other right of any person or entity, including, without limitation, any contractual, statutory, or common law right or any "moral right" or similar right however denominated. The County will comply with all applicable laws, rules, and regulations regarding the data that the County provides.

SC-2 INCIDENT RESPONSE

Consultant shall create and implement an incident response plan ("Incident Response Plan") addressing a third party's unauthorized access to County Data that consists of personally identifiable information, non-public information, or confidential information of the County ("Data Breach"). The Incident Response Plan shall, at a minimum: (a) meet all legal

requirements and applicable industry-standard practices; (b) require that Consultant immediately notify the County where it has reason to know that a Data Breach may have occurred; (c) require annual testing and preparedness exercises; and (d) specify that Consultant shall investigate, respond to, and mitigate Data Breaches, but shall coordinate such response and mitigation with the County. The Incident Response Plan shall be subject to the County's approval, which shall not be unreasonably withheld. Consultant shall provide a copy of the Incident Response Plan to the County upon execution of the Agreement.

SC-3 DATA RETENTION AND DISPOSITION

Consultant shall retain County Data in compliance with laws pertaining to the County, including but not limited to the Local Records Act and the rules promulgated thereunder. Consultant will perform backups of County Data and retain such backups of County Data stored in the website CMS in accordance with the SOW. Under no circumstances may Consultant delete or dispose of County Data without County's prior, express, written approval. Under no circumstances, and regardless of any breach of this contract by any party, shall Consultant prevent, or fail to allow, the County's access to County Data or the County's retrieval of County Data. All County Data must be stored only on computer systems located in the continental United States.

Upon termination of this Agreement or upon County's prior, express, written instruction, Consultant shall erase, destroy, and render unreadable County Data in its possession in accordance with this section. Rendering County Data unreadable must prevent its physical reconstruction through the use of commonly available file restoration utilities. Certification in writing that these actions have been completed must be provided within 30 days of the termination of this Agreement or within 7 days of a request of an agent of the County, whichever shall come first. Additionally, where the County approves disposal of County Data, the Consultant agrees that prior to disposal or reuse, all magnetic media that contained County Data shall be submitted to a data sanitization process which meets or exceeds DoD 5220.28-M 3-pass specifications. Certification of the completion of data sanitization shall be provided to the County within 10 days of completion. All other materials which contain County Data shall be physically destroyed and shredded in accordance to NIST Special Publication 800-88.

SC-4 TRANSITION OUT AND TRANSFER

Upon termination of the Agreement, whether upon expiration, upon breach, or otherwise, and at no cost to the County, Consultant shall retrieve, retain, deliver, or destroy County Data as the County reasonably directs. In all cases, Consultant shall provide reasonable assistance to County in accessing and retrieving its County Data.

Consultant agrees that upon termination of this Agreement, and at no additional cost, it shall return all County Data to the County in a useable, non-proprietary, encrypted electronic form. Consultant shall also tender to County, at no additional cost, any existing data dictionaries and maps, so that all County Data can be readily located, searched, extracted, and exported in whole

or in part by County personnel as County deems appropriate, with or without the use of tools provided by Consultant.

Also upon termination of the Agreement and at the maintenance and support hourly rates contained in the SOW, Consultant shall transfer knowledge to the County as reasonably necessary for the County to operate and support the Deliverables. Such knowledge transfer may include the Consultant's training of County personnel and providing up-to-date, accurate and reasonably detailed Documentation.

SC-5 AUDITS AND INVESTIGATIONS

The County's audit, access, and examination rights under this Agreement shall specifically include the following, not to the exclusion of any other rights the County may hold: At all times, the County has the right to access, examine and verify Consultant's Data Security, Incident Response Plan, and BCDR Plan; County may do so directly or through a third party of County's choosing; Upon written request by the County, Consultant shall provide to County reasonably detailed, complete and accurate documentation describing the policies, systems, processes, controls, workflows and dataflows relating to Consultant's Data Security, Incident Response Plan, or BCDR Plan as defined above.

SC-6 INTELLECTUAL PROPERTY INDEMNIFICATION

The indemnification rights and obligation under Article 3 of this Agreement shall specifically include the following, not to the exclusion of any other rights or obligations under such section: Consultant will indemnify and hold the County harmless from and against any and all claims, losses, liability, damages, costs, and expenses (including attorney's fees, expert witness fees, and court costs) directly or indirectly arising from or related to any actual or alleged infringement (including contributory infringement), misappropriation, or violation of any third party's patents, copyrights, trade secret rights, trademarks, or other intellectual property or proprietary rights of any nature in any jurisdiction in the world, resulting from the use of the Deliverables by County, regardless of whether such Deliverables are County IP, Consultant IP or Third Party IP. If the County's continued use of the Services is restricted or prohibited as a result of any such infringement, misappropriation, or violation of third party rights, Consultant shall, at the its option and at no charge to the County, and in addition to the County's other rights and remedies, (a) secure for the County the right to continue using the Services as allowed under this Agreement, (b) modify or replace the infringing components of the Services so that they are non-infringing with no loss or degradation of features, functionality, or performance, or if neither a or b is feasible, then refund to County all amounts paid by County for the affected Services.

SC-7 LIMITATION OF LIABILITY

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, IN NO EVENT (a) SHALL EITHER PARTY BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES (EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES); NOR (b) SHALL EITHER PARTY BE LIABLE FOR

CONSEQUENTIAL DAMAGES (EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), EXCEPT IN THE CASE OF A DATA BREACH OR INFRINGEMENT OF INTELLECTUAL PROPERTY , NOR (c) SHALL EITHER PARTY BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY AMOUNTS IN EXCESS OF \$107,880.00. THE EXCLUSIONS AND LIMITATIONS OF THIS SECTION DO NOT APPLY TO ANY BREACH BY EITHER PARTY OF ITS OBLIGATIONS HEREUNDER REGARDING CONFIDENTIALITY, INDEMNITY, OR LIABILITY ARISING FOR BODILY INJURY OF A PERSON, GROSS NEGLIGENCE, OR WILFULL MISCONDUCT.

CONTRACT NO: 1484-13949

EXHIBIT 2
SCOPE OF WORK



3 planning / implementation

MS2 will implement an enterprise Traffic Safety Management Solution based on the existing and proven software platform of the cloud-based Transportation Data Management System (TMS) developed by MS2. MS2 has put more than a decade of in-depth software development and testing — including over 500,000 lines of software code — into the TMS products. The result is stable, reliable, and interactive web-based software available for customizations at a fraction of the cost that would be required for developing a similar system.

A general system implementation plan is as follows:

TASK 1 – TCLS LICENSE AND SETUP

MS2 staff will conduct a kickoff meeting via WebEx with the agency staff and any stakeholders to complete a full assessment of the agency's needs. The meeting will include the following:

- Introduce key staff members from MS2 and the agency and describe their roles
- Document the full extent of data types and needs to incorporate into the program including GIS layers
- Document the variety/type of anticipated program users
- Identify and document the anticipated customizations that will be required

During or shortly after the meeting, existing databases, GIS layers, and documentations will be collected from the agency.

MS2 will activate a standard TCLS on MS2's secure server for access by the agency. Once activated, the agency staff can begin to use and become familiar with the system through their current web browsers.

Deliverable:

- Fully functional TCLS

TASK 2 – ANNUAL SUPPORT

MS2 will be supporting the cloud-based TCLS as follows:

- Perform system maintenance as necessary
- Perform nightly backup of the system and store copies of the monthly backup offsite as part of MS2's data warehousing procedures
- Implement system enhancements when available
- Provide technical support to the agency and stakeholder users as requested



TASK 3 – DATA MIGRATION

Upon the setup of the standard TCLS, MS2 will perform data migration to import all relevant data into the system, including:

- Raw crash data
- Exiting intersection list
- Existing road segment list
- GIS layers

Deliverable:

- TCLS loaded with all required historic data

TASK 4 – SYSTEM CUSTOMIZATION

MS2 staff will customize the standard TCLS to meet the complete needs of the agency as discussed in the initial needs assessment meeting and any subsequent communications.

Deliverable:

- Fully customized TCLS

TASK 5 – TRAINING WEBINARS

The best way to ensure success of the system is to make sure that the agency staff can effectively use and manage the TCLS. Shortly following system implementation, a series of two (2) training webinars will be conducted. As a combined presentation/demonstration and hands-on question/answer session, the training will enable staff to learn the use of the system in an efficient and effective manner.

Deliverable:

- Two (2) webinars

CONTRACT NO: 1484-13949

EXHIBIT 3

LICENSE AGREEMENT

Transportation Data Management System Software License Agreement

Midwestern Software Solutions (MS2) provides its Software and services to its customers based upon the terms and conditions herein. By ordering the Software and services, you (Licensee) indicate your acceptance of the terms of this License Agreement:

1. DEFINITIONS

(a) "Software" means the Transportation Data Management System (TMS) Software and includes any upgrades and additional modules provided by MS2.

(b) "Documentation" means any materials and documentation provided by MS2 to describe the features and operation of the Software.

2. LICENSE GRANT. Subject to the terms and conditions of this Agreement, MS2 grants to Licensee a non-exclusive license to use the Software.

3. SINGLE AGENCY USE. Licensee may use the Software only for the purposes of its own agency and may not use the Software to store or process data for another agency without first obtaining a separate license for such use.

4. OWNERSHIP. The Software and associated documentation are being licensed, not sold, to Licensee. MS2 owns all rights, title, and interest in and to the Software and associated documentation, including copyrights, patents and other intellectual property rights. Thus, Licensee may not copy, distribute, modify, or use the Software and associated documentation, or any portion thereof, other than what is expressly authorized by this Agreement. The data stored in the Software is the property of the licensee. MS2 may not use, sell or share the data without the licensee's express written consent. These provisions shall not apply if MS2 is required by law to share the data or ordered to produce the data by a court or other legal entity having the legal jurisdiction. MS2 may also share the data if the disclosure is reasonably necessary to defend itself from any legal action or claim, provided that MS2 has provided notice to the Licensee as soon as reasonably practicable. The data shall be delivered to the licensee upon demand or termination of this agreement.

5. NO REVERSE ENGINEERING. Licensee may not cause or permit the Software to be reverse engineered, decompiled, or disassembled, except to the extent that applicable law permits such activity notwithstanding contrary contractual obligations.

6. GOVERNMENT - RESTRICTED RIGHTS. The Software and associated documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in DFARS 252.227-7013 (c)(1)(ii) or FAR 52.227-19, as applicable. Manufacturer is Midwestern Software Solutions, LLC., 3815 Plaza Drive, Ann Arbor, Michigan 48108.

7. WARRANTIES. Licensee acknowledges that (a) the operation of the Software may not be uninterrupted or error-free; and (b) the functions of the Software may not meet Licensee's requirements. MS2 warrants that the Software will function substantially in accordance with the Documentation for a period of which the support fee is paid. MS2 disclaims any and all other warranties as to the Software, including any implied warranties of merchantability and fitness for a particular purpose of use.

8. EXCLUSIVE REMEDIES. Licensee's exclusive remedies for any claims against MS2 arising out of this Agreement will be limited to the following, at the option of MS2: (a) replacement by MS2 of the Software with software which functions substantially in accordance with the Documentation; (b) repair by MS2 of the Software, by patch or workaround, so that it functions substantially in accordance with the Documentation; or (c) refund by MS2 of the funds paid by Licensee and received by MS2 with respect to the Software and services.

9. LIMITATION OF LIABILITY.

(a) Limited Liability of MS2. MS2's liability in connection with the Software, any services, any license granted under this Agreement, or any other matter relating to this Agreement will not exceed the fee that

licensee actually paid to MS2 for the Software or services giving rise to the liability.

(b) Special Exclusions. The Software is intended to be used as a supplement for normal office procedures and is not intended to be a substitute for good professional interpretation, analysis, and judgment. MS2 assumes no liability for any type of damage or injury resulting from use of the Software or from conclusions drawn on information obtained using the Software. Use of the Software and reliance on data obtained using the Software is entirely at the user's risk.

(c) Basis of the bargain. Licensee acknowledges that MS2 has set its fees and entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth in this Agreement, and that those limitations and disclaimers form an essential basis of the bargain between the parties.

10. TERMINATION.

(a) Effect of Termination. Upon termination of this Agreement for any reason, Licensee will discontinue further use of the Software, will promptly return to MS2 or, at MS2' request, will destroy all copies of the Software, and will certify to MS2 in writing that Licensee has done so. MS2 will provide the Licensee with a copy of the Licensee's data stored in the Software at the time of termination.

(b) Survival Of Obligations. The provisions of Sections 5 and 9 shall survive termination of this Agreement.

(c) Termination Is Without Prejudice. Termination of this Agreement will be without prejudice to the terminating party's other rights and remedies pursuant to this Agreement.

11. RENTAL. Licensee may not rent, lease, or lend the Software or any portion thereof.

12. ASSIGNMENT. Licensee may not assign or otherwise transfer any of its rights or obligations under this Agreement and the Software may not be transferred to or used by any other person or entity for any reason whatsoever.

13. SEVERANCE CLAUSE. If any provision of this Agreement is illegal or unenforceable, it will be deemed stricken from the Agreement and the remaining provisions of the Agreement will remain in full force and effect.

CONTRACT NO: 1484-13949

EXHIBIT 4

PRICE PROPOSAL



3815 Plaza Drive
 Ann Arbor, Michigan 48108
 734.995.0200 Fax 734.995-0599
 www.ms2soft.com

TRANSPORTATION DATA MANAGEMENT SYSTEM ORDER FORM (OCTOBER 15, 2014)

Organization:	Cook County Department of Transportation and Highways
Contact Person:	Jennifer (Sis) Killen, P.E., PTOE
Address:	69 W. Washington Street, Room 2345 Chicago, IL 60602
Phone:	312-603-1660
Fax:	312-603-9735
Email:	jennifer.killen@cookcountyl.gov

MODULE	QUANTITY	UNIT PRICE	AMOUNT
Cloud-based TCLS (Traffic Crash) License	1	\$ 50,000	\$ 50,000
Data Migration			
- Import IDOT crash data	24	\$120 / hour	\$2,880
- Integrate Cook County GIS layers			
TCLS Support and Hosting (1 st Year)	1	\$ 10,000/year	\$ 10,000
TCLS Support and Hosting (2 nd Year)	1	\$ 10,500/year	\$ 10,500
TCLS Support and Hosting (3 rd Year)	1	\$ 11,000/year	\$ 11,000
TCLS Support and Hosting (4 th Year)	1	\$ 11,500/year	\$ 11,500
TCLS Support and Hosting (5 th Year)	1	\$ 12,000/year	\$ 12,000
TOTAL AMOUNT			\$107,880

NOTE: Orders are subject to acceptance of MS2. Additional services related to historic data conversion or tailoring TMS to meet specific needs can be provided on a fee to be agreed upon prior to furnishing those services. BY ORDERING THE SOFTWARE AND SERVICES, LICENSEE AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE LICENSE AGREEMENT

CONTRACT NO: 1484-13949

EXHIBIT 5

EVIDENCE OF INSURANCE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/28/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Eric Moore Moore Insurance Services, Inc. 67 N. Howell P.O. Box 207 Hillsdale MI 49242	CONTACT NAME: Cyndi Armstrong PHONE (A/C No. Ext): (517) 439-9345 E-MAIL ADDRESS: info@mooreinsuranceservices.com	FAX (A/C No.): (517) 439-5536
	INSURER(S) AFFORDING COVERAGE INSURER A: Charter Oak Fire Ins. Co. 25615 INSURER B: Travelers Property Casualty Co. 25674 INSURER C: The Travelers Indemnity Co. 25658 INSURER D: Travelers Indemnity Co. of 25682 INSURER E: Beazley Insurance Company 37540 INSURER F:	
INSURED MIDWESTERN SOFTWARE SOLUTIONS, LLC 3815 PLAZA DR ANN ARBOR MI 48108-1655	NAIC #	

COVERAGES CERTIFICATE NUMBER: CL149190501 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY		6800447P655	9/30/2014	9/30/2015	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR					MED EXP (Any one person) \$ 10,000
	<input checked="" type="checkbox"/> Ltd Contractual Liab					PERSONAL & ADV INJURY \$ 1,000,000
	<input checked="" type="checkbox"/> Inland Marine					GENERAL AGGREGATE \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:					PRODUCTS - COMP/OP AGG \$ 2,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					\$
B	AUTOMOBILE LIABILITY		BAOF655874	9/30/2014	9/30/2015	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input type="checkbox"/> ANY AUTO					BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS	<input checked="" type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> NON-OWNED AUTOS				PROPERTY DAMAGE (Per accident) \$
						Uninsured motorist BI split limit \$ 1,000,000
C	<input checked="" type="checkbox"/> UMBRELLA LIAB	<input checked="" type="checkbox"/> OCCUR	CUP0449P600	9/30/2014	9/30/2015	EACH OCCURRENCE \$ 5,000,000
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE				AGGREGATE \$ 5,000,000
	DED	RETENTIONS \$				\$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		UB3965T049	9/30/2014	9/30/2015	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N				E.L. EACH ACCIDENT \$ 500,000
	If yes, describe under DESCRIPTION OF OPERATIONS below	N/A				E.L. DISEASE - EA EMPLOYEE \$ 500,000
						E.L. DISEASE - POLICY LIMIT \$ 500,000
E	Professional Liability		V15W03140801	9/30/2014	9/30/2015	Per Claim \$2,000,000
						Aggregate \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER Cook County 118 N. Clark Street Chicago, IL 60602	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE Eric Moore/ERIC <i>Eric A Moore</i>

CONTRACT NO: 1484-13949

EXHIBIT 6

ECONOMIC DISCLOSURE STATEMENT

ACTION BY WRITTEN CONSENT OF THE
SOLE MEMBER OF
MIDWESTERN SOFTWARE SOLUTIONS, LLC.

The undersigned, being the sole Member of Midwestern Software Solutions, LLC., a Michigan limited liability company (the "Company"), hereby adopts the following resolution by written consent, as permitted by the Michigan Business Corporation Act, effective October 29, 2014:

RESOLVED, that per Section 3.1 of the Operating Agreement for Midwestern Software Solutions, LLC, the following persons are designated to serve as the Managers of the Company:

Arnold Geldermans

Scott W. Betzoldt

Hongbin (Ben) Chen

Patrick L. Hastings

The Managers shall have full authority to manage the business of the Company, as provided in the Operating Agreement for the Company and the Michigan Limited Liability Company Act. Any one Mangers may sign contracts on behalf of the Company.

Midwestern Consulting, LLC
Sole Member

By: 
Arnold Geldermans
General Manager

Before me, VITA M. CIEMIOREK, on this day, personally appeared ARNOLD GELDERMANS, to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

29th day of Oct., 2014.

Notary Public Signature Vita M. Ciemiorek

Notary public, State of Michigan, County of WASHTENAW

My commission expires Dec. 15, 2016

VITA M. CIEMIOREK
NOTARY PUBLIC, STATE OF MI
COUNTY OF WASHTENAW
MY COMMISSION EXPIRES Dec 15, 2016
ACTING IN COUNTY OF

ECONOMIC DISCLOSURE STATEMENT

**ECONOMIC DISCLOSURE STATEMENT
AND EXECUTION DOCUMENT
INDEX**

Section	Description	Pages
Instructions	Instructions for Completion of EDS.....	EDS i - ii
1	MBE/WBE Utilization Plan.....	EDS 1
2	Letter of Intent.....	EDS 2
3	Petition for Reduction/Waiver of MBE/WBE Participation Goals.....	EDS 3
4	Certifications.....	EDS 4, 5
5	Economic and Other Disclosures, Affidavit of Child Support Obligations and Disclosure of Ownership Interest.....	EDS 6 – 12
6	Sole Proprietor Signature Page.....	EDS 13a/b/c
7	Partnership Signature Page.....	EDS 14/a/b/c
8	Limited Liability Corporation Signature Page.....	EDS 15a/b/c
9	Corporation Signature Page.....	EDS 16a/b/c
10	Cook County Signature Page.....	EDS 17

ECONOMIC DISCLOSURE STATEMENTINSTRUCTIONS FOR COMPLETION OF
ECONOMIC DISCLOSURE STATEMENT AND EXECUTION DOCUMENT

This Economic Disclosure Statement and Execution Document ("EDS") is to be completed and executed by every Bidder on a County contract, every party responding to a Request for Proposals or Request for Qualifications ("Proposer"), and others as required by the Chief Procurement Officer. If the Undersigned is awarded a contract pursuant to the procurement process for which this EDS was submitted (the "Contract"), this Economic Disclosure Statement and Execution Document shall stand as the Undersigned's execution of the Contract.

Definitions. Capitalized terms used in this EDS and not otherwise defined herein shall have the meanings given to such terms in the Instructions to Bidders, General Conditions, Request for Proposals, Request for Qualifications, or other documents, as applicable.

"Affiliated Entity" means a person or entity that, directly or indirectly: controls the Bidder, is controlled by the Bidder, or is, with the Bidder, under common control of another person or entity. Indicia of control include, without limitation, interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees; and organization of a business entity following the ineligibility of a business entity to do business with the County under the standards set forth in the Certifications included in this EDS, using substantially the same management, ownership or principals as the ineligible entity.

"Bidder," "Proposer," "Undersigned," or "Applicant," is the person or entity executing this EDS. Upon award and execution of a Contract by the County, the Bidder, Proposer, Undersigned or Applicant, as the case may be, shall become the Contractor or Contracting Party.

"Proposal," for purposes of this EDS, is the Undersigned's complete response to an RFP/RFQ, or if no RFQ/RFP was issued by the County, the "Proposal" is such other proposal, quote or offer submitted by the Undersigned, and in any event a "Proposal" includes this EDS.

"Code" means the Code of Ordinances, Cook County, Illinois available through the Cook County Clerk's Office website (<http://www.cookctyclerk.com/sub/ordinances.asp>). This page can also be accessed by going to www.cookctyclerk.com, clicking on the tab labeled "County Board Proceedings," and then clicking on the link to "Cook County Ordinances."

"Contractor" or "Contracting Party" means the Bidder, Proposer or Applicant with whom the County has entered into a Contract.

"EDS" means this complete Economic Disclosure Statement and Execution Document, including all sections listed in the Index and any attachments.

"Lobby" or "lobbying" means to, for compensation, attempt to influence a County official or County employee with respect to any County matter.

"Lobbyist" means any person or entity who lobbies.

"Prohibited Acts" means any of the actions or occurrences which form the basis for disqualification under the Code, or under the Certifications hereinafter set forth.

Sections 1 through 3: MBE/WBE Documentation. Sections 1 and 2 must be completed in order to satisfy the requirements of the County's MBE/WBE Ordinance, as set forth in the Contract Documents, if applicable. If the Undersigned believes a waiver is appropriate and necessary, Section 3, the Petition for Waiver of MBE/WBE Participation must be completed.

Section 4: Certifications. Section 4 sets forth certifications that are required for contracting parties under the Code. Execution of this EDS constitutes a warranty that all the statements and certifications contained, and all the facts stated, in the Certifications are true, correct and complete as of the date of execution.

Section 5: Economic and Other Disclosures Statement. Section 5 is the County's required Economic and Other Disclosures Statement form. Execution of this EDS constitutes a warranty that all the information provided in the EDS is true, correct and complete as of the date of execution, and binds the Undersigned to the warranties, representations, agreements and acknowledgements contained therein.

ECONOMIC DISCLOSURE STATEMENT

**INSTRUCTIONS FOR COMPLETION OF
ECONOMIC DISCLOSURE STATEMENT AND EXECUTION DOCUMENT**

Sections 6, 7, 8, 9: Execution Forms. The Bidder executes this EDS, and the Contract, by completing and signing three copies of the appropriate Signature Page. Section 6 is the form for a sole proprietor; Section 7 is the form for a partnership or joint venture; Section 8 is the form for a Limited Liability Corporation, and Section 9 is the form for a corporation. Proper execution requires THREE ORIGINALS; therefore, the appropriate Signature Page must be filled in, three copies made, and all three copies must be properly signed, notarized and submitted. The forms may be printed and completed by typing or hand writing the information required.

Required Updates. The information provided in this EDS will be kept current. In the event of any change in any information provided, including but not limited to any change which would render inaccurate or incomplete any certification or statement made in this EDS, the Undersigned will supplement this EDS up to the time the County takes action, by filing an amended EDS or such other documentation as is requested.

Additional Information. The County's Governmental Ethics and Campaign Financing Ordinances, impose certain duties and obligations on persons or entities seeking County contracts, work, business, or transactions. For further information please contact the Director of Ethics at (312) 603-4304 (69 W. Washington St. Suite 3040, Chicago, IL 60602) or visit our web-site at www.cookcountygov.com and go to the Ethics Department link. The Bidder must comply fully with the applicable ordinances.

ECONOMIC DISCLOSURE STATEMENT

MBE/WBE UTILIZATION PLAN (SECTION 1)

BIDDER/PROPOSER HEREBY STATES that all MBE/WBE firms included in this Plan are certified MBEs/WBEs by at least one of the entities listed in the General Conditions.

I. BIDDER/PROPOSER MBE/WBE STATUS: (check the appropriate line)

- Bidder/Proposer is a certified MBE or WBE firm. (If so, attach copy of appropriate Letter of Certification)
- Bidder/Proposer is a Joint Venture and one or more Joint Venture partners are certified MBEs or WBEs. (If so, attach copies of Letter(s) of Certification, a copy of Joint Venture Agreement clearly describing the role of the MBE/WBE firm(s) and its ownership interest in the Joint Venture and a completed Joint Venture Affidavit – available from the Office of Contract Compliance)
- Bidder/Proposer is not a certified MBE or WBE firm, nor a Joint Venture with MBE/WBE partners, but will utilize MBE and WBE firms either directly or indirectly in the performance of the Contract. (If so, complete Sections II and III).

II. Direct Participation of MBE/WBE Firms Indirect Participation of MBE/WBE Firms

Where goals have not been achieved through direct participation, Bidder/Proposer shall include documentation outlining efforts to achieve Direct Participation at the time of Bid/Proposal submission. Indirect Participation will only be considered after all efforts to achieve Direct Participation have been exhausted. Only after written documentation of Good Faith Efforts is received will Indirect Participation be considered.

MBEs/WBEs that will perform as subcontractors/suppliers/consultants include the following:

MBE/WBE Firm: _____

Address: _____

E-mail: _____

Contact Person: _____ Phone: _____

Dollar Amount Participation: \$ _____

Percent Amount of Participation: _____ %

*Letter of Intent attached? Yes No

*Letter of Certification attached? Yes No

MBE/WBE Firm: _____

Address: _____

E-mail: _____

Contact Person: _____ Phone: _____

Dollar Amount Participation: \$ _____

Percent Amount of Participation: _____ %

*Letter of Intent attached? Yes No

*Letter of Certification attached? Yes No

Attach additional sheets as needed.

***Additionally, all Letters of Intent, Letters of Certification and documentation of Good Faith Efforts omitted from this bid/proposal must be submitted to the Office of Contract Compliance so as to assure receipt by the Contract Compliance Administrator not later than three (3) business days after the Bid Opening date.**

ECONOMIC DISCLOSURE STATEMENT

COOK COUNTY GOVERNMENT LETTER OF INTENT (SECTION 2)

M/WBE Firm: _____ Certifying Agency: _____

Address: _____ Certification Expiration Date: _____

City/State: _____ Zip: _____ FEIN #: _____

Phone: _____ Fax: _____ Contact Person: _____

Email: _____ Contract #: _____

Participation: _____ Direct _____ Indirect

Will the M/WBE firm be subcontracting any of the performance of this contract to another firm?

No _____ Yes _____ If "Yes", please attach explanation. Proposed Subcontractor: _____

The undersigned M/WBE is prepared to provide the following Commodities/Services for the above named Project/ Contract:

Indicate the Dollar Amount, or Percentage, and the Terms of Payment for the above-described Commodities/ Services:

(If more space is needed to fully describe M/WBE Firm's proposed scope of work and/or payment schedule, attach additional sheets)

THE UNDERSIGNED PARTIES AGREE that this Letter of Intent will become a binding Subcontract Agreement conditioned upon the Bidder/Proposer's receipt of a signed contract from the County of Cook. The Undersigned Parties do also certify that they did not affix their signatures to this document until all areas under Description of Service/ Supply and Fee/Cost were completed.

Signature (M/WBE)

Signature (Prime Bidder/Proposer)

Print Name

Print Name

Firm Name

Firm Name

Date

Date

Subscribed and sworn before me
this ____ day of _____, 20____.

Subscribed and sworn before me
this ____ day of _____, 20____.

Notary Public _____

Notary Public _____

SEAL

SEAL

ECONOMIC DISCLOSURE STATEMENT

PETITION FOR WAIVER OF MBE/WBE PARTICIPATION (SECTION 3)

A. BIDDER/PROPOSER HEREBY REQUESTS:

_____ FULL MBE WAIVER _____ FULL WBE WAIVER
 _____ REDUCTION (PARTIAL MBE and/or WBE PARTICIPATION)
 _____ % of Reduction for MBE Participation
 _____ % of Reduction for WBE Participation

B. REASON FOR FULL/REDUCTION WAIVER REQUEST:

Bidder/Proposer shall check each item applicable to its reason for a waiver request. Additionally, supporting documentation shall be submitted with this request. If such supporting documentation cannot be submitted with bid/proposal/quotation, such documentation shall be submitted directly to the Office of Contract Compliance no later than three (3) days from the date of submission date.

- _____ (1) Lack of sufficient qualified MBEs and/or WBEs capable of providing the goods or services required by the contract. (Please explain)
- _____ (2) The specifications and necessary requirements for performing the contract make it impossible or economically infeasible to divide the contract to enable the contractor to utilize MBEs and/or WBEs in accordance with the applicable participation. (Please explain)
- _____ (3) Price(s) quoted by potential MBEs and/or WBEs are above competitive levels and increase cost of doing business and would make acceptance of such MBE and/or WBE bid economically impracticable, taking into consideration the Percentage of total contract price represented by such MBE and/or WBE bid. (Please explain)
- _____ (4) There are other relevant factors making it impossible or economically infeasible to utilize MBE and/or WBE firms. (Please explain)

C. GOOD FAITH EFFORTS TO OBTAIN MBE/WBE PARTICIPATION:

- _____ (1) Made timely written solicitation to identified MBEs and WBEs for utilization of goods and/or services; and provided MBEs and WBEs with a timely opportunity to review and obtain relevant specifications, terms and conditions of the proposal to enable MBEs and WBEs to prepare an informed response to solicitation. (Please attach)
- _____ (2) Followed up initial solicitation of MBEs and WBEs to determine if firms are interested in business. (Please attach)
- _____ (3) Advertised in a timely manner in one or more daily newspapers and/or trade publication for MBEs and WBEs for supply of goods and services. (Please attach)
- _____ (4) Used the services and assistance of the Office of Contract Compliance staff. (Please explain)
- _____ (5) Engaged MBEs & WBEs for indirect participation. (Please explain)

D. OTHER RELEVANT INFORMATION:

Attach any other documentation relative to Good Faith Efforts in complying with MBE/WBE participation.

ECONOMIC DISCLOSURE STATEMENT**CERTIFICATIONS (SECTION 4)**

THE FOLLOWING CERTIFICATIONS ARE MADE PURSUANT TO STATE LAW AND THE CODE. THE UNDERSIGNED IS CAUTIONED TO CAREFULLY READ THESE CERTIFICATIONS PRIOR TO SIGNING THE SIGNATURE PAGE. SIGNING THE SIGNATURE PAGE SHALL CONSTITUTE A WARRANTY BY THE UNDERSIGNED THAT ALL THE STATEMENTS, CERTIFICATIONS AND INFORMATION SET FORTH WITHIN THESE CERTIFICATIONS ARE TRUE, COMPLETE AND CORRECT AS OF THE DATE THE SIGNATURE PAGE IS SIGNED. THE UNDERSIGNED IS NOTIFIED THAT IF THE COUNTY LEARNS THAT ANY OF THE FOLLOWING CERTIFICATIONS WERE FALSELY MADE, THAT ANY CONTRACT ENTERED INTO WITH THE UNDERSIGNED SHALL BE SUBJECT TO TERMINATION.

A. PERSONS AND ENTITIES SUBJECT TO DISQUALIFICATION

No person or business entity shall be awarded a contract or sub-contract, for a period of five (5) years from the date of conviction or entry of a plea or admission of guilt, civil or criminal, if that person or business entity:

- 1) Has been convicted of an act committed, within the State of Illinois, of bribery or attempting to bribe an officer or employee of a unit of state, federal or local government or school district in the State of Illinois in that officer's or employee's official capacity;
- 2) Has been convicted by federal, state or local government of an act of bid-rigging or attempting to rig bids as defined in the Sherman Anti-Trust Act and Clayton Act. Act. 15 U.S.C. Section 1 et seq.;
- 3) Has been convicted of bid-rigging or attempting to rig bids under the laws of federal, state or local government;
- 4) Has been convicted of an act committed, within the State, of price-fixing or attempting to fix prices as defined by the Sherman Anti-Trust Act and the Clayton Act. 15 U.S.C. Section 1, et seq.;
- 5) Has been convicted of price-fixing or attempting to fix prices under the laws the State;
- 6) Has been convicted of defrauding or attempting to defraud any unit of state or local government or school district within the State of Illinois;
- 7) Has made an admission of guilt of such conduct as set forth in subsections (1) through (6) above which admission is a matter of record, whether or not such person or business entity was subject to prosecution for the offense or offenses admitted to; or
- 8) Has entered a plea of nolo contendere to charge of bribery, price-fixing, bid-rigging, or fraud, as set forth in sub-paragraphs (1) through (6) above.

In the case of bribery or attempting to bribe, a business entity may not be awarded a contract if an official, agent or employee of such business entity committed the Prohibited Act on behalf of the business entity and pursuant to the direction or authorization of an officer, director or other responsible official of the business entity, and such Prohibited Act occurred within three years prior to the award of the contract. In addition, a business entity shall be disqualified if an owner, partner or shareholder controlling, directly or indirectly, 20 % or more of the business entity, or an officer of the business entity has performed any Prohibited Act within five years prior to the award of the Contract.

THE UNDERSIGNED HEREBY CERTIFIES THAT: The Undersigned has read the provisions of Section A, Persons and Entities Subject to Disqualification, that the Undersigned has not committed any Prohibited Act set forth in Section A, and that award of the Contract to the Undersigned would not violate the provisions of such Section or of the Code.

B. BID-RIGGING OR BID ROTATING

THE UNDERSIGNED HEREBY CERTIFIES THAT: In accordance with 720 ILCS 5/33 E-11, neither the Undersigned nor any Affiliated Entity is barred from award of this Contract as a result of a conviction for the violation of State laws prohibiting bid-rigging or bid rotating.

C. DRUG FREE WORKPLACE ACT

THE UNDERSIGNED HEREBY CERTIFIES THAT: The Undersigned will provide a drug free workplace, as required by Public Act 86-1459 (30 ILCS 580/2-11).

D. DELINQUENCY IN PAYMENT OF TAXES

THE UNDERSIGNED HEREBY CERTIFIES THAT: The Undersigned is not an owner or a party responsible for the payment of any tax or fee administered by Cook County, by a local municipality, or by the Illinois Department of Revenue, which such tax or fee is delinquent, such as bar award of a contract or subcontract pursuant to the Code, Chapter 34, Section 34-129.

E. HUMAN RIGHTS ORDINANCE

No person who is a party to a contract with Cook County ("County") shall engage in unlawful discrimination or sexual harassment against any individual in the terms or conditions of employment, credit, public accommodations, housing, or provision of County facilities, services or programs (Code Chapter 42, Section 42-30 et seq).

ECONOMIC DISCLOSURE STATEMENT**F. ILLINOIS HUMAN RIGHTS ACT**

THE UNDERSIGNED HEREBY CERTIFIES THAT: It is in compliance with the the Illinois Human Rights Act (775 ILCS 5/2-105), and agrees to abide by the requirements of the Act as part of its contractual obligations.

G. MACBRIDE PRINCIPLES, CODE CHAPTER 34, SECTION 34-132

If the primary contractor currently conducts business operations in Northern Ireland, or will conduct business during the projected duration of a County contract, the primary contractor shall make all reasonable and good faith efforts to conduct any such business operations in Northern Ireland in accordance with the MacBride Principles for Northern Ireland as defined in Illinois Public Act 85-1390.

H. LIVING WAGE ORDINANCE PREFERENCE (COOK COUNTY CODE, CHAPTER 34, SECTION 34-127;

The Code requires that a living wage must be paid to individuals employed by a Contractor which has a County Contract and by all subcontractors of such Contractor under a County Contract, throughout the duration of such County Contract. The amount of such living wage is determined from time to time by, and is available from, the Chief Financial Officer of the County.

For purposes of this EDS Section 4, H, "Contract" means any written agreement whereby the County is committed to or does expend funds in connection with the agreement or subcontract thereof. The term "Contract" as used in this EDS, Section 4, I, specifically excludes contracts with the following:

- 1) Not-For Profit Organizations (defined as a corporation having tax exempt status under Section 501(C)(3) of the United State Internal Revenue Code and recognized under the Illinois State not-for-profit law);
- 2) Community Development Block Grants;
- 3) Cook County Works Department;
- 4) Sheriff's Work Alternative Program; and
- 5) Department of Correction inmates.

ECONOMIC DISCLOSURE STATEMENT

REQUIRED DISCLOSURES (SECTION 5)

1. DISCLOSURE OF LOBBYIST CONTACTS

List all persons or entities that have made lobbying contacts on your behalf with respect to this contract:

Name	Address
<u>None</u>	

2. LOCAL BUSINESS PREFERENCE DISCLOSURE; CODE, CHAPTER 34, SECTION 34-151(p):

"Local Business" shall mean a person authorized to transact business in this State and having a bona fide establishment for transacting business located within Cook County at which it was actually transacting business on the date when any competitive solicitation for a public contract is first advertised or announced and further which employs the majority of its regular, full time work force within Cook County, including a foreign corporation duly authorized to transact business in this State and which has a bona fide establishment for transacting business located within Cook County at which it was actually transacting business on the date when any competitive solicitation for a public contract is first advertised or announced and further which employs the majority of its regular, full time work force within Cook County.

a) Is Bidder a "Local Business" as defined above?

Yes _____ No X

b) If yes, list business addresses within Cook County:

c) Does Bidder employ the majority of its regular full-time workforce within Cook County?

Yes _____ No X

3. THE CHILD SUPPORT ENFORCEMENT ORDINANCE (PREFERENCE (CODE, CHAPTER 34, SECTION 34-366))

Every Applicant for a County Privilege shall be in full compliance with any child support order before such Applicant is entitled to receive or renew a County Privilege. When delinquent child support exists, the County shall not issue or renew any County Privilege, and may revoke any County Privilege.

All Applicants are required to review the Cook County Affidavit of Child Support Obligations attached to this EDS (EDS-8) and complete the following, based upon the definitions and other information included in such Affidavit.

ECONOMIC DISCLOSURE STATEMENT

4. REAL ESTATE OWNERSHIP DISCLOSURES.

The Undersigned must indicate by checking the appropriate provision below and providing all required information that either:

a) The following is a complete list of all real estate owned by the Undersigned in Cook County:

PERMANENT INDEX NUMBER(S): _____

(ATTACH SHEET IF NECESSARY TO LIST ADDITIONAL INDEX NUMBERS)

OR:

b) The Undersigned owns no real estate in Cook County.

5. EXCEPTIONS TO CERTIFICATIONS OR DISCLOSURES.

If the Undersigned is unable to certify to any of the Certifications or any other statements contained in this EDS and not explained elsewhere in this EDS, the Undersigned must explain below:

If the letters, "NA", the word "None" or "No Response" appears above, or if the space is left blank, it will be conclusively presumed that the Undersigned certified to all Certifications and other statements contained in this EDS.

COOK COUNTY
10-01-17 10:00:00 AM
na

ECONOMIC DISCLOSURE STATEMENT

COOK COUNTY DISCLOSURE OF OWNERSHIP INTEREST STATEMENT

The Cook County Code of Ordinances (§2-610 et seq.) requires that any Applicant for any County Action must disclose information concerning ownership interests in the Applicant. This Disclosure of Ownership Interest Statement must be completed with all information current as of the date this Statement is signed. Furthermore, this Statement must be kept current, by filing an amended Statement, until such time as the County Board or County Agency shall take action on the application. The information contained in this Statement will be maintained in a database and made available for public viewing.

If you are asked to list names, but there are no applicable names to list, you must state NONE. An incomplete Statement will be returned and any action regarding this contract will be delayed. A failure to fully comply with the ordinance may result in the action taken by the County Board or County Agency being voided.

"Applicant" means any Entity or person making an application to the County for any County Action.

"County Action" means any action by a County Agency, a County Department, or the County Board regarding an ordinance or ordinance amendment, a County Board approval, or other County agency approval, with respect to contracts, leases, or sale or purchase of real estate.

"Entity" or "Legal Entity" means a sole proprietorship, corporation, partnership, association, business trust, estate, two or more persons having a joint or common interest, trustee of a land trust, other commercial or legal entity or any beneficiary or beneficiaries thereof.

This Disclosure of Ownership Interest Statement must be submitted by :

- 1. An Applicant for County Action and
- 2. An individual or Legal Entity that holds stock or a beneficial interest in the Applicant and is listed on the Applicant's Statement (a "Holder") must file a Statement and complete #1 only under Ownership Interest Declaration.

Please print or type responses clearly and legibly. Add additional pages if needed, being careful to identify each portion of the form to which each additional page refers.

This Statement is being made by the Applicant or Stock/Beneficial Interest Holder

This Statement is an: Original Statement or Amended Statement

Identifying Information:

Name: Midwestern Software Solutions D/B/A: _____ EIN NO.: 20-2394124

Street Address: 3815 Plaza Drive

City: Ann Arbor State: MI Zip Code: 48108

Phone No.: 734-995-0200

Form of Legal Entity:

- Sole Proprietor Partnership Corporation Trustee of Land Trust
- Business Trust Estate Association Joint Venture
- Other (describe) LLC

EDS-9
MAY 13 2013
MIDWESTERN BALL

ECONOMIC DISCLOSURE STATEMENT

Ownership Interest Declaration:

- 1. List the name(s), address, and percent ownership of each individual and each Entity having a legal or beneficial interest (including ownership) of more than five percent (5%) in the Applicant/Holder.

Name	Address	Percentage Interest in Applicant/Holder
Midwestern Consulting, LLC,	3815 Plaza Drive, Ann Arbor, MI 48108	100%

- 2. If the interest of any individual or any Entity listed in (1) above is held as an agent or agents, or a nominee or nominees, list the name and address of the principal on whose behalf the interest is held.

Name of Agent/Nominee	Name of Principal	Principal's Address

- 3. Is the Applicant constructively controlled by another person or Legal Entity? [] Yes [] No

If yes, state the name, address and percentage of beneficial interest of such person or legal entity, and the relationship under which such control is being or may be exercised.

Name	Address	Percentage of Beneficial Interest	Relationship
Midwestern Consulting, LLC,	3815 Plaza Drive, MI 48108,	100%,	Parent Company

Declaration (check the applicable box):

- [] I state under oath that the Applicant has withheld no disclosure as to ownership interest in the Applicant nor reserved any information, data or plan as to the intended use or purpose for which the Applicant seeks County Board or other County Agency action.
- [] I state under oath that the Holder has withheld no disclosure as to ownership interest nor reserved any information required to be disclosed.

Ben Chen

Principal

Name of Authorized Applicant/Holder Representative (please print or type) Title



10/28/2014

Signature

Date

bc@ms2soft.com

734-995-0200

E-mail address

Phone Number

Subscribed to and sworn before me

My commission expires:

this 28 day of Oct, 2014
x Vita M. Ciemiorek

Dec. 15, 2016

Notary Public Signature

Notary Seal

VITA M. CIEMIOREK
 NOTARY PUBLIC, STATE OF MI
 COUNTY OF WASHTENAW
 MY COMMISSION EXPIRES Dec 15, 2016
 ACTING IN COUNTY OF

ECONOMIC DISCLOSURE STATEMENT

**COOK COUNTY BOARD OF ETHICS
69 W. WASHINGTON STREET, SUITE 3040
CHICAGO, ILLINOIS 60602
312/603-4304
312/603-9988 FAX 312/603-1011 TT/TDD**

FAMILIAL RELATIONSHIP DISCLOSURE PROVISION:

Section 2-582 of the Cook County Ethics Ordinance requires any person or persons doing business with Cook County, upon execution of a contract with Cook County, to disclose to the Cook County Board of Ethics the existence of familial relationships they may have with all persons holding elective office in the State of Illinois, the County of Cook, or in any municipality within the County of Cook.

The disclosure required by this section shall be filed by January 1 of each calendar year or within thirty (30) days of the execution of any contract or lease. Any person filing a late disclosure statement after January 31 shall be assessed a late filing fee of \$100.00 per day that the disclosure is late. Any person found guilty of violating any provision of this section or knowingly filing a false, misleading, or incomplete disclosure to the Cook County Board of Ethics shall be prohibited, for a period of three (3) years, from engaging, directly or indirectly, in any business with Cook County. Note: Please see Chapter 2 Administration, Article VII Ethics, Section 2-582 of the Cook County Code to view the full provisions of this section.

If you have questions concerning this disclosure requirement, please call the Cook County Board of Ethics at (312) 603-4304. Note: A current list of contractors doing business with Cook County is available via the Cook County Board of Ethics' website at: http://www.cookcountygov.com/taxonomy/ethics/Listings/cc_ethics_VendorList_.pdf

DEFINITIONS:

"Calendar year" means January 1 to December 31 of each year.

"Doing business" for this Ordinance provision means any one or any combination of leases, contracts, or purchases to or with Cook County or any Cook County agency in excess of \$25,000 in any calendar year.

"Familial relationship" means a person who is related to an official or employee as spouse or any of the following, whether by blood, marriage or adoption:

Parent	Grandparent	Stepfather
Child	Grandchild	Stepmother
Brother	Father-in-law	Stepson
Sister	Mother-in-law	Stepdaughter
Aunt	Son-in-law	Stepbrother
Uncle	Daughter-in-law	Stepsister
Niece	Brother-in-law	Half-brother
Nephew	Sister-in-law	Half-sister

"Person" means any individual, entity, corporation, partnership, firm, association, union, trust, estate, as well as any parent or subsidiary of any of the foregoing, and whether or not operated for profit.

COOK COUNTY BOARD OF ETHICS
RECEIVED
JAN 11 2011
10:00 AM

ECONOMIC DISCLOSURE STATEMENT

SWORN FAMILIAL RELATIONSHIP DISCLOSURE FORM

Pursuant to Section 2-582 of the Cook County Ethics Ordinance, any person* doing business* with Cook County must disclose, to the Cook County Board of Ethics, the existence of familial relationships* to any person holding elective office in the State of Illinois, Cook County, or in any municipality within Cook County. Please print your responses.

Name of Owner/Employee: Ben Chen Title: Principal
Business Entity Name: Midwestern Software Solutions, LLC Phone: 734-995-0200
Business Entity Address: 3815 Plaza Drive, Ann Arbor, MI 48108

_____ The following familial relationship exists between the owner or any employee of the business entity contracted to do business with Cook County and any person holding elective office in the State of Illinois, Cook County, or in any municipality within Cook County.

Owner/Employee Name:	Related to:	Relationship:
1. _____		
2. _____		
3. _____		
4. _____		
5. _____		

If more space is needed, attach an additional sheet following the above format.

There is no familial relationship that exists between the owner or any employee of the business entity contracted to do business with Cook County and any person holding elective office in the State of Illinois, Cook County, or in any municipality within Cook County.

To the best of my knowledge and belief, the information provided above is true and complete.

[Signature] _____ Date 10/28/2014

Owner/Employee's Signature
Subscribe and sworn before me this 28 day of Oct, 2014.

a Notary Public in and for Washtenaw County
Vita M. Ciemiorek

(Signature)

NOTARY PUBLIC

SEAL

My Commission expires Dec. 15, 2016
VITA M. CIEMIOREK
NOTARY PUBLIC, STATE OF MI
COUNTY OF WASHTENAW
MY COMMISSION EXPIRES Dec 15, 2016
ACTING IN COUNTY OF _____

Completed forms must be filed within 30 days of the execution of any contract or lease with Cook County and should be mailed to:

Cook County Board of Ethics
69 West Washington Street,
Suite 3040
Chicago, Illinois 60602

ECONOMIC DISCLOSURE STATEMENT

SIGNATURE BY A SOLE PROPRIETOR

(SECTION 6)

The Undersigned hereby certifies and warrants: that all of the statements, certifications and representations set forth in this EDS are true, complete and correct; that the Undersigned is in full compliance and will continue to be in compliance throughout the term of the Contract or County Privilege issued to the Undersigned with all the policies and requirements set forth in this EDS; and that all facts and information provided by the Undersigned in this EDS are true, complete and correct. The Undersigned agrees to inform the Chief Procurement Officer in writing if any of such statements, certifications, representations, facts or information becomes or is found to be untrue, incomplete or incorrect during the term of the Contract or County Privilege.

BUSINESS NAME: _____

BUSINESS ADDRESS: _____

BUSINESS TELEPHONE: _____ FAX NUMBER: _____

FEIN/SSN: _____

COOK COUNTY BUSINESS REGISTRATION NUMBER: _____

SOLE PROPRIETOR'S SIGNATURE: _____

PRINT NAME: _____

DATE: _____

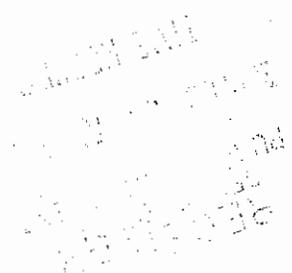
Subscribed to and sworn before me
this ____ day of _____, 20____.

My commission expires:

X _____

Notary Public Signature

Notary Seal



ECONOMIC DISCLOSURE STATEMENT

SIGNATURE BY A SOLE PROPRIETOR
(SECTION 6)

The Undersigned hereby certifies and warrants: that all of the statements, certifications and representations set forth in this EDS are true, complete and correct; that the Undersigned is in full compliance and will continue to be in compliance throughout the term of the Contract or County Privilege issued to the Undersigned with all the policies and requirements set forth in this EDS; and that all facts and information provided by the Undersigned in this EDS are true, complete and correct. The Undersigned agrees to inform the Chief Procurement Officer in writing if any of such statements, certifications, representations, facts or information becomes or is found to be untrue, incomplete or incorrect during the term of the Contract or County Privilege.

BUSINESS NAME: _____

BUSINESS ADDRESS: _____

BUSINESS TELEPHONE: _____ FAX NUMBER: _____

FEIN/SSN: _____

COOK COUNTY BUSINESS REGISTRATION NUMBER: _____

SOLE PROPRIETOR'S SIGNATURE: _____

PRINT NAME: _____

DATE: _____

Subscribed to and sworn before me
this ____ day of _____, 20____.

My commission expires:

X _____
Notary Public Signature

Notary Seal

ECONOMIC DISCLOSURE STATEMENT

SIGNATURE BY A SOLE PROPRIETOR

(SECTION 6)

The Undersigned hereby certifies and warrants: that all of the statements, certifications and representations set forth in this EDS are true, complete and correct; that the Undersigned is in full compliance and will continue to be in compliance throughout the term of the Contract or County Privilege issued to the Undersigned with all the policies and requirements set forth in this EDS; and that all facts and information provided by the Undersigned in this EDS are true, complete and correct. The Undersigned agrees to inform the Chief Procurement Officer in writing if any of such statements, certifications, representations, facts or information becomes or is found to be untrue, incomplete or incorrect during the term of the Contract or County Privilege.

BUSINESS NAME: _____

BUSINESS ADDRESS: _____

BUSINESS TELEPHONE: _____ FAX NUMBER: _____

FEIN/SSN: _____

COOK COUNTY BUSINESS REGISTRATION NUMBER: _____

SOLE PROPRIETOR'S SIGNATURE: _____

PRINT NAME: _____

DATE: _____

Subscribed to and sworn before me

this ____ day of _____, 20 ____.

X _____

Notary Public Signature

My commission expires:

Notary Seal

ECONOMIC DISCLOSURE STATEMENT

SIGNATURE BY A PARTNERSHIP (AND/OR A JOINT VENTURE)

(SECTION 7)

The Undersigned hereby certifies and warrants: that all of the statements, certifications and representations set forth in this EDS are true, complete and correct; that the Undersigned is in full compliance and will continue to be in compliance throughout the term of the Contract or County Privilege issued to the Undersigned with all the policies and requirements set forth in this EDS; and that all facts and information provided by the Undersigned in this EDS are true, complete and correct. The Undersigned agrees to inform the Chief Procurement Officer in writing if any of such statements, certifications, representations, facts or information becomes or is found to be untrue, incomplete or incorrect during the term of the Contract or County Privilege.

BUSINESS NAME: _____

BUSINESS ADDRESS: _____

BUSINESS TELEPHONE: _____ FAX NUMBER: _____

FEIN/SSN: _____

*COOK COUNTY BUSINESS REGISTRATION NUMBER: _____

SIGNATURE OF PARTNER AUTHORIZED TO EXECUTE CONTRACTS ON BEHALF OF PARTNERSHIP:

*BY: _____

DATE: _____

Subscribed to and sworn before me
this ____ day of _____, 20____

My commission expires:

X _____

Notary Public Signature

Notary Seal

* Attach hereto a partnership resolution or other document authorizing the individual signing this Signature Page to so sign on behalf of the Partnership.

ECONOMIC DISCLOSURE STATEMENT

SIGNATURE BY A PARTNERSHIP (AND/OR A JOINT VENTURE)

(SECTION 7)

The Undersigned hereby certifies and warrants: that all of the statements, certifications and representations set forth in this EDS are true, complete and correct; that the Undersigned is in full compliance and will continue to be in compliance throughout the term of the Contract or County Privilege issued to the Undersigned with all the policies and requirements set forth in this EDS; and that all facts and information provided by the Undersigned in this EDS are true, complete and correct. The Undersigned agrees to inform the Chief Procurement Officer in writing if any of such statements, certifications, representations, facts or information becomes or is found to be untrue, incomplete or incorrect during the term of the Contract or County Privilege.

BUSINESS NAME: _____

BUSINESS ADDRESS: _____

BUSINESS TELEPHONE: _____ FAX NUMBER: _____

FEIN/SSN: _____

*COOK COUNTY BUSINESS REGISTRATION NUMBER: _____

SIGNATURE OF PARTNER AUTHORIZED TO EXECUTE CONTRACTS ON BEHALF OF PARTNERSHIP:

*BY: _____

DATE: _____

Subscribed to and sworn before me

My commission expires:

this ____ day of _____, 20____.

X _____

Notary Public Signature

Notary Seal

* Attach hereto a partnership resolution or other document authorizing the individual signing this Signature Page to so sign on behalf of the Partnership.

ECONOMIC DISCLOSURE STATEMENT

**SIGNATURE BY A PARTNERSHIP (AND/OR A JOINT VENTURE)
(SECTION 7)**

The Undersigned hereby certifies and warrants: that all of the statements, certifications and representations set forth in this EDS are true, complete and correct; that the Undersigned is in full compliance and will continue to be in compliance throughout the term of the Contract or County Privilege issued to the Undersigned with all the policies and requirements set forth in this EDS; and that all facts and information provided by the Undersigned in this EDS are true, complete and correct. The Undersigned agrees to inform the Chief Procurement Officer in writing if any of such statements, certifications, representations, facts or information becomes or is found to be untrue, incomplete or incorrect during the term of the Contract or County Privilege.

BUSINESS NAME: _____

BUSINESS ADDRESS: _____

BUSINESS TELEPHONE: _____ FAX NUMBER: _____

FEIN/SSN: _____

*COOK COUNTY BUSINESS REGISTRATION NUMBER: _____

SIGNATURE OF PARTNER AUTHORIZED TO EXECUTE CONTRACTS ON BEHALF OF PARTNERSHIP:

*BY: _____

DATE: _____

Subscribed to and sworn before me
this ____ day of _____, 20____.

My commission expires:

X _____

Notary Public Signature

Notary Seal

* Attach hereto a partnership resolution or other document authorizing the individual signing this Signature Page to so sign on behalf of the Partnership.

ECONOMIC DISCLOSURE STATEMENT

SIGNATURE BY A LIMITED LIABILITY CORPORATION

(SECTION 8)

The Undersigned hereby certifies and warrants: that all of the statements, certifications and representations set forth in this EDS are true, complete and correct; that the Undersigned is in full compliance and will continue to be in compliance throughout the term of the Contract or County Privilege issued to the Undersigned with all the policies and requirements set forth in this EDS; and that all facts and information provided by the Undersigned in this EDS are true, complete and correct. The Undersigned agrees to inform the Chief Procurement Officer in writing if any of such statements, certifications, representations, facts or information becomes or is found to be untrue, incomplete or incorrect during the term of the Contract or County Privilege.

BUSINESS NAME: Midwestern Software Solutions, LLC

BUSINESS ADDRESS: 3815 Plaza Drive, Ann Arbor, MI 48108

BUSINESS TELEPHONE: 734-995-0200 FAX NUMBER: 734-995-0599

CONTACT PERSON: Ben Chen

FEIN: 20-2394124 *CORPORATE FILE NUMBER: _____

MANAGING MEMBER: Arnold Geldermans MANAGING MEMBER: Ben Chen

**SIGNATURE OF MANAGER: _____

ATTEST: *Arnold Geldermans*

Subscribed to and sworn before me

this 5th day of Nov, 2014.

X *Vita M. Ciemiorek*

Notary Public Signature

Notary Seal

* If the LLC is not registered in the State of Illinois, a copy of a current Certificate of Good Standing from the state of incorporation must be submitted with this Signature Page.

** Attach either a certified copy of the by-laws, articles, resolution or other authorization demonstrating such persons to sign the Signature Page on behalf of the LLC.

VITA M. CIEMIOREK
NOTARY PUBLIC, STATE OF MI
COUNTY OF WASHTENAW
MY COMMISSION EXPIRES Dec 15, 2018
ACTING IN COUNTY OF

ECONOMIC DISCLOSURE STATEMENT

SIGNATURE BY A CORPORATION

(SECTION 9)

The Undersigned hereby certifies and warrants: that all of the statements, certifications and representations set forth in this EDS are true, complete and correct; that the Undersigned is in full compliance and will continue to be in compliance throughout the term of the Contract or County Privilege issued to the Undersigned with all the policies and requirements set forth in this EDS; and that all facts and information provided by the Undersigned in this EDS are true, complete and correct. The Undersigned agrees to inform the Chief Procurement Officer in writing if any of such statements, certifications, representations, facts or information becomes or is found to be untrue, incomplete or incorrect during the term of the Contract or County Privilege.

BUSINESS NAME: _____

BUSINESS ADDRESS: _____

BUSINESS TELEPHONE: _____ FAX NUMBER: _____

CONTACT PERSON: _____

FEIN: _____ *CORPORATE FILE NUMBER: _____

PLEASE LIST THE FOLLOWING OFFICERS:

PRESIDENT: _____ VICE PRESIDENT: _____

SECRETARY: _____ TREASURER: _____

**SIGNATURE OF PRESIDENT: _____

ATTEST: _____ (CORPORATE SECRETARY)

Subscribed to and sworn before me
this ____ day of _____, 20____.

My commission expires: _____

X _____

Notary Public Signature

Notary Seal

*If the corporation is not registered in the State of Illinois, a copy of the Certificate of Good Standing from the state of incorporation must be submitted with this Signature Page.

**In the event that this Signature Page is signed by any persons than the President and Secretary, attach either a certified copy of the corporate by-laws, resolution or other authorization by the corporation, authorizing such persons to sign the Signature Page on behalf of the corporation.

ECONOMIC DISCLOSURE STATEMENT

SIGNATURE BY A CORPORATION

(SECTION 9)

The Undersigned hereby certifies and warrants: that all of the statements, certifications and representations set forth in this EDS are true, complete and correct; that the Undersigned is in full compliance and will continue to be in compliance throughout the term of the Contract or County Privilege issued to the Undersigned with all the policies and requirements set forth in this EDS; and that all facts and information provided by the Undersigned in this EDS are true, complete and correct. The Undersigned agrees to inform the Chief Procurement Officer in writing if any of such statements, certifications, representations, facts or information becomes or is found to be untrue, incomplete or incorrect during the term of the Contract or County Privilege.

BUSINESS NAME: _____

BUSINESS ADDRESS: _____

BUSINESS TELEPHONE: _____ FAX NUMBER: _____

CONTACT PERSON: _____

FEIN: _____ *CORPORATE FILE NUMBER: _____

PLEASE LIST THE FOLLOWING OFFICERS:

PRESIDENT: _____ VICE PRESIDENT: _____

SECRETARY: _____ TREASURER: _____

****SIGNATURE OF PRESIDENT:** _____

ATTEST: _____ (CORPORATE SECRETARY)

Subscribed to and sworn before me
this ____ day of _____, 20____.

My commission expires:

X _____

Notary Public Signature

Notary Seal

***If the corporation is not registered in the State of Illinois, a copy of the Certificate of Good Standing from the state of incorporation must be submitted with this Signature Page.**

****In the event that this Signature Page is signed by any persons than the President and Secretary, attach either a certified copy of the corporate by-laws, resolution or other authorization by the corporation, authorizing such persons to sign the Signature Page on behalf of the corporation.**

ECONOMIC DISCLOSURE STATEMENT

SIGNATURE BY A CORPORATION

(SECTION 9)

The Undersigned hereby certifies and warrants: that all of the statements, certifications and representations set forth in this EDS are true, complete and correct; that the Undersigned is in full compliance and will continue to be in compliance throughout the term of the Contract or County Privilege issued to the Undersigned with all the policies and requirements set forth in this EDS; and that all facts and information provided by the Undersigned in this EDS are true, complete and correct. The Undersigned agrees to inform the Chief Procurement Officer in writing if any of such statements, certifications, representations, facts or information becomes or is found to be untrue, incomplete or incorrect during the term of the Contract or County Privilege.

BUSINESS NAME: _____

BUSINESS ADDRESS: _____

BUSINESS TELEPHONE: _____ FAX NUMBER: _____

CONTACT PERSON: _____

FEIN: _____ *CORPORATE FILE NUMBER: _____

PLEASE LIST THE FOLLOWING OFFICERS:

PRESIDENT: _____ VICE PRESIDENT: _____

SECRETARY: _____ TREASURER: _____

**SIGNATURE OF PRESIDENT: _____

ATTEST: _____ (CORPORATE SECRETARY)

Subscribed to and sworn before me
this ____ day of _____, 20____.

My commission expires:

X _____

Notary Public Signature

Notary Seal

*If the corporation is not registered in the State of Illinois, a copy of the Certificate of Good Standing from the state of incorporation must be submitted with this Signature Page.

**In the event that this Signature Page is signed by any persons than the President and Secretary, attach either a certified copy of the corporate by-laws, resolution or other authorization by the corporation, authorizing such persons to sign the Signature Page on behalf of the corporation.

ATTACHMENT 1

North Carolina, City of Charlotte Contract No. 1400047

**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG**

**AGREEMENT TO PROVIDE CRASH REPORTING
AND TRAFFIC DATA SOFTWARE SERVICES**

THIS PROFESSIONAL SERVICES CONTRACT (the "Contract") is made and entered into as of this 9th day of August 2013 (the "Effective Date"), by and between Midwestern Software Solutions, LLC d/b/a MS2, a Michigan corporation doing business in North Carolina (the "Company"), and the City of Charlotte, a North Carolina municipal corporation (the "City").

RECITALS

WHEREAS, the City issued a Request For Proposals (RFP # 269-2013-074) for Crash Reporting and Traffic Data Software dated May 1, 2013. This Request for Proposals together with all attachments and addenda, is referred to herein as the "RFP"; and

WHEREAS, the City desires that the Company provide certain Crash Reporting and Traffic Data Software, and the Company desires to provide such Services; and

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

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

CONTRACT

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

- Exhibit A: Scope of Work
- Exhibit B: Pricing Worksheet
- Exhibit C: Project Plan
- Exhibit D: Scope of Maintenance Services
- Exhibit E: License

Each reference to this Contract shall be deemed to include all Exhibits. Any conflict between language in an Exhibit or Appendix and language in the main body of this Contract shall be resolved in favor of the main body of this Contract. Each reference to **MS2** in the Exhibits and Appendices shall be deemed to mean the Company.

2. DEFINITIONS.

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

- 2.8. **COMPANY PROJECT MANAGER** - Refers to a specified Company employee representing the best interests of the Company for this Project.
- 2.9. **COMPANY SOFTWARE** - Refers to all pre-existing software owned by the Company or any of its "Related Entities" which the Company provides or is required to provide under this Contract, and all Updates and Enhancements to the foregoing. The term "Related Entity" shall mean any person or entity that is directly or indirectly in control of, controlled by, or under common control with the Company, including but not limited to, parent, subsidiary, and affiliate entities. The word, "control," as used in this context, shall mean ownership of a sufficient percentage (not necessarily a majority) of the outstanding voting interests in an entity so as to afford effective control of the management of the entity.
- 2.10. **CONTRACT** - Refers to this written agreement executed by the City and Company for the Services as outlined herein.
- 2.11. **CRASH** - Refers to a traffic incident involving one (1) or more vehicles that results in damage or loss of property or injuries estimated over \$1,000.00 or any that involve a pedestrian or cyclist.
- 2.12. **CRASH DIAGRAM** - Refers to the graphical representation of Crashes at a specific location. These diagrams are used to display similar Crash types to discern patterns and include location (intersection or mid-block), Crash type, injury severity, speed of vehicle, and other related information.
- 2.13. **CURRENT RELEASE** - Refers to the latest version of the Software offered for general commercial distribution at a given point in time, including all Updates.
- 2.14. **DEFECT** - Refers to any failure of the System or any component thereof to fully conform to the Specifications and Requirements. A non-conformity is not a Defect if it results directly from the City's improper use or damage, unless it is reasonably likely that such non-conformity would have occurred on that or another occasion even without the City's improper use or damage.
- 2.15. **DELIVERABLES** - Refers to all tasks, reports, information, designs, plans and other items, which the Company is required to complete and deliver to the City in connection with this Contract.
- 2.16. **DEPARTMENT**. Refers to a department within the City of Charlotte.
- 2.17. **DOCUMENTATION** - Refers to all written, electronic, or recorded works, that describe the use, functions, features, or purpose of the Deliverables or Services or any component thereof, and which are published or provided to the City by the Company or its subcontractors, including without limitation all end user manuals, training manuals, guides, program listings, data models, flow charts, logic diagrams, and other materials related to or for use with the Deliverables or Services.
- 2.18. **EFFECTIVE DATE** - Refers to the date this Contract is fully executed by all parties to the Contract.
- 2.19. **ENHANCEMENTS** - Refers to any products, parts of products, improvements, additions or materials which are not included in the Products at the time of execution of an Agreement or that are subsequently developed, which modify the Products to provide a function or feature not originally offered or an improvement in function.
- 2.20. **FHWA** - Refers to the Federal Highway Administration.
- 2.21. **GUI** - Refers to Graphic User Interface.
- 2.22. **HARDWARE** - Refers to all hardware, equipment and materials which the Company actually provides or is required to provide under the terms of this Contract (whether now or in the future).
- 2.23. **IMPLEMENTATION** - Refers to the importing of Crash data and Traffic Data; data cleaning and manipulation; and other tasks to develop the usable database for the final Software.
- 2.24. **LICENSE** - Refers to the license agreement attached hereto as Exhibit E.
- 2.25. **MAINTENANCE SERVICES** - Refers to the maintenance services described in Exhibit D.
- 2.26. **MIDBLOCK** - Refers to volume, classification, and speed of vehicles at a specific location.

- 2.27. **MILESTONES** - Refers to the benchmarks of performance (consisting of an identified deadline for the completion of specific services and/or the Acceptance of identified Deliverables), as specified in this Contract.
- 2.28. **MODULE** - Refers to subsections of the Software including Crash reporting, Travel Time, Travel Data - Midblock, and Travel Data - Turning Movement Count.
- 2.29. **PRODUCTS** - Refers to all Software and all Hardware (both as herein defined).
- 2.30. **PROJECT PLAN** - Refers to the plan for delivery of the Services as described in Exhibit C in the form accepted in writing by the City in accordance with the terms of this Contract.
- 2.31. **RECYCLED MATERIAL** - Refers to material and by-products which have been recovered or diverted from solid waste for the purpose of recycling. It does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.
- 2.32. **SERVICES** - Refers to the Crash Reporting and Traffic Data Software as requested in this Contract.
- 2.33. **SOFTWARE** - Refers to (i) all Company Software; (ii) all Third Party Software; and (iv) all Updates and Enhancements of any of the foregoing.
- 2.34. **SPECIFICATIONS AND REQUIREMENTS** - Refers to all definitions, descriptions, requirements, criteria, warranties, and performance standards relating to the Deliverables and Services which are set forth or referenced in: (i) this Contract; (ii) the Documentation; and (iii) any functional and/or technical specifications which are published or provided by the Company or its licensors or suppliers from time to time with respect to all or any part of the Deliverables or Services.
- 2.35. **SQL** - Refers to special query language used in database management.
- 2.36. **SYSTEM** - Refers to Crash reporting and Traffic Data Software to be installed, configured and maintained by the Company under this Contract, including but not limited to all Products.
- 2.37. **SYSTEM ACCEPTANCE** - The term "System Acceptance" shall mean acceptance by the City of the complete System to be provided.
- 2.38. **TECHNOLOGY MANAGEMENT** - Refers to the Technology Management Division of the City's Shared Services Department.
- 2.39. **TRAFFIC COUNT** - Refers to volume, classification, and speed of vehicles at a specific location.
- 2.40. **TRAFFIC DATA** - Refers to traffic counts, turning movement counts, and travel time data.
- 2.41. **TRAINING** - Refers to the training courses and materials provided by the Company in support of the Software.
- 2.42. **TRAVEL TIME DATA** - Refers to point to point data including speed profiles and travel time-space trajectories.
- 2.43. **TURNING MOVING COUNT** - Refers to volume and classification of vehicular through and turning movements and pedestrian crossings at an intersection.
- 2.44. **UPDATES** - Refers to program logic changes made by the Company or its subcontractors or vendors to correct Defects in the Products and/or related Documentation delivered hereunder.
- 2.45. **WARRANTY PERIOD** - Refers to the twelve-month period following System Acceptance.
- 2.46. **WORKAROUND** - Refers to a reasonable change in the procedures followed or data supplied to avoid a Defect that does not impair the performance of the System or increase the cost of using the System.
- 2.47. **WORK PRODUCT** - Refers to the Deliverables and all other programs, algorithms, reports, information, designs, plans and other items developed by the Company in connection with this Contract, and all partial, intermediate or preliminary versions of any of the foregoing.

3. GENERAL DESCRIPTION OF SERVICES.

The Company shall provide the Implementation Services described in **Exhibit A** and any other design, development, supply, installation, consulting, System integration, Software development, project management, training, technical and other Services necessary to deliver and implement the System so that

it is in production at the City in full compliance with the Specifications and Requirements on or before the following planned Acceptance dates:

Module	Planned Acceptance Date
Crash Reporting	October 11, 2013
Traffic Data – Turning Movement Count	November 1, 2013
Traffic Data – Midblock	November 1, 2013
Travel Time	June 30, 2014

The Company shall also provide the Maintenance Services described in Exhibit D. The Company shall perform the Implementation Services on-site at the City's facilities in Charlotte, North Carolina, except as otherwise stated in this Contract or agreed in writing by the City.

4. COMPENSATION.

4.1. **PURCHASE PRICE.** The City shall pay the Company a fixed price for the purchase of each Module, as described in Exhibit B, Section 1 (the "Purchase Price"), as full and complete consideration for the satisfactory performance of all the requirements of this Contract other than Maintenance Services beyond the Warranty Period ("Extended Maintenance Services"). The Purchase Price is allocated to the Implementation, Training and Software Delivery in accordance with Exhibit B, Section 1. The amount of the Purchase Price referenced in this Section constitutes the total fees, charges, and expenses payable to the Company under this Contract for everything other than the Support and Maintenance Services, and shall not be increased except by a written instrument duly executed by the City, which expressly states that it amends this Section of this Contract.

4.2. **EXTENDED SUPPORT AND MAINTENANCE SERVICES.** The City shall pay the Company for Maintenance and Support Services at the fixed prices described in Exhibit B, Section 2. The City shall have the option to purchase Extended Support and Maintenance Services for the duration of the initial five (5) year term of this Contract, beginning on the Acceptance date of each Module, plus any subsequent renewal terms. The City shall be entitled to exercise its option to buy Extended Maintenance Service for a given one (1) year option period by: (a) providing written notice to the Company at any time prior to or within sixty (60) days following the beginning of such one (1) year option period; or (b) issuing payment to the Company's invoice for such one (1) year option period. The Company shall invoice the City for Maintenance Fees on an annual basis, but not more than sixty (60) days prior to the beginning of the upcoming one (1) year extended maintenance term.

4.3. INVOICES.

4.1.1. Each invoice sent by the Company shall detail all Services performed and delivered which are necessary to entitle the Company to the requested payment under the terms of this Contract.

4.1.2. The Company shall email all invoices to cocap@ci.charlotte.nc.us

OR

The Company shall mail all invoices to:

City of Charlotte AP
Attn: CDOT – Jon Shaben
P. O. Box 37979
Charlotte, NC 28237-7979

For either option, Accounts Payable (or AP) must be in the first line. On the Attn: line, you must indicate the department or area, along with the appropriate contact name.

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

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

- 4.5. **PRE-CONTRACT COSTS.** The City shall not be charged for any Services or other work performed by the Company prior to the Effective Date.
- 4.6. **AUDIT.** During the term of this Contract and for a period of two years after termination of this Contract, the City shall have the right to audit, either itself or through an independent auditor, all books and records and facilities of the Company necessary to evaluate Company's compliance with the terms and conditions of this Contract or the City's payment obligations. The City shall pay its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs of the Company. However, if non-compliance is found that would have cost the City in excess of \$10,000 but for the audit, then the Company shall be required to reimburse the City for the cost of the audit.
5. **TIME IS OF THE ESSENCE.** Time is of the essence in having the Company perform all Services and deliver all Products within the time frames provided by this Contract and the Project Plan, including all completion dates, response times and resolution times (the "Completion Dates"). Except as specifically stated in this Contract, there shall be no extensions of the Completion Dates. All references to days in this Contract (including the Exhibits) shall refer to calendar days rather than business days, unless this Contract provides otherwise for a specific situation.
6. **PRODUCT PURCHASE AND DELIVERY.**
- 6.1. **COMPANY TO PROVIDE ALL HARDWARE AND SOFTWARE.** As part of the Purchase Price, the Company shall provide all Hardware, Software, labor, equipment, and materials required in order for the Crash Reporting and Traffic Data Software System to perform in accordance with the Specifications and Requirements, except for those items that are specifically listed in **Exhibit B** as a City responsibility.
- 6.2. **DELIVERY SCHEDULE.** The Company shall deliver the Products by the delivery dates set forth in the Project Schedule, as may be modified by the parties' mutual consent in the Project Plan.
7. **NON-APPROPRIATION OF FUNDS.**
If the City Council does not appropriate the funding needed by the City to make payments under this Contract for any given fiscal year, the City will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the City will promptly notify the Company of the non-appropriation and this Contract will be terminated at the end of the fiscal year for which the funds were appropriated. No act or omission by the City that is attributable to non-appropriation of funds shall constitute a breach of or default under this Contract.
8. **DUTY OF COMPANY TO IDENTIFY AND REQUEST INFORMATION, PERSONNEL AND FACILITIES.**
Throughout the duration of this Contract, the Company shall identify and request in writing from the City Project Manager all City resources that may reasonably be required by the Company to perform the Services (the "City Resources"), including all information, City staff, equipment, facility or materials needed by the Company. The Company shall request City Resources far enough in advance to allow adequate planning and availability on the City's part and to avoid unnecessary expense or overtime. Notwithstanding the foregoing, the Company shall not be entitled to request that the City provide City Resources other than those identified as a City responsibility in Exhibit A (with respect to the Maintenance Services) unless the City can do so at no significant cost. If the City Project Manager fails to provide within a reasonable time period a City Resource that this Contract requires the City to provide, the Company will notify the responsible City Department Director of such failure. The Company shall not be relieved of any failure to perform under this Contract by virtue of the City's failure to provide any City resource: (i) that the Company failed to identify and request in writing from the City pursuant to this Section; or (ii) which the City is not required to provide pursuant to this Contract. To the extent the Company is excused from performance under the terms of this Section, the Company will only be excused for delays that occur after it has given notice to the City Department Director of the City's failure.
9. **REMOVAL, REPLACEMENT AND PROMOTION OF COMPANY PERSONNEL.** The City will have the right to require the removal and replacement of any personnel of the Company or the Company's subcontractors who are assigned to provide Services to the City. The City shall be entitled to exercise such right in its sole discretion by providing written notice to the Company.

The City must approve in writing any hires or transfers of personnel to "Key Personnel" positions on the Project, and the City shall have the right to interview all personnel that the Company proposes to hire or transfer to such positions. As used in this Contract, the term "Key Personnel" shall mean the Company Project Manager, and any other personnel of the Company or its subcontractors who are identified as Key Personnel in an Exhibit to the Contract, or whom the City from time to time designates in writing to the Company as fulfilling a key role in the Project. Unless approved by the City in writing, the Company will not: (i) remove the Company's Key Personnel from the Project or permit its subcontractors to remove Key Personnel from the Project; or (ii) materially reduce the involvement of the Company's Key Personnel in the Project or allow its subcontractors to materially reduce the involvement of Key Personnel in the Project.

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

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

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

10. REPRESENTATIONS AND WARRANTIES OF COMPANY.

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

- (a) For a period of twelve (12) months after System Acceptance (the "Warranty Period"), the System will fully comply with the Specifications and Requirements, and all federal, state and local laws, regulations, codes and guidelines that apply to it (including any changes to such laws, etc.).
- (b) All Products and Services delivered after System Acceptance shall fully conform to the Specifications and Requirements for a period of one (1) year after acceptance of such Product or Service by the City.
- (c) For as long as the City exercises its options to purchase Extended Maintenance Services, the System will fully comply with the Specifications and Requirements, and all federal, state and local laws, regulations, codes and guidelines that apply to it (including changes to such laws, etc.).
- (d) All Software provided by the Company or its subcontractors is and will be free of viruses, worms and Trojan horses, and any code designed to disable the Software because of the passage of time, alleged failure to make payments due, or otherwise (except for documented security measures such as password expiration functions);
- (e) All Software and Hardware is and will be year 2000 Compliant (as defined below).
- (f) In accordance with the North Carolina electronic data-processing records law N.C.G.S. §132-6-1:
 - 9.1.f.1. All Software and Documentation provided by the Company or its subcontractors will have sufficient information and capabilities to enable the City to permit the public inspection and examination and to provide electronic copies of public records stored, manipulated or retrieved by the System; and
 - 9.1.f.2. All Software and Documentation provided by the Company or its subcontractors will have sufficient information to enable the City to create an index containing the following information with respect to each database used by the System without extraordinary commitments of staff or resources: (i) annotated list of data fields: name, description, and restricted field indicator; (ii) description of the format or record layout; (iii) frequency with which the database is updated; (iv) list of any data fields to which public access is restricted; (v) description of each form in which the database can be copied or reproduced; (vi) title of the database; (vii) owner of the data; (viii) narrative description of the database; (ix) person creating the index; and (x) purpose of the database. The Company agrees that the City may copy and disclose the information listed above in

response to requests for database information under the North Carolina General Statutes.

- (g) All Documentation for the Products and the System is and will be in all material respects complete and accurate, and will enable data processing professionals and other City employees with ordinary skills and experience to utilize the Products and the System for the expressed purpose for which they are being acquired by the City;
- (h) All work performed by the Company and/or its subcontractors pursuant to this Contract shall meet the highest industry standards and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;
- (i) Neither the Services, nor the Products, nor any Deliverables provided by the Company under this Contract will violate, infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party, or any other third party rights (including without limitation non-compete agreements); and
- (j) All Hardware shall be delivered and shall remain free and clear of all liens and encumbrances. The Company shall not place or allow to be placed on the Software any third party lien or encumbrance of any kind at any time which could conceivably interfere with the City's use of the Software or the Company's maintenance of the Software.

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

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

If the Company breaches the warranty set forth in **Section 10.1(a)**, the City, without limiting any other remedies it may have under this Contract or at law, shall be entitled to an immediate refund of all amounts paid to the Company or its subcontractors or licensors under this Contract.

- 10.2. **ADDITIONAL WARRANTIES.** Company further represents and warrants that:
- (b) It is a corporation duly incorporated, validly existing and in good standing under the laws of the state of Michigan;
 - (c) It has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Contract;
 - (d) The execution, delivery, and performance of this Contract have been duly authorized by the Company;
 - (e) No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Contract;
 - (f) In connection with its obligations under this Contract, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses; and
 - (g) The Company shall not violate any agreement with any third party by entering into or performing this Contract.

11. REMEDIES.

- 11.1. **RIGHT TO COVER.** If the Company fails to meet any completion date or resolution time set forth in this Contract (including the Exhibits) or the Project Plan, the City may take any of the following actions with or without terminating this Contract, and in addition to and without limiting any other remedies it may have:
- (a) Employ such means as it may deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and the Company is again able to resume performance under this Contract; and
 - (b) Deduct any and all expenses incurred by the City in obtaining or performing the Services from any money then due or to become due the Company and, should the City's cost of obtaining or performing the services exceed the amount due the Company, collect the amount due from the Company.
- 11.2. **RIGHT TO WITHHOLD PAYMENT.** If the Company breaches any provision of this Contract, the City shall have a right to withhold all payments due to the Company until such breach has been fully cured.
- 11.3. **SPECIFIC PERFORMANCE AND INJUNCTIVE RELIEF.** The Company agrees that monetary damages are not an adequate remedy for the Company's failure to provide the Products, Services or System as required by this Contract, nor could monetary damages be the equivalent of the performance of such obligation. Accordingly, the Company hereby consents to an order granting specific performance of such obligations of the Company in a court of competent jurisdiction within the State of North Carolina. The Company further consents to the City obtaining injunctive relief (including a temporary restraining order) to assure performance in the event the Company breaches the Contract.
- 11.4. **SETOFF.** Each party shall be entitled to setoff and deduct from any amounts owed to the other party pursuant to this Contract all damages and expenses incurred as a result of the other party's breach of this Contract.
- 11.5. **OTHER REMEDIES.** Upon breach of this Contract, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

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

13. TERM AND TERMINATION.

- 13.1. **TERM.** This Contract shall commence on the Effective Date and shall continue in effect for five (5) years with the City having the unilateral right to renew for two (2) consecutive one (1) year terms.
- 13.2. **TERMINATION WITHOUT CAUSE.** The City may terminate this Contract at any time without cause by giving thirty (30) days written notice to the Company. As soon as practicable after receipt of a written notice of termination without cause, Company shall submit a statement to the City showing in detail the Services performed under this Contract through the date of termination. In the event of termination without cause pursuant to this Section, the City agrees to: (i) pay the Company a pro rata amount of the purchase price for Implementation Services rendered through the termination date based on percentage of completion of the applicable payment Milestones; and (ii) return all Hardware which the City elects not to keep, and (iii) pay the Company for any Hardware received by the City which the City has elected to keep, or which has been damaged by the City so as to preclude return. The forgoing payment obligation is contingent upon: (i) the Company having fully complied with Section 13.7; and (ii) the Company having provided the City with written documentation reasonably adequate to verify the number of hours of Services rendered by each person through the termination date and the percentage of completion of each task.

13.3. **TERMINATION FOR DEFAULT BY EITHER PARTY.** By giving written notice to the other party, either party may terminate this Contract upon the occurrence of one or more of the following events:

- (a) The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Contract, provided that, unless otherwise stated in this Contract, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party; or
- (b) The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Contract shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.

Any notice of default pursuant to this Section 13.3 shall identify this Section of this Contract and shall state the party's intent to terminate this Contract if the default is not cured within the specified period.

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

- (a) Failure of the Company to complete and deliver a particular Product, Deliverable or Service by the completion date set forth in this Contract (including the Exhibits) or the Project Plan;
- (b) Failure of the Company to correct all Defects and deficiencies identified by the City with respect to a Deliverable within the time period set forth in Exhibit C;
- (c) Failure of the Company to correct all items identified in a Rejection Notice within the time period specified in Exhibit D;
- (d) Failure of the Company to resolve a problem within the time set forth in Exhibit D regarding Maintenance Services (whether during the Warranty Period or during Extended Maintenance Services);
- (e) The Company makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Contract, Company's Proposal, or any covenant, agreement, obligation, term or condition contained in this Contract; or
- (f) The Company takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Contract, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Contract, or failure to provide the proof of insurance as required by this Contract.

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

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

- 13.7. **OBLIGATIONS UPON EXPIRATION OR TERMINATION.** Upon expiration or termination of this Contract, the Company shall promptly (a) return to the City all computer programs, files, documentation, data, media, related material and any other material and equipment that is owned by the City; (b) deliver to the City all Work Product; (c) allow the City or a new service provider access to the systems, software, infrastructure, or processes of the Company that are necessary to mitigate the Services to a new service provider; and (d) refund to the City all pre-paid Maintenance Fees based on a pro-rata as determined by the City.
- 13.8. **NO SUSPENSION.** In the event that the City disputes in good faith an allegation of default by the Company, notwithstanding anything to the contrary in this Contract, the Company agrees that it will not terminate this Contract or suspend or limit the delivery of Products or Services or any warranties or repossess, disable or render unusable any Software supplied by the Company, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.
- 13.9. **AUTHORITY TO TERMINATE.** The following persons are authorized to terminate this Contract on behalf of the City: (a) the City Manager, any Assistant City Manager or any designee of the City Manager; (b) the Department Director of the City Department responsible for administering this Contract.

14. TRANSITION SERVICES UPON TERMINATION. Upon termination or expiration of this Contract, the Company shall cooperate with the City to assist with the orderly transfer of the Services, functions and operations provided by the Company hereunder to another provider or to the City as determined by the City in its sole discretion. The transition services that the Company shall perform if requested by the City include but are not limited to:

- 14.1. Working with the City to jointly develop a mutually agreed upon transition services plan to facilitate the termination of the Services;
- 14.2. Notifying all affected service providers and subcontractors of the Company of transition activities;
- 14.3. Performing the transition service plan activities;
- 14.4. Answering questions on an as-needed basis; and
- 14.5. Providing such other reasonable services needed to effectuate an orderly transition to a new system.

15. CHANGES. In the event changes to the Services (collectively "Change"), become necessary or desirable to the parties, the parties shall follow the procedures set forth in this Section. A Change shall be effective only when documented by a written, dated agreement executed by both parties which expressly references this Contract (a "Change Statement"). The Change Statement shall set forth in detail: (i) the Change requested, including all modifications of the duties of the parties; (ii) the reason for the proposed Change; and (iii) a detailed analysis of the impact of the Change on the results of the Services and time for completion of the Services, including the impact on all Milestones and delivery dates and any associated price. In the event either party desires a Change, the Project Manager for such party shall submit to the other party's Project Manager a proposed Change Statement. If the receiving party does not accept the Change Statement in writing within ten (10) days, the receiving party shall be deemed to have rejected the Change Statement. If the parties cannot reach agreement on a proposed Change, the Company shall nevertheless continue to render performance under this Contract in accordance with its (unchanged) terms and conditions.

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

16. INTELLECTUAL PROPERTY.

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

- 16.2. **CITY OWNERSHIP.** The City shall have exclusive ownership of all intellectual property rights in all Deliverables and other Work Product created by the Company or its subcontractors in connection with this Contract, including all modifications, Updates, Enhancements, and Documentation relating thereto, and including but not limited to all copyrights, patents and trade secrets (collectively "City Intellectual Property"). The Company hereby assigns and transfers all rights in the City Intellectual Property to the City. The Company further agrees to execute and deliver such assignments and other documents as the City may later require to perfect, maintain, and enforce the City's rights as sole owner of the City Intellectual Property, including all rights under patent and copyright law. The Company hereby appoints the City as attorney in fact to execute all such assignments and instruments and agree that its appointment of the City as an attorney in fact is coupled with an interest and is irrevocable.

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

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

17. OTHER OBLIGATIONS OF COMPANY.

- 17.1. **WORK ON CITY'S PREMISES.** The Company will ensure that its employees and agents shall, whenever on the City's premises, obey all instructions and directions issued by the City with respect to rules, regulations, policies and security procedures applicable to work on the City's premises. The Company agrees that its personnel and the personnel of its subcontractors will comply with all such rules, regulations and security procedures when on the City's premises.
- 17.2. **DAMAGE TO EQUIPMENT OR FACILITIES.** The Company shall be responsible for any damage to or loss of the City's equipment or facilities arising out of the negligent or willful act or omission of the Company or its subcontractors.
- 17.3. **RESPECTFUL AND COURTEOUS BEHAVIOR.** The Company shall assure that its employees interact with County employees and with the public in a courteous, helpful and impartial manner. All employees of the Company in both field and office shall refrain from belligerent behavior and/or profanity. Correction of any such behavior and language shall be the responsibility of the Company.

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

- 18.1. The Company shall provide the City with prompt written notice of all upgrades, enhancements and modifications to the Products or Services that become available during the term of this Contract (the "New Technology").
- 18.2. Unless specified in writing by the City in a specific instance, all Products provided by the Company will be the latest, most recent version available as of the time of installation. The Company will schedule installation of all Products as late in the process as is reasonably practicable to meet the Project Plan deadlines. Unless specified in writing by the City in a specific instance, the Company will continually update the Software after installation at no additional cost and it shall be a condition of System Acceptance that all Software be the latest, most current version available as of the date of System Acceptance.

- 18.3. If the Company causes a delay in the Project of six months or more, it shall be a condition of System Acceptance (at the City's option) that the Hardware is the latest, most recent version available as of six months prior to the date of System Acceptance.
- 18.4. Notwithstanding anything contained in this Contract to the contrary, the City shall have the option to reject proposed New Technology and to accept less that the most current version of the Products by providing written notice to the Company.
- 18.5. The Company shall make the New Technology available to the City at no additional cost if required by this Contract, or if New Technology is generally commercially available to the Company's customers at no additional cost. Notwithstanding the foregoing, there shall be no additional charges for providing the most recent version of the Hardware as required by Section 18.2 or 18.3.
- 18.6. The Company shall provide additional details and estimated prices to the City at the request of the City, if the City wants to consider further the possible addition of the New Technology.
- 18.7. Notwithstanding anything contained herein to the contrary, neither the acceptance of proposed New Technology by the City nor the amendment of this Contract to incorporate New Technology shall relieve the Company from its obligations under this Contract to satisfy the Specifications and Requirements.

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

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

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

20.1. General Requirements.

- 20.1.1. The Company shall not commence any work in connection with this Contract until it has obtained all of the types of insurance set forth in this Section 20, and the City has approved such insurance. The Company shall not allow any subcontractor to commence work on its subcontract until all insurance required of the subcontractor has been obtained and approved.

- 20.1.2. All insurance policies required by Section 20.1 shall be with insurers qualified and doing business in North Carolina recognized by the Secretary of State and the Insurance Commissioner's Office. The Company shall name the City as an additional insured under the commercial general liability policy required by Section 20.1.
- 20.1.3. The Company's insurance, except for Automobile Liability, shall be primary of any self-funding and/or insurance otherwise carried by the City for all loss or damages arising from the Consultant's operations under this agreement. The Company and each of its subcontractors shall and does waive all rights of subrogation against the City and each of the Indemnitees (as defined in Section 19).
- 20.1.4. The City shall be exempt from, and in no way liable for any sums of money that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Company and/or subcontractor providing such insurance.
- 20.1.5. Within three (3) days after execution of this Contract, the Company shall provide the City with certificates of insurance documenting that the insurance requirements set forth in this Section 20 have been met, and that the City be given thirty (30) days' written notice of any intent to amend coverage or make material changes to or terminate any policy by either the insured or the insurer. The Company shall further provide such certificates of insurance to the City at any time requested by the City after execution of this Contract, and shall provide such certificates within five (5) days after the City's request. The City's failure to review a certificate of insurance sent by or on behalf of the Company shall not relieve the Company of its obligation to meet the insurance requirements set forth in this Contract.
- 20.1.6. Should any or all of the required insurance coverage be self-funded/self-insured, the Company shall furnish to the City a copy of the Certificate of Self-Insurance or other documentation from the North Carolina Department of Insurance.
- 20.1.7. If any part of the work under this contract is sublet, the subcontractor shall be required to meet all insurance requirements set forth in this Section 20, provided that the amounts of the various types of insurance shall be such amounts as are approved by the City in writing. However, this will in no way relieve the Consultant from meeting all insurance requirements or otherwise being responsible for the subcontractor
- 20.2. *Types of Insurance.* The Company agrees to purchase and maintain during the life of this Contract with an insurance company, acceptable to the City, authorized to do business in the State of North Carolina the following insurance:
- 20.2.1. *Automobile Liability.* Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit - bodily injury and property damage.
- 20.2.2. *Commercial General Liability.* Bodily injury and property damage liability as shall protect the Company and any subcontractor performing work under this Contract, from claims of bodily injury or property damage which arise from operation of this Contract, whether such operations are performed by the Company, any subcontractor, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate, or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, operations, personal injury liability and contractual liability, assumed under the indemnity provision of this Contract.
- 20.2.3. *Electronic Errors and Omissions.* Professional Liability as shall protect the Company and Company's employees for negligent acts, errors or omissions in performing the services under this contract in the amount of \$1,000,000 each occurrence/aggregate.
- 20.2.4. *Workers' Compensation Insurance.* The Company shall meet the statutory requirements of the State of North Carolina, \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit.

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

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

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

- 21. RELATIONSHIP OF THE PARTIES.** The relationship of the parties established by this Contract is solely that of independent contractors, and nothing contained in this Contract shall be construed to (i) give any party the power to direct or control the day-to-day activities of the other; (ii) constitute such parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking; (iii) make either party an agent of the other for any purpose whatsoever, or (iv) give either party the authority to act for, bind, or otherwise create or assume any obligation on behalf of the other. Nothing herein shall be deemed to eliminate any fiduciary duty on the part of the Company to the City that may arise under law or under the terms of this Contract.
- 22. SUBCONTRACTING.** The Company shall not subcontract any of its obligations under this Contract without the City's prior written consent. In the event the City does consent in writing to a subcontracting arrangement, Company shall be the prime contractor and shall remain fully responsible for performance of all obligations which it is required to perform under this Contract. Any subcontract entered into by Company shall name the City as a third party beneficiary.
- 23. CONFIDENTIALITY AGREEMENT.** The parties acknowledge that they have executed and entered into a Confidentiality Agreement prior to the execution of this Contract (the "Confidentiality Agreement"), and that they are bound by all terms contained in the Confidentiality Agreement with respect to any Confidential Information which either of them obtains access to in connection with this Contract.
- 24. NON-DISCRIMINATION.** The City has adopted a Commercial Non-Discrimination Policy that is described in Section 2, Article V of the Charlotte City Code, and is available for review on the City's website (the "Non-Discrimination Policy"). The Company agrees to comply with the Non-Discrimination Policy, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the Company shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, suppliers, or commercial customers in connection with a City contract or contract solicitation process, nor shall the Company retaliate against any person or entity for reporting instances of such discrimination. The Company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on City contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace. The Company understands and agrees that a violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of the Company from participating in City contracts or other sanctions.

As a condition of entering into this Contract, the Company agrees to: (a) promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation, selection, treatment and payment of subcontractors in connection with this Contract; and (b) if requested, provide to the City within sixty days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Company has used on City contracts in the past five years, including the total dollar amount paid by Contractor on each subcontract or supply contract. The Company further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Non-Discrimination Policy as set forth in Section 2, Article V of the City Code, to provide any documents relevant to such investigation that are requested by the City, and to be bound by the award of any arbitration

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

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

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

- 25.1. notify employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substance is prohibited in the workplace and specifying actions that will be taken for violations of such prohibition.
- 25.2. establish a drug-free awareness program to inform employees about (i) the dangers of drug abuse in the workplace, (ii) the Company's policy of maintaining a drug-free workplace, (iii) any available drug counseling, rehabilitation, and employee assistance programs, and (iv) the penalties that may be imposed upon employees for drug abuse violations;
- 25.3. notify each employee that as a condition of employment, the employee will (i) abide by the terms of the prohibition outlines in (a) above, and (ii) notify the Company of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction;
- 25.4. impose a sanction on, or requiring the satisfactory participation in a drug counseling, rehabilitation or abuse program by, an employee convicted of a drug crime;
- 25.5. make a good faith effort to continue to maintain a drug-free workplace for employees; and
- 25.6. require any party to which it subcontracts any portion of the work under the contract to comply with the provisions of this Section.

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

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

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

For the Company:

Ben Chen
MS2
3815 Plaza Dr.
Ann Arbor, MI 48108

PHONE: 734-995-0200
FAX: 734-995-0599
E-MAIL: bc@ms2soft.com

With Copy To (Company):

For the City:

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

PHONE: 704-336-2524
FAX: 704-336-2258
kelmores@ci.charlotte.nc.us

With Copy To (City):

Cindy White
City of Charlotte

PHONE: _____
EMAIL: _____

City Attorney's Office
600 East Fourth Street
CMGC 15th Floor
Charlotte, NC 28202
PHONE: (704)336-3012
cwhite@ci.charlotte.nc.us

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

27. MISCELLANEOUS.

27.1. **ENTIRE AGREEMENT.** This Contract, (including all Exhibits and Attachments), constitutes the entire agreement between the parties with respect to the subject matter herein. There are no other representations, understandings, or agreements between the parties with respect to such subject matter. This Contract supersedes all prior agreements, negotiations, representations and proposals, written or oral.

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

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

27.4. **BINDING NATURE AND ASSIGNMENT.** This Contract shall bind the parties and their successors and permitted assigns. Neither party may assign this Contract without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void. For purposes of this Section, a Change in Control, as defined in Section 27.12 shall constitute an assignment.

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

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

- (a) if such failure or delay:
 - 1. could not have been prevented by reasonable precaution;
 - 2. cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and
 - 3. if, and to the extent, such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions or court order.
- (b) An event which satisfies all of the conditions set forth above shall be referred to as a "Force Majeure Event." Upon the occurrence of a Force Majeure Event, the affected party shall be excused from any further performance of those of its obligations which are affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) the affected party continues to use reasonable efforts to recommence performance whenever and to whatever extent possible without delay.
- (c) Upon the occurrence of a Force Majeure Event, the affected party shall promptly notify the other by telephone (to be confirmed by written notice within five (5) days of the inception of the failure

or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents the Company from performing its obligations for more than fifteen (15) days, the City shall have the right to terminate this Contract by written notice to the Company.

- (d) Notwithstanding anything contained herein to the contrary, strikes, slow-downs, walkouts, lockouts, and industrial disputes of the Company or its subcontractors shall not constitute "Force Majeure Events" and are not excused under this provision. The parties expressly acknowledge that year 2000-related interruptions in operations or in the supply of the products or services of the Company or its not excused under this provision. Nothing in the preceding Force Majeure provisions shall relieve the Company of any obligation it may have regarding disaster recovery, whether under this Contract or at law.
- 27.7. **FORCE MAJEURE AFTER SYSTEM ACCEPTANCE.** The following force majeure provisions shall apply to the Company after System Acceptance. After System Acceptance, the Company shall not be excused from performance under this Contract by virtue of force Majeure events. The Company shall take precautions sufficient to ensure that force Majeure events (including but not limited to fire, flood, earthquake, hurricane, elements of nature, strikes, labor disputes, terrorism and acts of God) do not result in any failure or delay in the performance of the Company's obligations pursuant to this Contract. Failure to comply with this provision will constitute a default under this Contract, and grounds for immediate termination.
- 27.8. **SEVERABILITY.** The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Contract shall not affect the validity of the remaining portion of this Contract so long as the material purposes of this Contract can be determined and effectuated. If any provision of this Contract is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Contract shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.
- 27.9. **NO PUBLICITY.** No advertising, sales promotion or other materials of the Company or its agents or representations may identify or reference this Contract or the City in any manner without the prior written consent of the City. Notwithstanding the forgoing, the parties agree that the Company may list the City as a reference in responses to requests for proposals, and may identify the City as a customer in presentations to potential customers.
- 27.10. **WAIVER.** No delay or omission by either party to exercise any right or power it has under this Contract shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this Contract shall not constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Contract shall be effective unless in writing and signed by the party waiving the rights.
- 27.11. **SURVIVAL OF PROVISIONS.** Those Sections of this Contract and the Exhibits which by their nature would reasonably be expected to continue after the termination of this Contract shall survive the termination of this Contract, including but not limited all definitions and each of the following:
- | | |
|-------------|--------------------------------|
| Section 2 | Definitions |
| Section 4.5 | Additional Purchases |
| Section 4.7 | Audit |
| Section 10 | Representations and Warranties |
| Section 13 | Term and Termination |
| Section 16 | Intellectual Property |
| Section 19 | Indemnification |
| Section 24 | Non-Discrimination |
| Section 26 | Notices |
| Section 27 | Miscellaneous |
- 27.12. **CHANGE IN CONTROL.** In the event of a change in "Control" of the Company (as defined below), the City shall have the option of terminating this Contract by written notice to the Company. The Company shall notify the City within ten days of the occurrence of a change in control. As used in this Contract, the term "Control" shall mean the possession, direct or indirect, of either (i) the

ownership of or ability to direct the voting of, as the case may be fifty-one percent (51%) or more of the equity interests, value or voting power in the Company or (ii) the power to direct or cause the direction of the management and policies of the Company whether through the ownership of voting securities, by contract or otherwise.

- 27.13. **NO BRIBERY.** The Company certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the forgoing has bribed or attempted to bribe an officer or employee of the City in connection with this Contract.
- 27.14. **FAMILIARITY AND COMPLIANCE WITH LAWS AND ORDINANCES.** The Company agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Services. The Company further agrees that it will at all times during the term of this Contract be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all OSHA regulations applicable to the work.
- 27.15. **TAXES.** Except as specifically stated elsewhere in this Contract, the Company shall pay all applicable federal, state and local taxes which may be chargeable against the performance of the Services. The Company consents to and authorizes the City to collect any and all delinquent taxes and related interest, fines, or penalties of the Company by reducing any payment, whether monthly, quarterly, semi-annually, annually, or otherwise, made by the City to the Company pursuant to this Contract for an amount equal to any and all taxes and related interest, fines, or penalties owed by the Company to the City. The Company hereby waives any requirements for notice under North Carolina law for each and every instance that the City collects delinquent taxes pursuant to this paragraph. This paragraph shall not be construed to prevent the Company from filing an appeal of the assessment of the delinquent tax if such appeal is within the time prescribed by law.
- 27.16. **TITLES OF SECTIONS.** The section headings inserted herein are for convenience only, and are not intended to be used as aids to interpretation and are not binding on the parties.
- 27.17. **CONSTRUCTION OF TERMS.** Each of the parties has agreed to the use of the particular language of the provisions of this Contract and any questions of doubtful interpretation shall not be resolved by any rule or interpretation against the drafters, but rather in accordance with the fair meaning thereof, having due regard to the benefits and rights intended to be conferred upon the parties.

28. BACKGROUND CHECKS.

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

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

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

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

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

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

ATTESTED:

BY: Arld Galdia

TITLE: Arnold Galdia's General Manager

DATE: 8/6/13

MIDWESTERN SOFTWARE SOLUTIONS LLC:

BY: [Signature]

TITLE: BEN CHEN PRINCIPAL

DATE: 8/6/2013

CITY OF CHARLOTTE:
CITY MANAGER'S OFFICE

BY: Ronald R. Koble

TITLE: Deputy City Mgr.

DATE: 8-8-13

CITY OF CHARLOTTE:
RISK MANAGEMENT DEPARTMENT

BY: [Signature]

TITLE: Insurance Manager

DATE: 8/8/13

CITY OF CHARLOTTE:
CITY CLERK'S OFFICE

BY: Emily A. Kunze

TITLE: Deputy City Clerk

DATE: 08-09-13

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

[Signature]
Deputy Finance officer

8-15-13
Date

[Signature]

EXHIBIT A

SCOPE OF WORK

This Scope of Work is an Exhibit to and is incorporated into the Services Contract between the City of Charlotte and MS2 (the "Contract"). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract.

1. General Scope

The Company shall provide the CDOT with Crash reporting Software and a Traffic Data management system through an online interface to access the City's Traffic Count database in order to provide for a safe and efficient transportation system and to effectively plan for future growth.

2. Overall System Description

The Software shall include but not be limited to, the following features:

- Web browser-based user interface;
- GUI with map based selection of intersections and/or segments;
- Onscreen reviewing of tabular data;
- Utility to geo-locate Crash locations based upon police reports;
- Utility to geo-locate Traffic Data based on unique centerline and intersection identifiers; and
- Printable and customizable Crash and Traffic Data reports.

3. Software Requirements.

The Software shall have the following capabilities:

3.1. General Requirements:

- Provide no less than 99.000% uptime at all times during the duration of this Contract following System Acceptance;
- Allow for unlimited City or non-City employee users;
- Provide a username- and password-protected system with various level of administrative and user abilities;
- Provide a method for the selection of intersections or segments;
- Allow for single or multiple selections of features through points or polygons drawn on the map;
- Allow for the addition and subtraction from a selection set;
- Include a tabular area with customizable drop down menus and an auto-fill search;
- Include tables that shall allow for data to be sorted by any column heading;
- Include tables that shall allow subsets to be created by selecting data in fields;
- Provide a quality control mechanism which compares new data to historic and flags questionable results;
- Ability for users to add graphics and textboxes to create custom maps; and
- Allow for data access by other agencies and departments as authorized by CDOT.

3.2. Crash Reporting:

- Allow for Crash reports and Traffic Data records to be selected from queries submitted onscreen;
- Allow for on screen data quality review and for identifying the proper location of each Crash;
- Allow for the changing of data elements of new and older Crashes saved in the database;
- Allow for searching of Crashes by data elements, displaying the results onscreen, and allowing users with appropriate permissions to edit the data elements;
- Create Crash Diagrams from the data provided in the database;
- Allow users to manually edit the direction of travel of the units involved in the Crash; and
- Create a printout that will include all the types of Crashes, north arrow and street names.

3.3. Traffic Data:

3.3.1. Midblock.

- Ability to view Traffic Counts in fifteen (15) minute increments, by direction and bidirectional, for the count duration or user for specified time period;
- Ability to view Traffic Counts in tabular and graphic formats;
- Date and time stamp for all Traffic Data;
- A summary table for each record that includes peak hour factor, peak hour and period, volumes, directional factor, and classification;
- Ability to view Traffic Data trends along user specified corridors;
- Ability to compare multiple Traffic Data locations;
- Ability to download all Traffic Count Data in .mdb format, in user-specified time increments and column headings to include but not limited to unique location identifier, street names, volume by direction, FHWA classification and/or user specified classification groups;
- Allow the City the ability to change data collection hardware and software to any currently available manufacturer in the future; and
- Ability to receive data from permanently mounted microwave or radar data collection systems.

3.3.2. Turning Movement Count.

- Ability to view Traffic Counts in tabular and graphic formats;
- Date and time stamp for all Traffic Data;
- A summary table for each record that includes peak hour factor, peak hour and period, volumes, directional factor, and classification;
- Show Turning Movement Counts graphically for full count and peak morning and afternoon hours;
- Provide Turning Movement Counts in tabular format in fifteen- (15) minute increments with the ability to isolate user specified time periods;
- Ability to view Traffic Data trends along user specified corridors;
- Ability to compare multiple Traffic Data locations;
- Ability to export Turning Movements Counts in .vol files;
- Ability to download all Traffic Count Data in .mdb format, in user-specified time increments and column headings to include but not limited to unique location identifier, street names, volume by direction, FHWA classification and/or user specified classification groups; and
- Allow the City the ability to change data collection hardware and software to any currently available manufacturer in the future.

3.4. Travel Time.

- Ability to import, load and display existing and historical INRIX travel time information;
- Ability to compare travel time information from NAVTEQ to INRIX;
- Ability to create weekly, monthly and yearly travel time index graphs for pre-defined and on-the-fly highlighted corridors;
- Ability to define the criterion for calculating Travel Time index;
- Ability to view travel time information on a map by selecting links and corridors;
- Ability to aggregate the travel time information from fifteen minutes interval to hourly, weekly, monthly categories;
- Ability to compare travel time trends for the same day, month and year;
- Ability to export the travel time data for detailed analysis or use in reports;
- Ability to modify ranges and color for legends that define the average and free flow speed and travel/planning time index;
- Ability to add shapefiles to the map (if requested, the City will provide the shapefile);
- Ability to measure distances, extract or add latitude and longitude information to dataset;
- Ability to aggregate and view the results by geographic area (zip codes, county, city etc); and
- Ability to search for a turning movement count, corridor or segment.

4. Reporting.

The Company shall provide either through an integrated software package or server reporting package, such as Microsoft Reporting Services, the ability to generate reports detailing Crash data stored on the server. The tool shall:

- Be capable of defining embedded calculations, analysis, summarization and flexible formatting of stored data;
- Be capable of accessing any information from within the current or historical databases;
- Allow for customizable reports created by CDOT staff; and
- Export a report's tabular data to Microsoft Excel and Adobe PDF.

5. Training.

The Company shall provide the following training elements:

- One (1) six (6) to eight (8) hour training workshop for each system module with options to have two (2) additional training workshops;
- An online user's guide; and
- Continuously available training webinars on the Company's website.

All training materials must be printed on Recycled Material.

6. Disaster Recovery.

The Company shall be able to recover from natural, human-caused, and electronic disasters (including security compromises) that could interrupt service to the City and the City's customers. The Company shall maintain and/or provide:

- Procedures for off-site storage of information;
- Capabilities and availability of alternate processing, communications, and operations facilities;
- Plans for maintaining business processes, including communications with the City, the City's customers, and suppliers of goods and services.
- 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
- A documented disaster recovery and business continuity plan, including dates of disaster recovery tests and schedule for future tests.

7. Additional Representations and Warranties;

The Company represents, warrants, and covenants that:

- The Services shall satisfy all requirements set forth in the Contract, including but not limited to any attached Exhibits;
- All work performed by the Company and/or its subcontractors pursuant to the Contract shall meet highest industry standards, and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;
- Neither the Services, nor any Software or Hardware provided by the Company under the Contract, will infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party;
- The Company shall take precautions sufficient to ensure that it will not be prevented from performing all or part of its obligations under the Contract by virtue of interruptions in the computer systems used by the Company; and
- In accordance with the North Carolina electronic data-processing records law N.C.G.S. §132-6-1:
 - All software and documentation provided by the Company or its subcontractors will have sufficient information and capabilities to enable the City to permit the public inspection and examination and to provide electronic copies of public records stored, manipulated or retrieved by the System; and
 - All software and documentation provided by the Company or its subcontractors will have sufficient information to enable the City to create an index containing the following information with respect to each database used by the System without extraordinary commitments of staff or resources: (i) annotated list of data fields: name, description, and restricted field indicator; (ii) description of the

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GEAC#:

format or record layout; (iii) frequency with which the database is updated; (iv) list of any data fields to which public access is restricted; (v) description of each form in which the database can be copied or reproduced; (vi) title of the database; (vii) owner of the data; (viii) narrative description of the database; (ix) person creating the index; and (x) purpose of the database. The Company agrees that the information set forth in the preceding sentence constitutes a public record and may be disclosed by the City without the Company's consent.

EXHIBIT B

PRICING WORKSHEET

This Pricing Worksheet is an Exhibit to and is incorporated into the Contract between the City of Charlotte and MS2 (the "Contract"). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract.

1. Implementation, Training and Software Delivery Pricing.

The City will pay the Company for the following project phases upon successful completion of the tasks in Exhibit C:

Project Phase	Crash Reporting	Traffic Data - Midblock	Traffic Data - Turning Movement	Travel Time Data	Total Cost
Implementation	\$21,800	\$17,500	\$17,500	\$30,000	\$86,800
Training	\$8,000	\$16,000	\$6,000	\$8,000	\$28,000
Software Delivery	\$70,000	\$55,000	\$55,000	\$100,000	\$280,000
NAVTEQ				\$13,000	\$13,000
Total Cost	\$99,800	\$88,500	\$78,500	\$151,000	\$417,800

2. Support and Maintenance Pricing.

The City will pay the Company the following yearly rates for the provision of ongoing Support and Maintenance Services, as detailed in Exhibit D:

Module	Year 1	Year 2	Year 3	Year 4	Year 5	Optional Year 6	Optional Year 7
Crash Reporting	\$14,000	\$14,700	\$15,400	\$16,100	\$16,900	\$17,700	\$18,500
Traffic Data - Midblock	\$11,000	\$11,500	\$12,000	\$12,600	\$13,200	\$13,800	\$14,400
Traffic Data - Turning Movement	\$11,000	\$11,500	\$12,000	\$12,600	\$13,200	\$13,800	\$14,400
Travel Time Data	\$20,000	\$21,000	\$22,000	\$23,000	\$24,100	\$25,300	\$26,500

EXHIBIT C**PROJECT SCHEDULE**

This tentative Project Schedule is an Exhibit to and is incorporated into the Contract between the City of Charlotte and MS2 (the "Contract"). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract.

The Company shall deliver all Products and perform all Services in accordance with the below Project Schedule. The following dates indicate the plan for Implementation of the Crash Reporting and Traffic Data Software. The City Project Manager and the Company Project Manager shall reassess the Project Schedule within the final Project Plan following commencement of this Contract.

Project Phase	Responsible Party	Crash Reporting	Traffic Data - Midblock	Traffic Data - Turning Movement	Travel Time Data
Implementation	Company	8/26/2013	9/1/2013	9/1/2013	4/1/2014
City Data Delivery Date	City	9/3/2013	9/16/2013	9/16/2013	4/15/2014
Training	Company	10/1/2013	10/16/2013	10/16/2013	6/12/2014
NAVTEQ	Company				5/1/2014
Acceptance Date	Company	10/11/2013	11/1/2013	11/1/2013	6/30/2014

EXHIBIT D

SCOPE OF MAINTENANCE SERVICES

This Scope of Maintenance Services is an Exhibit to and is incorporated into the Contract between the City of Charlotte and MS2 (the "Contract"). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract.

1. **GENERAL DESCRIPTION OF COMPANY RESPONSIBILITIES.**
Beginning on the date of System Acceptance and continuing throughout the term of this Contract (and any renewal period thereof), the Company shall provide to the City the services specified in the following provisions of this Contract (all of which are collectively referred to in this Contract as the "Maintenance Services").
2. **PREVENTION AND CORRECTION OF DEFECTS.**
 - 2.1. **SYSTEM.** The Company shall respond to and correct all Defects in the System within the time frames set forth in **Section 2.15** of this Exhibit. The Company shall further take all actions reasonably necessary to prevent Defects, and to cause the System to reliably and consistently operate in conformance with the Specifications and Requirements.
 - 2.2. **SOFTWARE.** Without limiting any of its other obligations under this Contract, the Company shall correct Defects in the Software within the time frames set forth in **Section 2.15** of this Contract, and take such actions as are necessary to ensure that the Software fully conforms to the Specifications and Requirements. The Company's obligations hereunder extend to Third Party Software and Customizations, as well as other Software (including Upgrades and New Versions to Third Party Software and Customizations).
 - 2.3. **HARDWARE.** Without limiting any of its other obligations under this Contract, the Company will correct Defects in the Hardware within the time frames set forth in **Section 2.15** of this Contract, and maintain all Hardware in a manner so that: (i) the manufacturer warranty shall remain in full force and effect; (ii) such Hardware shall be qualified for coverage under the manufacturer's maintenance program, if available; and (iii) so as to ensure that the Hardware operates in conformity with the Specifications and Requirements. During the term of this Contract, the Company shall be responsible for correcting all Defects in the Hardware (whether covered by manufacturer warranty or not). The Company shall supply all parts and labor required to perform its obligations under this Subsection at no charge beyond the Maintenance Fee.
 - 2.4. **HIGHEST INDUSTRY STANDARDS.** All work performed by the Company and/or its subcontractors pursuant to this Contract shall meet the highest industry standards for professional quality and workmanship, and shall be performed by qualified staff using quality products and materials.
 - 2.5. **SOFTWARE NEW RELEASES AND NEW VERSIONS.** The Company shall provide to the City all New Releases and all New Versions to all Software (including Third Party Software) as soon as reasonably possible following their commercial release at no charge beyond the Maintenance Fee. The New Versions and New Releases provided by the Company to the City will incorporate Customizations at no charge beyond the Maintenance Fee. If requested by the City, the Company shall install New Releases and New Versions at no charge beyond the Maintenance Fee. All New Releases and New Versions provided to the City under this Contract will become part of the Software, and will be maintained by the Company under the terms of this Contract.

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

Throughout the duration of the Maintenance Services, the Company will provide compatibility in new versions of the Company's Software with the Products that comprise the City's System.
 - 2.6. **HARDWARE NEW RELEASES AND NEW VERSIONS.** The Company will provide and install at no charge beyond the Maintenance Fee all New Releases and New Versions to Hardware (including engineering changes) which are: (a) necessary to correct Defects or enable the

- System or any component to function at an optimum level; or (b) required by the manufacturer. This includes mandatory engineering change orders (ECOs).
- 2.7. **COMPLIANCE WITH LAWS.** The Company will promptly develop and provide at no charge beyond the Maintenance Fee all changes and additions to the Software and the Hardware that are required to achieve compliance with local, state or federal laws, regulations, codes and guidelines (including all changes to such laws, regulations, codes and guidelines). The Company will develop New Releases as necessary to improve ease of use and correct
- 2.8. **TRAINING AND DOCUMENTATION FOR MAJOR UPDATES AND ENHANCEMENTS.** The Company will provide at no charge beyond the Maintenance Fee all training and Documentation that is necessary for the City to fully utilize all major New Releases and New Versions.
- 2.9. **REPORTING OF DEFECTS.** The Company shall serve as a single source to address all Defects in the System. Notwithstanding the notice provisions contained in this Contract, the City shall be entitled to report Defects to the Company by telephone, E-mail, or other means, provided that all Defects which require immediate attention shall first be reported by telephone. Notice of Defects need not be in writing, and shall be deemed effective when first received by the Company. The City shall not be required to follow up in-person, telephone, E-mail or telefax notices of Defects with a hard copy by mail or other means.
- 2.10. **TELEPHONE SUPPORT.** The Company shall provide "single point of call" telephone support to the City with respect to the use of the Products and the correction of Defects. Such support will be available from Monday through Friday 7:00 a.m. until 6:00 p.m. Eastern Time ("Regular Business Hours"). During Regular Business Hours, the Company will provide sufficient, qualified help desk personnel to ensure that City problems are addressed immediately. At all other times, a recording will advise the City representative the appropriate pager number to utilize. The Company will respond to each page within one hour.
- 2.11. **REMOTE SUPPORT.** The Company shall provide remote diagnostic and repair service to the City with respect to the use of the Products and the correction of Defects, ("Remote Services"). The Company will make Remote Services available to the City both during Regular business through the help desk, and at other times through the Company staff who respond to pages. The Company shall comply with the security measures set forth on in this Exhibit regarding remote access, and any other security measures provided by the City in writing from time to time regarding access to the System.
- The Remote Services to be provided by the Company include but are not limited to the following:
- Software diagnostics;
 - Database diagnostics;
 - CPU monitoring and diagnostics;
 - Memory usage and performance monitoring;
 - Operating system parameters analysis and diagnostics;
 - Remote downloading of software (fixes and features releases); and
 - Immediate response to calls.
- 2.12. **ON-SITE SERVICES.** Company shall provide on-site maintenance and support to the extent necessary to correct any Defect in the Products, or the System, or to carry out any of the Company's other obligations under this Contract. There shall be no charge for such on-site services, other than the Maintenance Fees provided in this Contract.
- 2.13. **CHANGE CONTROL PROCEDURES.** In performing remote support and other Maintenance Services, the Company will comply with the change control procedures established by the City from time to time, provided that the City shall give the Company notice of such procedures.
- 2.14. **ACCESS TO FACILITIES AND PERSONNEL.** In the event Company provides on-site support, the City shall provide the Company with reasonable access, without charge, to the City's facilities, appropriate personnel, and any other information reasonably requested by Company so as to enable Company to provide Services, provided that the City can do so at no significant cost to the City.

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

Priority One Critical	Priority One applies if the problem could: Prevent the accomplishment of an operational or mission essential function, OR Causes loss of data or data corruption, OR Jeopardize safety or security
Response Time	Immediately, if the problem is reported during Regular Business Hours Within one hour of notification if the problem is reported after Regular Business Hours.
Resolution Time	Within 24 hours after the problem is first reported by the City.
Liquidated Damages	Ten percent (10%) of the annual Maintenance Fees paid by the City for each instance where the Company fails to resolve a Priority One problem within the resolution time specified above. For each 24 hours that a Priority One problem continues after the resolution time specified above, the Company shall pay additional liquidated damages equal to ten percent (10%) of the annual Maintenance Fees paid or payable by the City. The liquidated damage is capped at the annual Maintenance Fees paid for the current year.
Termination Trigger	The City may exercise the right to terminate this Contract immediately for default upon written notice to the Company in the event that a Priority One problem continues in duration for more than 48 hours after it is first reported by the City.

Priority Two	Priority Two applies if the problem could: Adversely affect (but not prevent) the accomplishment of an operational or mission essential function, and no Workaround is available, OR Adversely affect technical or cost risks to the life cycle support of the System, and no Workaround is available. Priority Two problems include aborts, but not loss of data or data corruption.
Response Time	Immediately, if the problem is reported during Regular Business Hours Within three hours of notification if the problem is reported after Regular Business Hours.
Resolution Time	Within 48 hours after the problem is first reported to the City
Liquidated Damages	Ten percent (10%) of the annual Maintenance Fees paid or payable by the City for each instance where the Company fails to resolve a Priority Two problem within the resolution time specified above. For each forty-eight hours that a Priority Two problem continues after the resolution time specified above, the Company shall pay additional liquidated damages equal to ten percent (10%) of the annual Maintenance Fees paid by the City. The liquidated damage is capped at the annual Maintenance Fees paid for the current year.
Termination Trigger	The City may exercise the right to terminate this Contract immediately for default in the event that a Priority Two problem continues in duration for more than forty-eight (48) hours after it is first reported by the City.

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

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

2.17. **PHONE LOGS.** Company will keep detailed records of telephone calls, Remote Services, on-site visits and other information necessary to readily identify the date a problem is reported, a summary of procedures followed by the Company to correct the problem and any follow up calls relating to such problem. 2.18. **TECHNICAL RECORDS.** The Company shall produce and maintain during the term of the MASI and for a period of five (5) years thereafter detailed technical records with respect to all Maintenance Services performed under the MASI, including but not limited to engineering notebooks, development commentary, flow charts, logic diagrams and other materials related to the System (the "Technical Records"). The Company shall provide the City with copies of the Technical Records as requested in writing from time to time by the City.

2.19. PREVENTIVE MAINTENANCE. The Company shall take all reasonable actions necessary to prevent Defects, and to cause the System to reliably and consistently operate in conformance with the Specifications and Requirements.

3. CITY'S RIGHT TO RANDOM AND PERIODIC VALIDATION.

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

4. ASSURANCE OF CONTINUED MAINTENANCE AND SUPPORT.

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

5. SECURITY MEASURES FOR REMOTE ACCESS.

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

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

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

EXHIBIT D

LICENSE

This License is an Exhibit to and is incorporated into the Contract between the City of Charlotte and MS2 (the "Contract"). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract.

For purposes of this Exhibit only, the term "Software" shall not be deemed to include Customizations, given that the Customizations are owned by the City and require no license.

1. GRANT OF LICENSE

1.1. **GRANT OF LICENSE.** Subject to the restrictions set forth in Section 1.2 below, the Company grants to City and the Affiliates a perpetual, nonexclusive, irrevocable, nontransferable, royalty-free license to:

- (a) Use the Software and the Documentation for all purposes set forth or referenced in this Contract, including but not limited to: (a) the operation and use of the System, (b) internal training and testing, (c) development, (d) disaster recovery, backup, archive and restore testing and implementation purposes and (e) any other purpose related to the above; and
- (b) 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;
- (c) Modify, improve, enhance, update, integrate and make derivative works of the Software and the Documentation on its own or through a third party; and
- (d) Make as many copies of the Software and Documentation as it desires in support of its authorized use of the Software, provided that said copies shall include the Company's or the third party owner's copyright and other proprietary notices (as the case may be).

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

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

2. DELIVERY, TESTING AND ACCEPTANCE.

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

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

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

ECONOMIC DISCLOSURE STATEMENT

COOK COUNTY SIGNATURE PAGE

(SECTION 10)

ON BEHALF OF THE COUNTY OF COOK, A BODY POLITIC AND CORPORATE OF THE STATE OF ILLINOIS, THIS CONTRACT IS HEREBY EXECUTED BY:

Sam E. M.

COOK COUNTY CHIEF PROCUREMENT OFFICER

DATED AT CHICAGO, ILLINOIS THIS 17 DAY OF December, 2014.

IN THE CASE OF A BID PROPOSAL, THE COUNTY HEREBY ACCEPTS:

THE FOREGOING BID/PROPOSAL AS IDENTIFIED IN THE CONTRACT DOCUMENTS FOR CONTRACT NUMBER

1484-13949

OR

ITEM(S), SECTION(S), PART(S): _____

TOTAL AMOUNT OF CONTRACT: \$ 107,880.00

(DOLLARS AND CENTS)

FUND CHARGEABLE: _____

APPROVED AS TO FORM:

ASSISTANT STATE'S ATTORNEY

(Required on contracts over \$1,000,000.0)