

SERVICE AGREEMENT NO. 1499

Claims Database System for Risk Management

THIS **Claims Database System for Risk Management Agreement** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and Recordables, Inc. ("Contractor"), effective upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Contractor has bid to provide Claims Database System in response to Request for Bid/Proposal No. N/A ("RFB/RFP"), which RFB/RFP includes the required scope of work and all specifications and which RFB/RFP and the Contractor's bid or proposal response, as applicable, are incorporated by reference in this Agreement as Exhibits 1 and 2, respectively, as if each were fully set out here in its entirety.

NOW, THEREFORE, City and Contractor agree as follows:

- 1. Scope.** Contractor will provide Claims Database System ("Services") in accordance with the attached Scope of Work, as shown in Attachment A, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety, and in accordance with Exhibit 2.
- 2. Term.** This Agreement is for sixty months, with performance commencing upon the date of issuance of a notice to proceed from the Contract Administrator or Purchasing Division. The parties may mutually extend the term of this Agreement for up to zero additional n/a-month periods ("Option Period(s)"), provided, the parties do so in writing and prior to the expiration of the original term or the then-current Option Period. The City's extension authorization must be executed by the City Manager or designee.
- 3. Compensation and Payment.** The total value of this Agreement is not to exceed \$97,437.25, subject to approved extensions and changes. Payment will be made for Services completed and accepted by the City within 30 days of acceptance, subject to receipt of an acceptable invoice. All pricing must be in accordance with the attached Bid/Pricing Schedule, as shown in Attachment B, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.
- 4. Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement, including deductions for non-performance and authorizations for payment. The City's Contract Administrator for this Agreement is as follows:

Name: Gilbert Sanchez
Department: Risk Management
Phone: 361.826.3739
Email: Gilberts2@cctexas.com

5. Insurance; Bonds.

(A) Before performance can begin under this Agreement, the Contractor must deliver a certificate of insurance ("COI"), as proof of the required insurance coverages, to the City's Risk Manager and the Contract Administrator. Additionally, the COI must state that the City will be given at least 30 days' advance written notice of cancellation, material change in coverage, or intent not to renew any of the policies. The City must be named as an additional insured. The City Attorney must be given copies of all insurance policies within 10 days of the City Manager's written request. Insurance requirements are as stated in Attachment C, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.

(B) In the event a payment bond, a performance bond, or both, are required of the Contractor to be provided to the City under this Agreement before performance can commence, the terms, conditions, and amounts required in the bonds and appropriate surety information are as included in the RFB/RFP or as may be added to Attachment C, and such content is incorporated here in this Agreement by reference as if each bond's terms, conditions, and amounts were fully set out here in its entirety.

- 6. Purchase Release Order.** For multiple-release purchases of Services to be provided by the Contractor over a period of time, the City will exercise its right to specify time, place and quantity of Services to be delivered in the following manner: any City department or division may send to Contractor a purchase release order signed by an authorized agent of the department or division. The purchase release order must refer to this Agreement, and Services will not be rendered until the Contractor receives the signed purchase release order.

- 7. Inspection and Acceptance.** Any Services that are provided but not accepted by the City must be corrected or re-worked immediately at no charge to the City. If immediate correction or re-working at no charge cannot be made by the Contractor, a replacement service may be procured by the City on the open market and any costs incurred, including additional costs over the item's bid/proposal price, must be paid by the Contractor within 30 days of receipt of City's invoice.

8. Warranty.

(A) The Contractor warrants that all products supplied under this Agreement are new, quality items that are free from defects, fit for their intended purpose,

and of good material and workmanship. The Contractor warrants that it has clear title to the products and that the products are free of liens or encumbrances.

(B) In addition, the products purchased under this Agreement shall be warranted by the Contractor or, if indicated in Attachment D by the manufacturer, for the period stated in Attachment D. Attachment D is attached to this Agreement and is incorporated by reference into this Agreement as if fully set out here in its entirety.

9. **Quality/Quantity Adjustments.** Any Service quantities indicated on the Bid/Pricing Schedule are estimates only and do not obligate the City to order or accept more than the City's actual requirements nor do the estimates restrict the City from ordering less than its actual needs during the term of the Agreement and including any Option Period. Substitutions and deviations from the City's product requirements or specifications are prohibited without the prior written approval of the Contract Administrator.
10. **Non-Appropriation.** The continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on September 30th annually, is subject to appropriations and budget approval specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the City's City Council to determine whether or not to fund this Agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget.
11. **Independent Contractor.** Contractor will perform the work required by this Agreement as an independent contractor and will furnish such Services in its own manner and method, and under no circumstances or conditions will any agent, servant or employee of the Contractor be considered an employee of the City.
12. **Subcontractors.** Contractor may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the Contractor must obtain prior written approval from the Contract Administrator if the subcontractors were not named at the time of bid or proposal, as applicable. In using subcontractors, the Contractor is responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of the Contractor. All requirements set forth as part of this Agreement, including the necessity of providing a COI in advance to the City, are applicable to all subcontractors and their employees to the same extent as if the Contractor and its employees had performed the work.
13. **Amendments.** This Agreement may be amended or modified only by written change order signed by both parties. Change orders may be used to modify quantities as deemed necessary by the City.

14. **Waiver.** No waiver by either party of any breach of any term or condition of this Agreement waives any subsequent breach of the same.
15. **Taxes.** The Contractor covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other related taxes. Upon request, the City Manager shall be provided proof of payment of these taxes within 15 days of such request.
16. **Notice.** Any notice required under this Agreement must be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day faxed or hand-delivered or on the third day after postmark if sent by certified mail. Notice must be sent as follows:

IF TO CITY:

City of Corpus Christi
Attn: Gilbert Sanchez
Title: Safety and Risk Manager
Address: 1201 Leopard Street, Corpus Christi, Texas 78401
Phone: 361.826.3739
Fax:

IF TO CONTRACTOR:

Recordables, Inc.
Attn: Paul Kofman
Title: President
Address: P.O. Box 519, Venice, Florida 34284
Phone: 312.961.7894
Fax:

17. **CONTRACTOR SHALL FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES AND AGENTS ("INDEMNITEES") FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS, AND CAUSES OF ACTION OF WHATEVER NATURE, CHARACTER, OR DESCRIPTION ON ACCOUNT OF PERSONAL INJURIES, PROPERTY LOSS, OR DAMAGE, OR ANY OTHER KIND OF INJURY, LOSS, OR DAMAGE, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, ATTORNEYS' FEES AND EXPERT WITNESS FEES, WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF OR IN CONNECTION WITH A BREACH OF THIS AGREEMENT OR THE PERFORMANCE OF THIS AGREEMENT BY THE CONTRACTOR OR RESULTS FROM THE NEGLIGENT ACT, OMISSION, MISCONDUCT, OR FAULT OF THE CONTRACTOR OR ITS EMPLOYEES OR AGENTS. CONTRACTOR MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT**

OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL SATISFACTORY TO THE CITY ATTORNEY, AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING OR RESULTING FROM ANY SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS, SUITS, OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF CONTRACTOR UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

18. Termination.

(A) The City Manager may terminate this Agreement for Contractor's failure to perform the work specified in this Agreement or to keep any required insurance policies in force during the entire term of this Agreement. The Contract Administrator must give the Contractor written notice of the breach and set out a reasonable opportunity to cure. If the Contractor has not cured within the cure period, the City Manager may terminate this Agreement immediately thereafter.

(B) Alternatively, the City Manager may terminate this Agreement for convenience upon 30 days advance written notice to the Contractor. The City Manager may also terminate this Agreement upon 24 hours written notice to the Contractor for failure to pay or provide proof of payment of taxes as set out in this Agreement.

19. Assignment. No assignment of this Agreement by the Contractor, or of any right or interest contained herein, is effective unless the City Manager first gives written consent to such assignment. The performance of this Agreement by the Contractor is of the essence of this Agreement, and the City Manager's right to withhold consent to such assignment is within the sole discretion of the City Manager on any ground whatsoever.

20. Severability. Each provision of this Agreement is considered to be severable and, if, for any reason, any provision or part of this Agreement is determined to be invalid and contrary to applicable law, such invalidity shall not impair the operation of nor affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part had been omitted.

21. Order of Precedence. In the event of any conflicts or inconsistencies between this Agreement, its attachments, and exhibits, such conflicts and inconsistencies will be resolved by reference to the documents in the following order of priority:

- A. this Agreement (excluding attachments and exhibits);
- B. its attachments;
- C. the bid solicitation document including any addenda (Exhibit 1); then,

D. the Contractor's bid response (Exhibit 2).

- 22. Certificate of Interested Parties.** Contractor agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement.
- 23. Verification Regarding Israel.** In accordance with Chapter 2270, Texas Government Code, the City may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The signatory executing this Agreement on behalf of the Contractor verifies that the company does not boycott Israel and will not boycott Israel during the term of this Agreement.
- 24. Governing Law.** This Agreement is subject to all federal, State, and local laws, rules, and regulations. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas, and such form and venue for such disputes is the appropriate district, county, or justice court in and for Nueces County, Texas.
- 25. Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties.

(SIGNATURE PAGE FOLLOWS)

CONTRACTOR

Signature: Paul Kofman

Printed Name: PAUL KOFMAN

Title: PRESIDENT

Date: 1-17-18

CITY OF CORPUS CHRISTI

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Attached and Incorporated by Reference:

- Attachment A: Scope of Work
- Attachment B: Bid/Pricing Schedule
- Attachment C: Insurance and Bond Requirements
- Attachment D: Warranty Requirements

Incorporated by Reference Only:

- Exhibit 1: RFB/RFP No. N/A
- Exhibit 2: Contractor's Bid/Proposal Response

Attachment A – Scope of Work

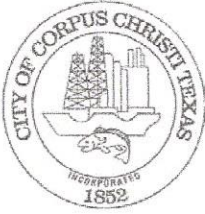
1.0 General Requirements/Background

The Contractor shall provide a claims database system for use by the City's Risk Management Division. The City currently self-insures Auto, General and other Liability claims and lawsuits that are handled in-house by claims adjusters and litigation attorneys.

1.1 Scope

- A. The system shall be web hosted software utilizing VPN, Virtual Private Network connections utilizing a SaaS Software as a service or subscription based model.
- B. Contract is to provide TrackAbility software for liability with litigation/legal module, check writing, Center for Medicare Services and CertAdvisor for managing incoming certificates of insurance for up to 15 users.
- C. The system must be capable of enhancing the claims administration capabilities to include but are not limited to:
 - 1. Streamlining processes of claim functions and payment related activities for efficient claims administration.
 - 2. Quality and efficiency of trending reports for claim data and standardizing claim types.
 - 3. Best practice audit data and tracking capabilities.
 - 4. A certificate of insurance tracking module to efficiently organize and track certificates of insurance and related functions.
- D. The system should be capable of addressing claim and lawsuit categories such as: General Liability, Auto Liability, Public Officials' Liability, Law Enforcement Liability, Employment Practices, EEOC, Crime-Employee Dishonesty, Environmental Impairment Liability, Property, Boiler and Machinery, Self-Insured and various miscellaneous categories.

Attachment B – Schedule of Pricing



ATTACHMENT B-QUOTE/PRICING SCHEDULE CITY OF CORPUS CHRISTI QUOTE FORM

1. Refer to Contract Terms and Conditions before completing quote.
2. Quote your best price, including freight, for each item.
3. In submitting this quote, Contractor certifies that the prices in this quote have been arrived at independently, without consultation, communication, or agreement with any other contractor or competitor, for the purpose of restricting competition with regard to prices.

Invitation to quote, FOB Destination, Freight Included, on the following:

DESCRIPTION	QTY	UNIT	UNIT PRICE	PRICE TOTAL
Yearly subscription of TrackAbility Web Hosting	1	LS	\$19,487.45	\$19,487.45
TOTAL				\$19,487.45

COMPANY: Recordables, Inc.

NAME OF PERSON AUTHORIZED TO SIGN: Paul Kofman

ADDRESS: PO BOX 519 CITY / STATE / ZIP Venice, FL 34284

PHONE: (312) 961-7894 EMAIL: paul@recordables.com

FAX: (941) 244-5515 DATE: January 15, 2018

SIGNATURE: *Paul Kofman* TITLE: President

THE CITY RESERVES THE RIGHT TO REJECT OR CANCEL ANY OR ALL QUOTES. TO WAIVE ANY

Attachment C – Insurance Requirements

I. CONTRACTOR'S LIABILITY INSURANCE

- A. Contractor must not commence work under this contract until all insurance required has been obtained and such insurance has been approved by the City. Contractor must not allow any subcontractor, to commence work until all similar insurance required of the subcontractor has been obtained.
- B. Contractor must furnish to the City's Risk Manager and Contract Administrator one (1) copy of Certificates of Insurance with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City's Risk Manager.

Construction contracts including excavation at (3) three feet or more requires Pollution Liability Coverage. In addition Construction contracts of more than (5) five million dollars require Umbrella Liability Insurance.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-day advance written notice of cancellation, non-renewal, material change or termination required on all certificates and policies.	Bodily Injury and Property Damage Per occurrence - aggregate
ERRORS & OMISSIONS	\$1,000,000 Per Occurrence \$1,000,000 Aggregate

- C. In the event of accidents of any kind related to this contract, Contractor must furnish the Risk Manager with copies of all reports of any accidents within 10 days of the accident.

II. ADDITIONAL REQUIREMENTS

- A. Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A-VII.
- B. Contractor shall be required to submit renewal certificates of insurance throughout the term of this contract and any extensions within 10 days of the policy expiration dates. All notices under this Exhibit shall be given to City at the following address:

City of Corpus Christi
Attn: Risk Manager
P.O. Box 9277
Corpus Christi, TX 78469-927

Attachment D – Warranty

No warranty is required under this Agreement, therefore Service Agreement paragraph (B) of Section 8 is null and void.