

CONTRACT
by and between
SHELBY COUNTY GOVERNMENT
and
ACCELA, INC.

This contract (the "Contract") entered into this ____ day of _____, 2016, and between SHELBY COUNTY GOVERNMENT, hereinafter referred to as "COUNTY" and ACCELA, INC. hereinafter referred to as "PROVIDER".

WITNESSETH

WHEREAS, On June 22, 1998 the COUNTY entered into an agreement with PROVIDER for software maintenance for the Permits Plus Computer System utilized by Codes Enforcement; and

WHEREAS, the PROVIDER developed the product and owns the exclusive copyright for the product and is the only company that has the expertise to support it; and

WHEREAS, COUNTY has approved PROVIDER'S single source designation by letter dated May 28, 2015; and

WHEREAS, the parties are desirous of entering into a new contract setting forth the terms and conditions under which the PROVIDER will provide said services.

NOW THEREFORE, for and in consideration of mutual promises and covenants herein contained, the parties hereto agree as follows:

Exhibits: This Agreement is comprised of the following documents:

- Exhibit A – Software Maintenance Services and Quote

I. SCOPE OF WORK

1. The PROVIDER shall provide the services as outlined within the Software Maintenance Services and Quote attached hereto as Exhibit "A" and incorporated herein by reference as if stated verbatim (the "Services").

2. The PROVIDER shall perform the services detailed in Exhibit A to the County.
3. As required, COUNTY will provide PROVIDER with appropriate access to COUNTY's facilities, data systems, and other resources. If security restrictions impair such access, COUNTY acknowledges that some maintenance services hereunder may not be provided to COUNTY. It is COUNTY's sole responsibility to maintain current backup copies of its data and of its implementation of PROVIDER's software products.

II. TERM AND COMPENSATION

1. The term of this Contract (the "Term") will commence upon the execution of this Contract and continue through June 30, 2017.
2. The COUNTY agrees to compensate the PROVIDER for the provision of the Services the sum total not to exceed Sixty Eight Thousand One Dollar AND 98/100(\$68,001.98) Dollars (the "Fee") during the term of this Contract which shall include all reimbursable expenses. It is the duty of the PROVIDER to monitor such fees, costs, and expenses to ensure the PROVIDER does not exceed this total dollar amount. The COUNTY expressly reserves the right to deny payment of any amount billed in excess of \$68,001.98.
3. The invoice shall be submitted to the address set forth in the NOTICE section of this Contract to the attention of Mr. Terry Parker. The COUNTY shall pay such invoices within thirty (30) days of its receipt and approval of said invoice. The COUNTY is not obligated to pay, and will withhold from payment, any amounts the COUNTY has in dispute with the PROVIDER based on PROVIDER'S non-performance or negligent performance of any of the Services under this Contract.
4. **PROVIDER shall not be permitted or authorized to incur costs beyond the extent that purchase orders have been issued on approved contracts and/or purchases prior to the commencement date, during the term of the contract, and/or subsequent to the termination date of COUNTY contracts or purchases without prior, expressly written, appropriate authorization to COUNTY purchasing procedures and rules and regulations. COUNTY is not obligated to pay nor shall PROVIDER be entitled to receive payments for contract fees and expenses incurred in violation of this provision.**

III. GENERAL CONDITIONS

The parties further agree as follows:

1. CONTROL

All Services by the PROVIDER will be performed in accordance with the agreed terms and conditions set out in this Contract.

2. PROVIDER'S PERSONNEL

The PROVIDER certifies that it presently has adequate qualified personnel to perform all Services required under this Contract. All work performed during the Term of this Contract will be as specified in Exhibit A. The PROVIDER further certifies that all of its employees assigned to provide the Services have such knowledge and experience as required to perform the duties assigned to them.

If the COUNTY determines, acting reasonably and in good faith, that an employee of the PROVIDER is putting at risk the safety of COUNTY personnel or property or the security of the COUNTY systems and operations, then the COUNTY shall have the right to request PROVIDER to immediately remove such employee from providing any Services under this Contract.

3. INDEPENDENT STATUS

- a. Nothing in this Contract shall be deemed to represent that the PROVIDER, or any of the PROVIDER's employees or agents, are the agents, representatives, or employees of the COUNTY. The PROVIDER will be an independent PROVIDER over the details and means for performing the Services under this Contract. Anything in this Contract which may appear to give the COUNTY the right to direct the PROVIDER as to the details of the performance of the Services under this Contract or to exercise a measure of control over the PROVIDER is solely for purposes of compliance with local, state and federal regulations.
- b. It is further expressly agreed and understood by PROVIDER that neither it nor its employees or agents are entitled to any benefits which normally accrue to employees of the COUNTY; that PROVIDER has been retained by the COUNTY to perform the Services specified herein (not hired) and that the remuneration specified herein is considered fees for the Services performed (not wages) and that invoices submitted to the COUNTY by PROVIDER for the Services performed shall be on the PROVIDER's letterhead.

4. TERMINATION OR ABANDONMENT

- a. It shall be cause for the immediate termination of this Contract if, after its execution, the COUNTY determines that:
 - i) Either the PROVIDER or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has pled nolo contendere, or has pled or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, or any other collusive and illegal activity pertaining to bidding and governmental contracting; or
 - ii) PROVIDER has subcontracted, assigned, delegated, transferred its obligations or duties under this Contract without the COUNTY's consent

or approval, such consent not to be unreasonably withheld, delayed or conditioned, Notwithstanding the foregoing, the Provider shall have the right to assign any claims for money due or to become due under this Contract without the prior written approval of the County; or

- iii) PROVIDER has filed bankruptcy, become insolvent or made an assignment for the benefit of creditors, or a receiver, or similar officer has been appointed to take charge of all or part of PROVIDER assets.
- b. The COUNTY may terminate the Contract upon five (5) days written notice by the COUNTY or its authorized agent to the PROVIDER for PROVIDER's failure to provide the Services specified under this Contract provided that the County has delivered to the Provider at least thirty (30) business days prior written notice of the Provider's failure to provide the services and informed Provider that if Provider does not remedy such failure within such Thirty (30) day period, then the County may exercise its right to terminate this Contract.
- c. This Contract may be terminated by either party by giving thirty (30) days written notice to the other before the effective date of termination. In the event of such termination, the Provider shall be entitled to receive just and equitable compensation for any work performed in accordance with the requirements agreed and set out in this Contract, as of the termination date. The Provider shall not be reimbursed for any anticipatory profits that have not been earned as of the date of termination.
- d. Notwithstanding the above, the Provider shall not be relieved of liability to the County for damages sustained by the County by virtue of any material breach of the Contract by the Provider and the County may withhold any payments to the Provider for the purpose of setoff until such time as the exact amount of damages due the County from the Provider is determined.
- e. The COUNTY has the option to cancel the Agreement if the County is put on notice of legal problems with PROVIDER or any of its principals, partners, corporate officers, or agents, involving allegations of dishonesty, improper business conduct, or criminal activity. Cancellation under this provision shall be immediate and effective upon notice. The COUNTY reserves the right to exercise this provision at its discretion and any decision rendered by the COUNTY under this provision constitutes a final determination of the matter the public welfare requiring it.

5. COMPENSATION FOR CORRECTIONS

No compensation shall be due or payable to PROVIDER pursuant to this Contract for any PROVIDER's Services performed by the PROVIDER in connection with effecting of corrections to the design of the Services, when such corrections are required as a direct

result of negligence by the PROVIDER to properly fulfill any of his obligations as set forth in this Contract.

6. SUBCONTRACTING, ASSIGNMENT OR TRANSFER

- a. Any subcontracting, assignment, delegation or transfer of all or part of the rights, responsibilities, or interest of either party to this Contract is prohibited unless by written consent of the other party, not to be unreasonably withheld, delayed or conditioned. No subcontracting, assignment, delegation or transfer shall relieve the PROVIDER from performance of the Services under this Contract. The COUNTY shall not be responsible for the fulfillment of the PROVIDER's obligations to its transferors or subcontractors.
- b. Upon the request of the other party, the subcontracting, assigning, delegating or transferring party shall provide all documents evidencing the subcontract, assignment, delegation or transfer.
- c. PROVIDER may assign its rights and obligations hereunder for purposes of financing or pursuant to corporate transactions.

7. CONFLICT OF INTEREST

The PROVIDER covenants that it has no public or private interest, and will not acquire directly or indirectly any interest which would conflict in any manner with the performance of the Services. The PROVIDER warrants that no part of the total Contract Fee shall be paid directly or indirectly to any officer or employee of the COUNTY as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to the PROVIDER in connection with any work contemplated or performed relative to this Contract.

8. CONTINGENT FEES

The PROVIDER warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the PROVIDER, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the PROVIDER any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the COUNTY will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

9. EMPLOYMENT OF COUNTY WORKERS

The PROVIDER will not engage, on a full, part-time, or any other basis during the Term of the Contract, any professional or technical personnel who are or have been at any time during the Term of the Contract in the employ of the COUNTY.

10. ACCESS TO RECORDS

During all phases of the work and Services to be provided hereunder, PROVIDER agrees to permit duly authorized agents (who are not competitors of PROVIDER and have signed PROVIDER's standard form non-disclosure agreement) and employees of the COUNTY to enter PROVIDER's offices for the purpose of inspections, reviews and audits during normal working hours upon a minimum of five (5) business days' prior written notice. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places. The PROVIDER will maintain all books, documents, papers, accounting records, and other evidence pertaining to the Fee paid under this Contract and make such materials available at their offices at all reasonable times during the Term of this Contract and for three (3) years from the date of payment under this Contract for inspection by the COUNTY or by any other governmental entity or agency participating in the funding of this Contract, or any authorized agents thereof. Copies of said records shall be furnished to the COUNTY upon request.

11. ARBITRATION

Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the PROVIDER and the COUNTY will be submitted to the following dispute resolution process:

Disputes arising out of, or relating to, this Agreement shall first be discussed by the Project Managers. Any dispute that cannot be resolved within five (5) business days at the Project Manager level (or such other date as agreed upon by the Project Managers) shall be referred to the County Chief Information Officer and PROVIDER's COO ("Executive Dispute Level"). Any dispute that cannot be resolved in ten (10) Business Days at the Executive Dispute Level shall then be referred to a neutral third-party as an arbiter.

12. RESPONSIBILITIES FOR CLAIMS AND LIABILITIES

- a. PROVIDER shall indemnify, defend, save and hold harmless the COUNTY, and its elected officials, officers, employees, agents, assigns, and instrumentalities from and against any and all claims, liability, losses or damages arising from any acts or omissions of PROVIDER under the terms of this Contract—including but not limited to Title VII and 42 USC 1983 prohibited acts—arising out of or resulting from any conduct; whether performed by the PROVIDER, its agents, employees or assigns. This indemnification shall survive the termination or conclusion of this Contract. In the event PROVIDER utilizes any subcontractor in performance of the Services hereunder, PROVIDER shall use its commercially reasonable efforts to include in each contract with a subcontractor that such subcontractor will similarly indemnify COUNTY.

- b. PROVIDER expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by the PROVIDER shall in no way limit the responsibility to indemnify, defend, save and hold harmless the COUNTY or its elected officials, officers, employees, agents, assigns, and instrumentalities as herein provided. Notwithstanding, to the extent not offset by its insurance coverage and to the maximum extent permitted by applicable laws, in no event will PROVIDER's cumulative liability for any general, incidental, special, compensatory, or punitive damages whatsoever suffered by COUNTY or any other person or entity exceed the fees paid to PROVIDER by COUNTY during the twelve (12) calendar months immediately preceding the circumstances which give rise to such claim(s) of liability, even if PROVIDER or its agents have been advised of the possibility of such damages.
- c. The COUNTY has no obligation to provide legal counsel or defense to PROVIDER or its subcontractors in the event that a suit, claim or action of any character is brought by any person not a party to this agreement against PROVIDER as a result of or relating to performance of the Services under this Contract.
- d. Except as expressly provided herein, the COUNTY has no obligation for the payment of any judgment or the settlement of any claims against PROVIDER as a result of or relating to performance of the Services under this Contract.
- e. PROVIDER shall immediately notify the COUNTY c/o Shelby County Government, Contracts Administration, 160 N. Main Street, Suite 950, Memphis, TN 38103, of any claim or suit made or filed against PROVIDER or its subcontractors regarding any matter resulting from or relating to PROVIDER's performance of the Services under this Contract and will cooperate, assist and consult with the COUNTY in the defense or investigation thereof.
- f. The Provider shall immediately notify the County, c/o Shelby County Government, Contracts Administration, 160 N. Main Street, Suite 950, Memphis, TN 38103, of cancellation or changes in any of the insurance coverage required.
- g. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE LIABILITY OF PROVIDER TO THE COUNTY FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH SERVICES OTHER THAN MAINTENANCE OR SUPPORT SERVICES PROVIDED UNDER THIS CONTRACT, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, SHALL BE LIMITED TO THE AMOUNT OF FEES PAID TO PROVIDER UNDER THIS CONTRACT. THE FOREGOING LIMITATION DOES NOT APPLY TO THE FOLLOWING CIRCUMSTANCES: (1) FRAUD; OR (2) CLAIMS FOR BODILY INJURY OR PROPERTY DAMAGE.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE LIABILITY OF PROVIDER TO THE COUNTY FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY MAINTENANCE OR SUPPORT SERVICES (NOT SERVICES CONTEMPLATED IN THE PRIOR PARAGRAPH) PROVIDED UNDER THIS CONTRACT, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE TOTAL FEES PAID BY THE COUNTY FOR SUCH MAINTENANCE AND SUPPORT SERVICES DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE OCCURRENCE OF THE LIABILITY EVENT.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER (NOR TO ANY PERSON CLAIMING ANY RIGHT, TITLE, OR INTEREST DERIVED FROM OR AS SUCCESSOR TO A PARTY'S RIGHT, TITLE, AND INTEREST) FOR INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOST REVENUES OR PROFITS, OR LOSS OF BUSINESS OR LOSS OF DATA ARISING OUT OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER THE PARTIES HAVE ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGE.

13. GENERAL COMPLIANCE WITH LAWS

- a. The PROVIDER certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and it shall obtain, at its expense all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of the Services under this Contract.
- b. The PROVIDER is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the performance of the Services. The preceding shall include, but is not limited to, compliance with all Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements, and the Americans with Disabilities Act (ADA).
- c. This Contract will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Contract, the PROVIDER agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Contract will be instituted and litigated in the state or federal courts of the State of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Contract submit to the jurisdiction of the state or federal courts of the State of Tennessee located in Shelby County, Tennessee. No dispute under this Contract shall be determined by a trial by jury.

14. NON-DISCRIMINATION

The PROVIDER hereby agrees, warrants, and assures compliance with the provisions of Title VI and VII of the Civil Rights Act of 1964 and all other federal statutory laws which provide in whole or in part that no person shall be excluded from participation or be denied benefits of or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the PROVIDER on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee State Constitutional or statutory law. The PROVIDER shall upon request show proof of such non-discrimination and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

Any recipient entity shall be subject to the requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., and regulations promulgated pursuant thereto. It shall develop a Title VI implementation plan with participation by protected beneficiaries as may be required by such law or regulations. To the extent applicable, such plan shall include Title VI implementation plans sub-recipients of federal funds through the entity. The PROVIDER shall produce the plan upon request of Shelby County Government. Failure to provide same shall constitute a material breach of contract.

15. ENTIRE AGREEMENT

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, whether oral or written.

16. AMENDMENT

This Contract may be modified or amended only by written instrument signed by both parties.

17. SEVERABILITY

If any provision of this Contract is held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable; and this Contract shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Contract shall remain in full force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance here from. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Contract a legal, valid and enforceable provision as similar in terms to such unlawful, invalid or unenforceable provision as possible.

18. NO WAIVER OF CONTRACTUAL RIGHT

No waiver of any term, condition, default, or breach of this Contract, or of any document executed pursuant hereto, shall be effective unless in writing and executed by the party making such waiver; and no such waiver shall operate as a waiver of either (a) such term, condition, default, or breach on any other occasion or (b) any other term, condition, default, or breach of this Contract or of such document. No delay or failure to enforce any provision in this Contract or in any document executed pursuant hereto shall operate as a waiver of such provision or any other provision herein or in any document related hereto. The enforcement by any party of any right or remedy it may have under this Contract or applicable law shall not be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

19. MATTERS TO BE DISREGARDED

The titles of the several sections, subsections, and paragraphs set forth in this contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Contract.

20. SUBJECT TO FUNDING

This Contract is subject to annual appropriations of funds by the Shelby County Government. In the event sufficient funds for this Contract are not appropriated by Shelby County Government for any of its fiscal period during the Term hereof, then this Contract will be terminated. In the event of such termination, the PROVIDER shall be entitled to receive just and equitable compensation for any work performed in accordance with the requirements agreed and set out in this Contract, as of the Termination Date.

21. TRAVEL EXPENSES

All travel expenses payable under this Contract shall be in accordance with the County Travel Policy and Procedures. This includes advance written travel authorization, submission of travel claims, documentation requirements, and reimbursement rates. No travel advances will be made by the County.

22. NON-LIABILITY FOR PROVIDER EMPLOYEE TAXES

Neither PROVIDER nor its personnel are COUNTY's employees, and COUNTY shall not take any action or provide PROVIDER's personnel with any benefits and shall have no liability for the following:

- a. Withholding FICA (Social Security) from PROVIDER's payments;
- b. Making state or federal unemployment insurance contributions on behalf of PROVIDER or its personnel;

- c. Withholding state and federal income tax from payment to PROVIDER;
- d. Making disability insurance contributions on behalf of PROVIDER;
- e. Obtaining workers' compensation insurance on behalf of PROVIDER or PROVIDER's personnel.

23. CONTRACTING WITH LOCALLY OWNED SMALL BUSINESSES

The PROVIDER shall take affirmative action to assure that Locally Owned Small Businesses that have been certified by the COUNTY are utilized when possible as sources of supplies and equipment, construction and services.

24. INCORPORATION OF WHEREAS CLAUSES

The foregoing whereas clauses are hereby incorporated into this Contract and made a part hereof.

25. RIGHT TO REQUEST REMOVAL OF PROVIDER'S EMPLOYEES

The COUNTY may interview the personnel PROVIDER assigns to COUNTY's work. COUNTY shall have the right, at any time, to request removal of any employee(s) of PROVIDER, whom COUNTY deems to be unsatisfactory for any reason. Upon such request, PROVIDER shall use all reasonable efforts to promptly replace such employee(s) with substitute employee(s) having appropriate skills and training.

26. DISCLOSURE OF REPORTS, DATA OR OTHER INFORMATION

Notwithstanding anything to the contrary contained herein or within any other document supplied to the COUNTY by the PROVIDER, the PROVIDER understands and acknowledges that the COUNTY is a governmental entity subject to the laws of the State of Tennessee and that any reports, data or other information supplied to the COUNTY by the PROVIDER due to Services performed pursuant to this Contract is subject to being disclosed as a public record in accordance with the laws of the State of Tennessee.

27. ORGANIZATION STATUS AND AUTHORITY

- a. The PROVIDER represents and warrants that it is a corporation, limited liability company, partnership, or other entity duly organized, validly existing and in good standing under the laws of the state of the state in which the PROVIDER is incorporated; it has the power and authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary.
- b. The execution, delivery and performance of this Contract by the PROVIDER has been duly authorized by all requisite action and will not violate any provision of law,

any order of any court or other agency of government, the organizational documents of PROVIDER, any provision of any indenture, agreement or other instrument to which PROVIDER is a party, or by which PROVIDER's respective properties or assets are bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets.

28. WARRANTY

To the extent permitted by applicable law, the Provider warrants to the County that (a) all Services shall be performed in accordance with acceptable standards in the industry applicable to the Services to ensure that the operation of the maintained software products do not materially differ from documented specifications, and (b) all Provider resources performing Services hereunder shall have the necessary expertise, skills and qualifications and will perform the Services in a professional manner. The Provider warrants to the County that all Services shall be in strict compliance with the terms of this Contract, and all applicable governmental laws, rules and regulations. Except as expressly stated in this section 29 and to the extent permitted by applicable law, the Provider (including its suppliers, subcontractors, employees and agents) provides all services and work "AS IS" without express or implied warranty of any kind regarding the character, function, capabilities, or appropriateness of such services and to the extent permitted by applicable law, makes no other express or implied warranties, written or oral, and ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE. To the extent permitted by applicable law, Provider provides no warranty whatsoever for any third-party hardware or software products. If a third-party product is supplied by Provider, no support for any third party product is provided, unless an addendum is attached hereto, identifying the product and specifying the terms and conditions of any support. Third-party applications which utilize or rely upon the application services may be adversely affected by remedial or other actions performed pursuant to this Contract; To the extent permitted by applicable law, Provider bears no liability for and has no obligation to remedy such effects. Provider may make repeated efforts within a reasonable time period to resolve maintenance requests. When a maintenance request cannot be resolved and to the extent permitted by applicable law County's exclusive remedy will be damages in an amount equal to the total of maintenance fees paid to Provider for the defective or non-conforming software products for the twelve (12) calendar months immediately preceding County's maintenance request.

29. RIGHTS IN DATA

All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems and any other materials or properties provided to Provider by County shall be the sole and exclusive property of County. All design, bid documents, software, and other material furnished to the County by Provider during the course of the Services being provided comprise derivative works from Provider's pre-existing intellectual property and shall remain the property of Provider. The remedial methods, software updates, and product information provided to County pursuant to this Contract are protected under the laws of the United States and the individual states and by international treaty provisions. Provider retains full ownership in such items and grants to County a limited, nonexclusive, nontransferable license to use the items, subject to the terms and conditions of this Contract and other agreements between Provider and County.

30. SOURCE CODE

County is entitled to receive the Software compiled (object) code and is licensed to use any data code produced through implementation and/or normal operation of the Software; County is not entitled to receive source code for the Software except pursuant to an Intellectual Property Escrow Agreement, which may be executed separately by the Parties. The Provider, shall place the entire set of source code for the proposed solution with an authorized escrow agent. Setting aside the software in an escrow account provides Shelby County a method of obtaining the software in the event the Provider ceases to market and support the proposed software. The Provider shall provide all information to Shelby County relevant to placing the software with an authorized escrow agent, ensuring the most recent version of the software is in escrow within a reasonable time after issuance of a new major release of the solution.

31. INSURANCE REQUIREMENTS

a. The PROVIDER shall purchase and maintain, in a company or companies licensed to do business in the State of Tennessee, such insurance as will protect the COUNTY from claims which may arise out of or result from the PROVIDER'S operations under the Contract, whether such operations are performed by PROVIDER or by anyone directly employed by PROVIDER, or by anyone for whose acts the PROVIDER may be liable. In the event that PROVIDER utilizes a subcontractor in the performance of any of the Services hereunder, PROVIDER shall require such subcontractor to maintain the same insurance coverage and limits as provided herein, unless otherwise agreed by the COUNTY in writing.

b. The PROVIDER will provide evidence of the following insurance coverage:

The PROVIDER/provider shall maintain coverage with limits of no less than:

- 1) *Commercial General Liability Insurance* \$1,000,000 limit per occurrence bodily injury and property damage/\$1,000,000 personal and

advertising injury/\$2,000,000 General Aggregate/\$2,000,000 Products-Completed Operations Aggregate. Shelby County Government, its elected officials, appointees and employees shall be named as additional insureds. The PROVIDER/provider should indicate in its bid whether the coverage is provided on a claims-made or preferably on an occurrence basis. The insurance shall include coverage for the following:

- a) Premises/Operations
- b) Products/Completed Operations
- c) Contractual
- d) Independent Providers
- e) Broad Form Property Damage
- f) Personal Injury and Advertising Liability
- g) Cyber Liability – minimum limit of \$300,000

2) *Business Automobile Liability Insurance* - \$1,000,000 each accident for property damage and personal injury. Coverage is to be provided on all:

- a) Owned/Leased Autos
- b) Non-owned Autos
- c) Hired Autos

3) *Workers Compensation and Employers' Liability Insurance* - Workers Compensation statutory limits as required by Tennessee. This policy should include Employers' Liability Coverage for \$1,000,000 per accident.

4) *Professional Liability Insurance* - \$1,000,000 per claim/\$3,000,000 annual aggregate. Indicate if coverage is on occurrence basis or claims-made.

5) *Crime and Third Party Fidelity* – minimum limit of \$500,000 per employee, including Third Party coverage annual aggregate.

c. All policies will provide for notice of non-renewal or termination to be given pursuant to the policy requirements. Additionally, PROVIDER shall provide thirty (30) days written notice to COUNTY of cancellation or material change in coverage provided absent equivalent or better policies in place.

d. PROVIDER shall provide County with a current copy of the Certificate of Insurance at the time of contracting and shall maintain said insurance during the entire Contract period as well as provide renewal copies on each anniversary date. The certificate holder is to read:

Shelby County Government
Contracts Administration
160 N. Main, Suite 950
Memphis, TN 38103

32. NOTICE

Any notices required or permitted to be given under the provisions of this Contract shall be effective only if in writing and delivered either in person to the COUNTY's authorized agent or by First Class or U.S. Mail to the addresses set forth below, or to such other person or address as either party may designate in writing and deliver as herein provided:

COUNTY: Shelby County Government
Codes Enforcement
6465 Mullins Station Road
Memphis, Tennessee 38134-7968
Attn.: Mr. Terry Parker

and

Shelby County Government
Contract Administration
160 N. Main St., Suite 950
Memphis, Tennessee 38103

PROVIDER: Accela, Inc.
2633 Camino Ramon, Suite 500
San Ramon, CA 94583

33. CONFIDENTIAL INFORMATION

- a. Both parties acknowledge that, in dealing with individuals in the provision of the Services for COUNTY, any information provided to either party is confidential information. Both parties agree to hold all confidential information in strict confidence, and except as expressly set forth herein, will not use or disclose such confidential information to any third party(s), including but not limited to any corporation, company, group, partnership, agency or individual. Either party shall:
 - i) Use the confidential information only in connection with the provision of the Services;
 - ii) Disclose the confidential information only to its officers, directors, and employees who need to know the confidential information to accomplish the preparation of the audits and/or auditing process; and
 - iii) Safeguard the confidential information with the same or greater degree of care to avoid unauthorized disclosure as that party uses to protect its own confidential information.

- b. In the event that the party receiving confidential information ("Receiving Party) of the other ("Disclosing Party") or anyone to whom it transmits confidential information becomes legally compelled to disclose any of the confidential information, the Receiving Party will provide the Disclosing Party with prompt written notice before such confidential information is disclosed so that the Disclosing Party can seek a protective order or other appropriate remedy. Unauthorized disclosure of confidential information by either party shall result in immediate termination of the Contract.
- c. For the avoidance of doubt, the following types of information will not be deemed to be confidential information for the purposes of this Agreement: any information which (i) was already known to the Receiving Party at the time of disclosure, (ii) was independently developed by the Receiving Party, (iii) was lawfully received by the Receiving Party from a third party, (iv) becomes known to persons knowledgeable in the industry or public knowledge, or (v) is required to be disclosed by law.

34. ORDER OF APPLICATION OF CONTRACT AND SUPPORTING EXHIBITS

It is understood and agreed between the parties that in the event of a variance between the terms and conditions of the Contract and any exhibit or amendment thereto, the following order of precedence applies:

1. The Contract
2. The Software Maintenance Service and Quote

35. RIGHT TO MONITOR AND AUDIT

During all phases of the work and services to be provided hereunder the PROVIDER agrees to permit duly authorized agents and employees of the COUNTY to enter the PROVIDER's offices for the purpose of inspections, reviews and audits during normal working hours. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places. The PROVIDER will maintain all books, documents, papers, accounting records, and other evidence pertaining to the fee paid under this Contract and make such materials available at their offices at all reasonable times during the period of this Contract and for three (3) years from the date of payment under this Contract for inspection by the COUNTY or by any other governmental entity or agency participating in the funding of this Contract, or any authorized agents thereof; copies of said records to be furnished if requested.

FORCE MAJEURE

If either party is delayed in its performance of any obligation under this Contract due to causes or effects beyond its control, that party will give timely notice to the other party and will act in good faith to resume performance as soon as practicable.

36. DATA SECURITY

Architect warrants to the COUNTY and State that it agrees to meet the spirit and intent of all compliance requirements relating to the content of data accessed. This includes but is not limited to Payment Card Industry (PCI) data, as defined by PCI Security Standard v3.1, Protected Health Information (PHI), as defined under the in Code of Federal Regulations, Title 45, Subtitle A, Subchapter C, Part 160, Subpart A, §160.103 (45 C.F.R. §160.103), and Personally Identifiable Information (PII), as defined in the National Institute of Standards and Technology Special Publication 800-122 sections 2.1 and 2.2, in electronic and/or paper format. CONTRACTOR will sign any documents that are reasonably necessary to keep the State and the COUNTY in compliance, including, but not limited to, Data Security - Vendor Acknowledgement agreement and Acceptable Use Policy, and to abide by SCG ITS security policies including, but not limited to, the SCG Network Security and Information Security policies.

Architect shall apply all vendor-issued security updates for system hardware and software components maintained by the Architect within 30 days of issuance.

Upon notification by the COUNTY, the Architect shall assure that all vulnerabilities specific to the systems maintained and identified by the COUNTY Approved Scanning Vendor (ASV), using the common vulnerability scoring system (CVSS), as not meeting compliance requirements, including but not limited to PCI Data Security Standards (DSS) and Health Insurance Portability and Accountability Act (HIPAA), are patched, updated, or otherwise modified to assure they meet said compliance requirements.

The Architect shall promptly report to Information Technology Security Officer any breaches of Shelby County Government data and will implement immediate, appropriate corrective actions to contain and prevent recurrence.

i) HIPAA (If Health Related) - Architect warrants to the COUNTY and State that it is familiar with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Contract. Architect warrants that it will cooperate with the COUNTY and State in the course of performance of the Contract so that all parties will be in compliance with HIPAA, including cooperation and coordination with COUNTY and State privacy officials and other compliance officers required by HIPAA and its regulations. Architect will sign any documents that are reasonably necessary to keep the State and the COUNTY in compliance with HIPAA, including, but not limited to, business associate agreements.

ii) PCI-DSS-Architect warrants to the COUNTY that it is familiar with the requirements established by the Payment Card Industry Security Standards Council for PCI Data Security Standards (PCI-DSS) and will comply with all applicable PCI-DSS requirements in the course of this Contract. CONTRACTOR agrees to indemnify and hold the COUNTY, its officers, employees, and agents, harmless for, from and against any and all claims, causes of action, suits, judgments, assessments, costs (including

reasonable attorneys' fees) and expenses arising out of or relating to any breach of COUNTY or COUNTY customer credit card or identity information due to the Architect's actions.

iii) Personally Identifiable Information (PII) - Architect warrants to the COUNTY that it will protect any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.

IN WITNESS WHEREOF, the parties hereto have set their signatures for the purposes contained herein, on the day and date first above written.

**APPROVED AS TO FORM
AND LEGALITY:**

SHELBY COUNTY GOVERNMENT

Contract Administrator/
Assistant County Attorney

Harvey Kennedy, CAO

Accela, Inc.

BY: _____

TITLE: _____

CORPORATE ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared _____, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be president or other officer authorized by appropriate Corporate action and/or Resolution to execute the preceding instrument of the _____, the within named bargainer, a corporation, and that he as such _____, executed the foregoing instrument for the purpose herein contained, by signing the name of the corporation by himself/herself as _____.

Witness my hand and official seal at office this _____ day of _____, 2016.

Notary Public