RESOLUTION AWARDING A CONTRACT THROUGH A COMPETITIVE CONTRACTING REQUEST FOR PROPOSAL PROCESS WITH UNICORN, HRO, 25 B. HANOVER ROAD, FLORHAM PARK, NEW JERSEY 07932 TO PROVIDE PAYROLL AND HUMAN RESOURCE INFORMATION SYSTEM SERVICES FOR THE CITY OF TRENTON FOR A PERIOD OF THREE (3) YEARS IN AN AMOUNT NOT TO EXCEED $588,778.00- CC2017-02

WHEREAS, Resolution Number 08-154 authorized the utilization of competitive contracting in lieu of public bidding for Payroll Services and Human Resource Information Systems Services as required pursuant to the authority set forth in the Local Public Contracts Law at N.J.S.A. 40A:11-4.1 et. seq.; and

WHEREAS, Pursuant to N.J.S.A.40A:11-4.5. et seq., a Request for Competitive Contracting Proposals was advertised and seven (7) proposals were received on April 20, 2017 and were evaluated based on criteria that included experience and qualifications, quality of technical proposal, price proposal and responsiveness to the specifications; and

WHEREAS, the proposal of Unicorn, HRO, 25 B. Hanover Rd., Florham Park, NJ 07932 was deemed to include the necessary qualifications and expertise for the performance of the services at the rates listed in the proposal; and

WHEREAS, said proposal is for an amount not to exceed $588,778.00 for three (3) years, with an option to extend two (2) one (1) year options; to provide Payroll and Human Resource Systems Services for the City of Trenton, Department of Administration; and

WHEREAS, said proposal is for a total amount not to exceed for three year $588,778.00 $235,051.00 (Year 1) have been certified in account number 8-01--25-2540-290 contingent upon the adoption FY'2018 final budget, $176,863.50 (Year 2) 9-01--25-2540-290; $176,863.50 (Year 3) 0-01--25-2540-290 contingent upon the availability of funds and the adoption of the temporary/final budget for FY'19 and FY'20; with an option to extend two (2) one (1) year options with a typical increase of 3.5%-5% or larger subject to mutual agreement.
NOW, THEREFORE, IT IS RESOLVED, by the City Council of the City of Trenton as follows:

1. The Mayor is hereby authorized to execute a contract with Unicorn HRO, 25 B. Hanover Rd., Florham Park, NJ 07932 to provide Payroll and Human Resource Information System Services for a period of three (3) years with an option to extend two (2) one year options for the said purposes in the manner prescribed by law for the City of Trenton, Department of Administration.

2. This contract is awarded pursuant to the authority set forth in the Local Public Contracts Law at N.J.S.A. 40A:11-4.5.

3. A notice of this action shall be printed once in the official newspaper for the City of Trenton and the Resolution and contract shall remain on file in the City Clerk’s Office.

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<thead>
<tr>
<th></th>
<th>Aye</th>
<th>Nay</th>
<th>Abstain</th>
<th>Absent</th>
<th>Aye</th>
<th>Nay</th>
<th>Abstain</th>
<th>Absent</th>
<th>Aye</th>
<th>Nay</th>
<th>Abstain</th>
<th>Absent</th>
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<tbody>
<tr>
<td>BETHEA</td>
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<tr>
<td>CALDWELL</td>
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<td>HARRISON</td>
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This Resolution was adopted at a Meeting of the City Council of the City of Trenton SEPT 07 2017

President of Council

City Clerk
The City of Trenton, New Jersey

Services and Applications Manifest (Schedule A-1)

<table>
<thead>
<tr>
<th>One Time Implementation</th>
<th>Billed upon contract signing</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td># Active EEs</td>
</tr>
<tr>
<td>ICON implementation—includes employee history from 2015 to present</td>
<td>1285</td>
</tr>
<tr>
<td>WFM implementation</td>
<td>1285</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>One time Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$10,000.00</td>
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<tr>
<td></td>
<td>$3,000.00</td>
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Total Implementation Fees $58,187.50

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<thead>
<tr>
<th>Annual Recurring</th>
<th>Billed annually in anniversary month</th>
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</thead>
<tbody>
<tr>
<td></td>
<td># of forms</td>
</tr>
<tr>
<td>W-2 preparation</td>
<td>1444</td>
</tr>
<tr>
<td>Form 1095c filing</td>
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Annual Fee $4,000.00

Estimated Annual Recurring Fees $10,981.50

<table>
<thead>
<tr>
<th>Monthly Recurring</th>
<th>Billed monthly</th>
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<tbody>
<tr>
<td></td>
<td># EE’s</td>
</tr>
<tr>
<td>ICON (includes payroll, HR, benefits administration, Employee Self Service, New Hire Reporting, FMLA, FTE Position Control)</td>
<td>1285</td>
</tr>
<tr>
<td>Workforce Management Module</td>
<td>1285</td>
</tr>
<tr>
<td>Retirees: No Charge for up to 1,000 Retirees</td>
<td>1000</td>
</tr>
<tr>
<td>Garnishments: $2 per garnishment</td>
<td>135</td>
</tr>
</tbody>
</table>

Payroll Check processing (biweekly) | # EE’s | Per Employee Pay |
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<thead>
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<th></th>
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</thead>
<tbody>
<tr>
<td></td>
<td>1285</td>
<td>$1.20</td>
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</tbody>
</table>

Payroll Check processing (monthly) | # Creators | Cost / Creator |
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<tr>
<th></th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Creation of Cognos reporting</td>
<td>2</td>
<td>$50.00</td>
</tr>
</tbody>
</table>

|                         | # of Entities | Rate / Entity |
| Federal Tax Services    | 1            | $120.00 |
| State Tax Services      | 2            | $20.00 |
| Local Tax Services      | 0            | $10.00 |

Total Monthly Recurring Estimate $13,823.50

Shipping charges are billed as incurred
NSF fees - $55 per insufficient funds transaction
Employee file storage will be billed as follows:

<table>
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<tr>
<th>Size</th>
<th>Charge</th>
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<tbody>
<tr>
<td>Up to 1 GB</td>
<td>no charge</td>
</tr>
<tr>
<td>1-25 GB</td>
<td>$25 per month</td>
</tr>
<tr>
<td>25 GB +</td>
<td>$25 per month plus $2.50 per additional GB</td>
</tr>
</tbody>
</table>
SERVICES AGREEMENT

SERVICES AGREEMENT (this “Agreement”), dated as September 11, 2017 (the “Effective Date”) by and between UNICORN HRO, LLC, a New Jersey corporation, (“Unicorn”) and The City of Trenton, New Jersey (“Customer”)

WITNESSETH:

WHEREAS, Unicorn provides payroll and human resources information services; and

WHEREAS, Customer desires to have Unicorn provide certain payroll and human resources information services (“P&HR Services”) and related services to Customer as described in Schedule A attached hereto and made a part hereof and such other Schedules as the parties may enter into from time to time (collectively, the “Services”) and Unicorn desires to supply the Services to Customer on the terms and conditions contained herein and in such Schedules;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Unicorn and Customer hereby agree as follows:

1. Agreement and Term

1.1 Agreement. During the Term, Unicorn shall be Customer’s provider of, and Customer shall purchase only from Unicorn, the Services, subject to the terms and conditions specified in this Agreement.

1.2 Term. Unless terminated in accordance with Section 8 of this Agreement, the term of this Agreement (the “Term”) shall commence on the earlier to occur of the One-hundred and twentieth (120th) day after the Effective Date or the date Unicorn notifies Customer that the Services are ready for testing by Customer (the “Commencement Date”) and shall continue for 36 Months (the “Initial Term”). Unless Customer is in breach of this Agreement, Customer will have the option to renew this Agreement for two (2) successive one (1) year terms (each a “Renewal Term”) by providing Unicorn, no later than at least sixty (60) days prior to the end of, as applicable, the Initial Term or the first Renewal Term, written notice that this Agreement is extended for one year; provided, however, if no such notice is provided prior to such date and Customer continues to receive and use any of the Services past what would otherwise be the end of the Term, Customer shall be deemed to have elected to exercise its option to continue for a one year term.

2. Basic Rights and Obligations of Unicorn

2.1 Unicorn Services. Subject to the terms and conditions of this Agreement and in consideration of the fees described in Section 4, Unicorn shall provide to Customer the Services.

2.2 Changes in Scope of Services. Unicorn may, from time to time, upon sixty (60) days written notice make changes to the scope of the Services (either additions or deletions). Such changes shall be evidenced by the delivery of an applicable Schedule. If acting under this Section 2.2, Unicorn removes any of the Services it will use reasonable commercial efforts to assist Customer in locating a replacement for such removed Services.

2.3 Ownership. Customer acknowledges and agrees that all software (including third party software) and web applications, databases, graphical user interfaces and system architecture provided or used by or on behalf of Unicorn in connection with the performance of the Services, and the related documentation, and all copies, modifications, enhancements, revisions, and updates thereof, is proprietary to Unicorn and constitutes confidential information and trade secrets of Unicorn (“Unicorn Property”). For the purposes of this Agreement, any user names, pass codes, or other security codes (“Security Codes”) that Unicorn may provide to Customer for accessing the Services shall be deemed Unicorn Property. All Customer information remains the property of Customer.

2.4 Services Provided by Others. Unicorn may, in its sole discretion, engage one or more third parties (“Vendors”) to provide some or all of the Services. Each Vendor shall have, as applicable with respect to the Service provided by such Vendor, all of the rights, protections, limitations of liability, and indemnification rights provided to Unicorn under this Agreement, and all applicable references in this Agreement to “Unicorn” shall be deemed references to “Unicorn and/or the Vendor, as applicable,” whether or not the term “Vendor” is expressly stated.

3. Basic Obligations of Customer

3.1 Data and Records. Customer shall provide to Unicorn on a timely basis all data and records which are necessary to enable Unicorn to perform the Services. Customer shall be responsible for the accuracy and completeness of all data and records provided and for the results of inaccurate or incomplete data or records. Customer shall promptly review all output from the services and promptly report any errors or omissions to Unicorn.
3.2 Service Schedules and Powers of Attorney. In addition to Schedule A, the parties may, from time to time, enter into other Schedules which are incorporated by reference into this Agreement and provide additional details regarding the Services and the parties rights, obligations and responsibilities with respect to such services and Power of Attorneys which are need for the provision of the Services.

3.3 Connectivity. Customer shall be responsible at its expense to obtain and maintain all Customer located or specific equipment, facility wiring, connectivity installation, including payment of connectivity charges necessary to facilitate the performance of the Services.

3.4 Use of Services. The Services are provided for the sole and exclusive use of Customer for its internal business use only and for use solely within and from the United States. Any resale, in whole or in part, of the Services is strictly prohibited.

3.5 Security Codes. Customer may disclose Security Codes to Customer’s authorized users, but to no other person or entity. Customer acknowledges and agrees that failure to protect Security Codes may allow unauthorized persons to access and use the Services to, among other things, (a) cause unauthorized transactions, including, but not limited to the unauthorized payment of funds and benefits all in the Customer’s name and at the Customer’s risk and liability as Customer, (b) enable unauthorized persons to access and obtain personal, non-public information of Customer’s employees, and (c) add, change or delete data used with the Services. Customer agrees that Customer is fully responsible for all use of the Security Codes, whether or not authorized, and fully assumes (and will defend and indemnify Unicorn against) any and all damages, liabilities, losses, costs, and expenses (including reasonable attorney fees) resulting or in any manner arising from any use (including, any improper, unauthorized, or fraudulent use) of any Security Codes.

3.6 Internal Procedures. Customer acknowledges the importance of developing, and its obligation to Unicorn to develop, internal procedures to limit risk in connection with the Customer’s use of the Services, which procedures will include, at a minimum: (a) deactivating user access rights for any person no longer authorized by the Customer to use the Services and notifying Unicorn immediately when the person is no longer authorized as a user; (b) not keeping lists of authorized user names and Security Codes together in any form; (c) notifying Unicorn immediately when compromise of any Security Code is suspected; and (d) notifying Unicorn immediately when Customer becomes aware of, or suspects, any loss, theft or unauthorized use in connection with any Service.

4. Terms of Payment to Unicorn

4.1 Contract Fees. Customer shall make payment to Unicorn for Services rendered hereunder at the rates and in the amounts set forth in the applicable Schedule which reflects the pricing in the competitive Proposal, dated ______ 2017, submitted by Unicorn to customer and accepted by Customer (the “Contract Fees”) subject to adjustment as provided below.

4.2 Taxes. In addition to any other sums due hereunder, Customer shall pay directly or as invoiced by Unicorn, all federal, state, and local taxes and similar charges and fees, however designated or levied, based upon this Agreement or the Services or materials provided or used hereunder, including, but not limited to any state or local sales, use, privilege or excise taxes, but excluding any taxes based on the net income of Unicorn. All such taxes shall be due and payable when billed by Unicorn to Customer, or when assessed, levied or billed by the appropriate taxing authority, even if such billing shall occur subsequent to the expiration or termination of this Agreement.

4.3 Commencement of Fees / Invoices.

(a) Unicorn shall invoice Customer the fees in the applicable Schedule for implementation, consulting and/or training services as such services are provided to Customer.

(b) The fees in Schedule A-1 and any other fees similarly structured shall commence on the Commencement Date. Such fees shall be based on the actual number of individuals with respect to whom Services are provided; provided, however, starting with the Commencement Date for any calendar month during which such Services are not actively used by Customer, the fees shall be initially invoiced and paid based on the estimated number of employees set forth in Schedule A-1 and then at the end of the year during which Customer actively uses the Services the number of employees and the fees due for such earlier estimate period will be reconciled with the actual number of employees during such period and any deficiency shall be invoiced to and paid by Customer.

(c) Commencing with the Commencement Date, Unicorn shall invoice Customer for the Contract Fees monthly in arrears. Services provided but not listed in a Schedule, will be invoiced at Unicorn’s rate as published in the then current Unicorn price list.

4.4 Time of Payment.

(a) Payment of Fees. Except as otherwise provided herein, any sum due Unicorn hereunder shall be due and payable within forty (40) days of the date of the
applicable invoice. Any amount not paid when due shall accrue interest at a rate of the lower of 1% per month or the maximum rate permitted by applicable law. In addition to all other remedies available to Unicorn hereunder, if Customer fails to pay any amounts hereunder within five (5) days of receiving written or electronic notification that they are past due, Unicorn may, in its sole discretion and without liability, suspend its performance of the Services until all such outstanding amounts are paid by Customer.

(b) Initial Payment. The fees, if any, listed in Schedule A-2 are due and payable in full on the Effective Date.

(c) Method of Payment. All amounts payable under this Agreement will be computed, stated, and paid in U.S. dollars. Payments will be made by electronic transfer to the bank account Unicorn designates. Customer shall bear all banking and similar charges.

5. Compliance with Laws

The Services may only be used for lawful purposes. In addition to complying with the terms, conditions and limitations of this Agreement, Customer shall comply with all local, state, national and international laws applicable to its use of the Services.

6. Performance of Services; Disclaimers of Warranties

6.1 Performance of Services. The Services will be performed in a good and workmanlike manner in accordance with applicable specifications from time to time promulgated by Unicorn and/or applicable guidelines or service levels set forth in any Schedules to this Agreement.

6.2 Disclaimer of Warranties. EXCEPT AS PROVIDED IN SECTION 6.1, THE SERVICES ARE PROVIDED "AS IS" WITHOUT (AND UNICORN EXPRESSLY DISCLAIMS) ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY AS TO RELIABILITY, MERCHANTABILITY, NON-INFRINGEMENT, COMPLETENESS, OR FITNESS FOR A PARTICULAR PURPOSE, (WHETHER OR NOT UNICORN KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE AWARE OF ANY SUCH PURPOSE). UNICORN DOES NOT WARRANT THAT SUCH SERVICES WILL BE ERROR FREE, NOR DOES IT MAKE ANY WARRANTY AS TO ANY RESULTS THAT MAY BE OBTAINED BY USE OF SUCH SERVICES.

Without limiting the generality of the foregoing, Unicorn does not make any representations or warranties with respect to the Services or the legal effect or sufficiency, under Federal, State or local statutes or regulations or other laws, of any forms, documents, or other matters provided by Unicorn from time to time in connection with this Agreement.

The provisions of this Section 6 and Section 9 allocate the risks under and in connection with this Agreement between the parties and the compensation to Unicorn under this Agreement reflects this allocation of risk and the limitations of liability agreed to under this Agreement.

7. Confidential Information / Security/ Non-Solicitation/Non-Hire

7.1 Confidentiality. (a) During the Term of this Agreement and thereafter for a period of three years, each party shall maintain the other party’s Confidential Information (as defined below) in the strictest confidence and except as otherwise provided herein, it shall not use or disclose to anyone other than its Agents (as defined below) and the Agents of the other party, any Confidential Information of the other party. “Confidential Information” means information a party ("Disclosing Party") designates as being confidential or which, under the circumstances surrounding disclosure, should reasonably be understood to be confidential and, includes, without limitation, information relating to software products; marketing; promotion or other business plans or practices; trade secrets; know-how; financial information; and information received from others that Disclosing Party is obligated to treat as confidential and has so advised the other party hereto ("Receiving Party"). Confidential Information disclosed by any Agent of a party is covered by this Agreement. The rights and obligations of the parties under this Section 7 shall inure to the benefit of, and are enforceable by or against, the entity affiliates of each party.

(b) Confidential Information shall not include information that: (i) is or subsequently, without breach of this Agreement, becomes publicly available; (ii) was known to Receiving Party before disclosure hereunder; (iii) becomes known to Receiving Party from a source other than Disclosing Party or its Agents without a breach of an obligation of confidentiality owed to Disclosing Party; or (iv) is independently developed by Receiving Party without the use or benefit of any Confidential Information of Disclosing Party.

(c) Notwithstanding the above, it shall not be a breach of this Section 7.1 for a party to disclose Confidential Information of the other party that is required to be disclosed pursuant to a court order or other government authority of competent jurisdiction, or as otherwise required by law, rule or regulation, provided that the party, unless prohibited by law, promptly gives written notice thereof to the Disclosing Party.
7.2 Security. Unicorn agrees to maintain its information security program that includes administrative, technical and physical safeguards reasonably designed to (i) protect the security and confidentiality of the Customer Data (as defined below), (ii) protect against anticipated threats or hazards to the security of the Customer Data, (iii) protect against unauthorized access to or of use of the Customer Data, and (iv) purge or dispose of the Customer Data in a secure manner. Unicorn will promptly notify Customer upon becoming aware of any breach of Unicorn's systems that results in any actual unauthorized access to or theft or other loss of the Customer Data and will take action designed to prevent further unauthorized access. Unicorn will provide information that Customer reasonably requests pertaining to the incident and will cooperate with Customer to investigate any such unauthorized access; provided Unicorn shall not be obligated to provide Customer information regarding any other customer of Unicorn or of any employee, contractor or Agent of any other Customer of Unicorn. “Customer Data” means non-public information provided by Customer or any of its employees or contractors that identifies an individual and is linked to or provides access to such individual’s financial or health information, including the individual’s first name or first initial and last name, social security number, driver’s license number or state identification number, financial account or credit or debit account number, individually identifiable health information as defined in 45 C.F.R. 160.103, and any security code or access code or password that would permit access to any such financial account or any such individually identifiable health information.

7.3 Non-Solicitation/Non-Hire. Neither party shall during the Term of this Agreement and for a period of one (1) year thereafter, either on its own account or for any other person or entity, directly or indirectly, (a) solicit, interfere with, cause or endeavor to cause, induce or attempt to induce, any employee or other Agent (as defined below) of the other party to leave his or her position or otherwise terminate his or her relationship with the other party, or (b) hire, employ or otherwise retain the services of any person who is or was during the Term of this Agreement an employee or other Agent of the other party.

7.4 Customer’s Authority. Customer represents and warrants to Unicorn that Customer has full authority and right to enter into this Agreement and to authorize Unicorn to perform the Services on its behalf, and disclose to Unicorn Customer’s Confidential Information, including, without limitation, information as to Customer’s employees and consultants. Except as provided above, all Confidential Information is provided on an “as is” basis, and neither party makes any representations or warranties to the other as to its Confidential Information.

7.5 Publication/Non-Disclosure of Pricing. Each party may represent in its marketing materials that the other is a customer or service provider (as applicable) and, subject to the following limitation, refer to this Agreement and the subject matter or content hereof; provided, however, that neither party shall disclose any information concerning the economic terms of this Agreement without the prior written consent of the other.

8. Termination

8.1 Termination.

(a) (i) Either party may terminate this Agreement at the end of the Initial Term or any Renewal Term upon not less than one hundred twenty (120) days written notice to the other party.

(ii) If Customer fails to pay any amount within thirty (30) days of the date it is due hereunder, and does not cure such failure within five (5) days after receipt of written notice thereof from Unicorn, then Unicorn may terminate this Agreement upon notice to Customer.

(iii) If Customer breaches this Agreement, other than a failure to pay amounts due hereunder, and does not cure such breach within thirty (30) days after receipt of written notice of such breach, then Unicorn may, by giving written notice to Customer, terminate this Agreement as of the date specified in such notice of termination.

(iv) If Unicorn breaches this Agreement and does not cure such breach within thirty (30) days after receipt of written notice of such breach, then Customer may, by giving written notice to Unicorn, terminate this Agreement as of the date specified in such notice of termination.

(b) If a party admits in writing its inability to pay its debts, makes an assignment for the benefit of creditors, or consents to the appointment of a receiver or custodian for itself or for the whole or a substantial part of its property, or files or has filed against it a petition in bankruptcy or a petition or answer seeking reorganization or an arrangement under any bankruptcy law or similar law or is adjudicated as bankrupt, this Agreement shall automatically terminate without notice to Customer.

(c) In the event this Agreement terminates for any reason during or after the Initial Term, Customer shall (i) if terminated by Customer for a reason other than as provided in Section 8.1(a)(iv) above, notify Unicorn ninety (90) days prior to the termination date, (ii) pay to Unicorn no later than thirty (30) days after the date (the “Notice Date”) notice of termination is given, an amount equal to the charges and fees (at Unicorn
standard rates) estimated by Unicorn for any additional services requested by Customer under Section 8.4 or otherwise for transition from the Services, (iii) pay to Unicorn no later than the date this Agreement terminates, an amount by which the fees for the actual Transition Services exceed the estimated fees paid under (ii) above, and (vi) unless terminated pursuant to Section 8.1(a)(iv), pay to Unicorn no later than thirty (30) days after the Notice Date or, if earlier, the date this Agreement terminates, as liquidated damages (and not as a penalty) an amount (the "Termination Fee") equal to (A) the product of (1) the average monthly fees due from Customer during the twelve (12) full calendar months immediately preceding the calendar month in which the notice of termination was given, times (2) the total number of months (or portion thereof) remaining in the term then in effect from the date of termination to the end of such term, times (3) seventy percent (70%), plus (B) an amount equal to any unpaid implementation fees. If less than twelve (12) full calendar months of billing has occurred when the above computation is made, then in lieu of such twelve (12) month average, the greater of the following shall be used: (x) average monthly fees over the number of months for which billing has occurred or (y) an amount equal to the Monthly Fee listed for the Total Recurring Cost in Schedule A-1.

8.2 Effect of Expiration or Termination. Upon the expiration or termination of this Agreement for any reason, Unicorn shall cease providing the Services hereunder and Customer shall pay Unicorn for all the Services rendered through the expiration or termination date in addition to all other sums payable to Unicorn hereunder, including, without limitation, all taxes, if applicable. Termination shall be effective upon expiration of, or as of the date set forth in, the notice required to be delivered under 8.1, and the payment of all fees, costs and expenses due, including, if applicable, the Termination Fee. At customer’s option, Unicorn shall continue to provide services during any notice period until the effective date of termination.

8.3 Force Majeure. Each party hereto shall be excused from performance hereunder (other than a payment obligation) for any period to the extent that it is prevented from performing any services pursuant hereto, in whole or in part, as a result of delays caused by the other party or an act of God, war, civil disturbance, court order, labor dispute, third party nonperformance, contractual impossibility, illegality of performance, or other cause (whether or not similar to the foregoing) beyond its reasonable control, including failures or fluctuations in electrical power, heat, light, air conditioning, or telecommunications equipment, and such nonperformance shall not be a default hereunder or ground for termination hereof, and if and to the extent necessary, such party’s time for performance shall be extended.

8.4 Termination Assistance. Upon the expiration or any termination of this Agreement, if requested by Customer in writing, Unicorn may, in its sole discretion, (i) provide, at no cost to Customer, a complete set of customer records year to date in machine readable electronic format and (ii) provide Customer termination assistance on such terms and conditions, including fees and costs as the parties may agree.

9. Limitation of Liability

9.1 Neither Unicorn nor any of its Agents will be liable to Customer or any affiliate of Customer for any damage arising out of or related to Unicorn’s performance or nonperformance of the Services or this Agreement other than direct damages actually incurred. NOT IN LIMITATION OF THE FOREGOING, EXCEPT FOR DAMAGES CAUSED BY THEIR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL UNICORN OR ANY OF ITS AGENTS BE LIABLE FOR ANY INDIRECT, INCIDENTAL CONSEQUENTIAL, PUNITIVE, EXEMPLARY, SPECIAL, OR SIMILAR LOSSES OR DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS OR OTHER ECONOMIC LOSS, WHETHER ANY CLAIM FOR SUCH DAMAGES OR LOSSES IS BASED IN TORT OR IN CONTRACT (INCLUDING, WITHOUT LIMITATION, ATTORNEYS’ FEES) WHICH CUSTOMER OR ANY AFFILIATE OF CUSTOMER MAY INCUR OR SUFFER BY REASON OF THIS AGREEMENT OR ANY OF THE SERVICES, OR ANY FAILURE TO PROVIDE ANY SERVICE, INCLUDING, WITHOUT LIMITATION, ANY LOSS, DAMAGE OR EXPENSE BECAUSE OF ANY ACT OR OMISSION OF UNICORN OR ANY OF ITS AFFILIATES AND VENDORS, AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, CONSULTANTS, STOCKHOLDERS, MEMBERS, AND AGENTS (COLLECTIVELY, “AGENTS”).

9.2 IN ADDITION TO ANY OTHER LIMITATIONS OF LIABILITY PROVIDED HEREIN, NEITHER UNICORN NOR ANY OF ITS AGENTS SHALL BE LIABLE FOR ANY DAMAGES RESULTING FROM (a) THE FAILURE BY CUSTOMER TO COMPLY WITH, OR THE BREACH BY CUSTOMER OF, ANY OF THE PROVISIONS OF THIS AGREEMENT, (b) THE NONPERFORMANCE OR FAILURE OF SERVICES, HARDWARE, SOFTWARE OR SYSTEMS PROVIDED BY CUSTOMER OR THIRD PARTIES, OR (c) ARISING FROM CAUSES BEYOND UNICORN’S CONTROL.

9.3 EXCEPT FOR DAMAGES CAUSED BY THEIR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, THE AGGREGATE LIABILITY OF UNICORN AND ITS AGENTS IN CONNECTION
WITH THIS AGREEMENT OR ANY SERVICE, WILL NOT IN ANY EVENT BE GREATER THAN THE ACTUAL PRICE PAID TO SUCH ENTITY BY OR ON BEHALF OF CUSTOMER UNDER THIS AGREEMENT DURING THE SIX (6) MONTHS IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY FOR THE PARTICULAR SERVICE WITH RESPECT TO WHICH SUCH CLAIMS ARE MADE.

NO THIRD PARTY SHALL HAVE ANY RIGHTS OR CLAIMS AGAINST UNICORN OR ANY OF ITS AGENTS, AND NEITHER UNICORN NOR ANY OF ITS AGENTS, SHALL BE LIABLE FOR ANY DAMAGES CAUSED BY ANY ACT OR OMISSION OF ANY THIRD PARTY.

9.4 No action regardless of form, arising out of any transaction hereunder, may be brought by Customer more than two (2) years after the occurrence which gives rise to the cause of such action.

10. Dispute Resolution; Injunctive Relief

10.1 Dispute Resolution. (a) If a party is unsatisfied with the other party's performance of its obligations, a written description of the problem shall be provided to the offending party and a good faith effort to resolve the problem shall be made by both parties prior to proceeding to arbitration or litigation, except as provided in Section 10.1(c).

(b) Except as provided in Section 10.1(c), any controversy or claim arising out of or related to this Agreement, or the breach hereof, which cannot be amicably settled will be finally settled by arbitration before a panel of one arbitrator in Morris County, New Jersey in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator will have knowledge of and experience in dealing with the technology and information systems services industry. The arbitration hearing will commence within sixty (60) days after the appointment of the arbitrator. Unless the arbitrator finds that exceptional circumstances justify delay, the hearing will be completed and an award will be rendered in writing within ninety (90) days after commencement of the hearing. The arbitrator may include in the award the prevailing party's cost of arbitration and reasonable fees of attorneys, accountants and other professionals connected with the arbitration.

(c) Notwithstanding any provision contained herein to the contrary, neither party shall be required to make any effort to resolve or arbitrate any dispute relating to any actual or threatened breaches of any provision of Article 7 of this Agreement by the other party.

10.2 Injunctive Relief. In addition to any available legal remedies on the occurrence of a breach of this Agreement by the other party, the parties agree that each party shall be entitled to seek equitable relief, including, without limitation, injunctive relief and specific performance, without the necessity of posting a bond or of proof of actual damage, against actual or threatened breaches of any provision of Article 7 of this Agreement by the other party.

11. Indemnification

11.1 Subject to the limitations set forth in this Agreement, Unicorn will defend and indemnify Customer from and against damages, losses, claims, liabilities and expenses (including, without limitation, reasonable attorney's fees and costs) arising out of any valid third party claim of infringement by Unicorn of such third party's copyright or trade secret rights arising from the proper use of the Services by Customer as contemplated under this Agreement; provided that Customer notifies Unicorn as soon as practicable of any such claim and provides Unicorn the right to control the defense and settlement of all such claims, related lawsuits, and proceedings.

12. Miscellaneous

12.1 Assignment. This Agreement may not be assigned in whole or in part by Customer without the prior written consent of Unicorn, which consent shall not be unreasonably withheld or delayed. Charges may apply. This Agreement may not be assigned in whole or in part by Unicorn without the prior written consent of Customer, which consent shall not be unreasonably withheld or delayed.

12.2 Choice of Law, Jurisdiction and Venue. The validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the parties shall be governed by, and construed in accordance with, the laws of the State of New Jersey without the application of its conflict of laws rules. If any dispute arises concerning this Agreement that is not subject to the provisions of Section 10.1(a) or (b) above, the parties hereto submit to the jurisdiction of any state or federal court located in the State of New Jersey; and waive any objection to such jurisdiction as an inconvenient forum.

12.3 Amendment. Only an instrument in writing executed by the parties or their permitted assignees, including the Schedules hereto, may amend this Agreement or such Schedules.

12.4 Section Headings. Section and Article headings are for reference purposes only and shall not affect the interpretation or meaning of this Agreement.
12.5 Notices. All notices pursuant to this Agreement shall be in writing, except as provided herein. Written notices shall be sufficient if hand delivered or sent by nationally recognized courier, or sent by e-mail or facsimile, in all cases to the attention of the person at the address of such party set forth below, or to such other address or person as such party shall designate by notice given pursuant to this Section.

If to Unicorn:
Unicorn HRO, L.L.C.
25B Hanover Road
Florham Park, New Jersey 07932
Attention: Chief Financial Officer
Fax: (973) 360-0699
e-mail: __________________

If to Customer:
Name: The City of Trenton, New Jersey
Attention: Terry K. McEwen
Address: 319 East State Street
Trenton, NJ 08608
Fax: __________________
e-mail: __________________

Notices shall be deemed received: on delivery, if by hand or courier; upon confirmation of dispatch, if by e-mail or facsimile.

12.6 No Waiver of Performance. Failure by either party at any time to require performance by the other party or to claim a breach of any provision of this Agreement will not be construed as a waiver of any right accruing under this Agreement, nor affect any subsequent breach, nor affect the effectiveness of this Agreement or any part hereof, nor prejudice either party as regards any subsequent action. (Forgiveness of one breach does not mean forgiveness for all breaches).

12.7 Entire Agreement: Conflicting Provisions. This Agreement together with the Schedules hereto constitutes the entire agreement between Customer and Unicorn with respect to the subject matter of this Agreement and such Schedules.

12.8 Enforceability. If any one or more of the provisions of this Agreement should be ruled wholly or partly invalid or unenforceable by a court or other government body of competent jurisdiction, the validity and enforceability of all other provisions of this Agreement will be unaffected and remain in full force and effect and the provision(s) held wholly or partly invalid or unenforceable will be deemed amended, and the court or other government body is authorized to reform the provision(s), to the minimum extent necessary, to render them valid and enforceable in conformity with the parties’ intent as manifested herein.

12.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

12.10 Relationship of the Parties. Customer and Unicorn are and intend to remain independent parties. Nothing in this Agreement shall be deemed or construed to create the relationship of principal and agent, or of partnership or joint venture, and neither party shall hold itself out as an agent, legal representative, partner, subsidiary, joint venture, servant or employee of the other. Neither party nor any officer, employee, agent or representative thereof shall, in any event, have any right, collectively or individually, to bind the other party, to make any representations or warranties, to accept service of process, to receive notice or to perform any act or thing on behalf of the other party. Customer understands and agrees that Unicorn may perform similar human resources information services for others, and that Unicorn’s relationship with Customer is not exclusive.

12.11 Survival. Any obligations, duties, or terms or provisions which by their nature extend beyond the expiration or termination of this Agreement, including, without limitation, Sections 6, 7, 9, and 12 shall survive the expiration or termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date first above written.

Unicorn HRO, LLC
By: __________________________
Name: Michelle Woods
Title: SVP Sales & Marketing

The City of Trenton, New Jersey
By: __________________________
Name: Eric E. Jackson
Title: Mayor

Schedule A
Services, Contract Fees and Payments
1. Specific Services and Applications and Services Available Upon Request.

a) Unicorn HRO, LLC ("Unicorn") agrees to provide the Specific Services, Applications, and Services Available Upon Request, all as designated on this Schedule A, to the Customer in consideration for the Fees designated in this Schedule A, and described in "Services and Applications Manifest" exhibit (Schedule A), subject to the terms and conditions of the Services Agreement between Unicorn and Customer (the "Agreement").

b) Changes in the scope of such Services may be made from time to time in accordance with Section 2.2 of the Agreement.

2. Implementation, Consulting and Training.

a) Unicorn agrees to provide the Implementation, Consulting and/or Training Services for the Applications, all as designated on this Schedule A, to the Customer in consideration for the Fees designated in this Schedule A, subject to the terms and conditions of the Agreement. Unicorn will use commercially reasonable efforts to ensure all Implementation, Consulting and Training Services are performed with a commercially high level of professionalism and quality. Unicorn may freely utilize any and all ideas, concepts, methods, know-how or techniques related to programming and processing of data, discovered or developed by Unicorn during the performance of the Implementation, Consulting and/or Training Services.

b) Changes in the scope of such Services may be made from time to time in accordance with Section 2.2 of the Agreement.

c) Service Fees detailed in "Baseline Implementation Package" exhibit ("Schedule A-2") are based on good faith, reasonable estimates. Any alterations to fees are subject to Unicorn recommendations that will be made in writing and any alterations become effective upon receipt of Customer signed agreement.

d) Customer will pay for implementation service in accordance with Section 4.1 of the Services Agreement. If the Agreement is terminated for any reason other than those in Section 6(iv) before the end of the Term or any Renewal Term, the Customer shall pay Unicorn upon such termination the total implementation and other fees accrued by Unicorn HRO, inclusive of any fees that were, for billing purposes, included as a portion of the monthly fees and scheduled to be paid over time as the monthly fees were billed and paid.

e) Service Fees do not include reasonable living and travel expenses incurred in the normal course of performing services and such expenses are payable in full upon Unicorn presenting documented receipts and any other official notice to Customer, whereby Customer will pay in full those living and travel expenses.

3. Description and Guidelines for Payroll Services.

a) Unicorn will provide payroll processing services during the Term of this Agreement. Unicorn will use due care in processing Customer's work, but Unicorn accepts no responsibility other than for errors resulting solely from malfunction of Unicorn controlled machines, or failure of Unicorn operators or processors (collectively, "Unicorn Errors"). If Customer reports such an error to Unicorn within ten (10) days following Customer's receipt and an error has been made and is a Unicorn Error, Unicorn will correct the same at Unicorn's expense and within a reasonable time.

b) Customer will deliver to Unicorn the data and information required to process Customer's work in enough time to allow Unicorn to complete processing in accordance with the schedule set forth. Transmission of such data and information to and from Unicorn premises will be at Customer's risk and expense. Customer will review and audit all data, reports, checks, and other materials and will notify Unicorn of any discrepancies in such materials within ten (10) days after receipt, and in any case before using them.

c) Customer agrees to follow the instruction contained in the applicable reference guides and software documentation, and to pay for all expenses incurred by Unicorn as the result of Customer's errors or omissions. Services and reports are provided as described in these materials. Customer personnel must successfully complete

d) Unicorn training programs are related to the services listed in this Schedule A. Unicorn is not responsible for providing additional professional services, including implementation or support of software customizations, except where Unicorn has agreed in writing to provide such services. Implementation will be considered to have been completed when Customer accepts the results of the implementation and approves the initiation of payroll services.

e) If the Customer uses an Official Bank Check, Unicorn is authorized to provide to the Customer's bank Customer's data requested by the bank. If the bank requests that Unicorn delay the release of Customer payroll checks or if it appears that adequate funds may not be available to cover Customer payroll checks, Unicorn may delay release of the payroll checks to Customer.

f) Two (2) banking days prior to the applicable payroll check date, Unicorn will collect funds to cover the total direct deposit liability transmitted to Unicorn. Unicorn will direct the transfer of funds from Customer's designated bank account to Unicorn's account by
electronic funds transfer. Customer agrees to maintain good and sufficient collected funds in the Customer’s designated bank account to cover all funding transactions to be made by Unicorn under this Agreement. In the event Customer fails to maintain such good and sufficient collected funds, Unicorn may terminate the payroll services under this Agreement upon notice to Customer and charge Customer for any applicable fees, penalties, and interest. Funds held in the account will be segregated from other similar funds held by Unicorn, but may be commingled by Unicorn with funds that have been transferred to the account. Unicorn will be entitled to receive all net income generated on any funds held by Unicorn.

g) Service fees for payroll and other services listed in “Services and Applications Manifest” exhibit (Schedule A-1) shall commence with the Commencement Date and are due by either payment method as described in section 4.4.


a) Unicorn will prepare, deposit, and file Customer payroll tax returns for those federal, states, and local jurisdictions supported by the Unicorn Payroll System and listed by Customer on Unicorn Payroll Tax Filing Authorization Form. Unicorn will prepare and file required reconciliations if Unicorn has provided tax-filing services for the entire applicable month, quarter, or year. If Unicorn has not furnished tax-filing services for the entire time period, monthly quarterly, and/or annual reconciliations will be prepared and filed by Unicorn, on an exception basis, if Customer and Unicorn agree to this service in writing. Unicorn will be provided with the coupon books for all applicable jurisdictions, executed Power of Attorney forms, completed Tax Funding Authorization, and sufficient information to enable Unicorn to determine paid and accrued taxes and all tax liabilities. Customer is solely responsible for the accuracy of all tax records and for all information furnished to Unicorn. Unicorn is not responsible for any matters existing prior to Commencement Date or errors that may occur in the event that Unicorn is not provided with the coupon books. Unicorn is not obligated to commence providing services until Unicorn has received information sufficient to determine Customer’s paid and accrued taxes and all tax liabilities. If Unicorn corrects any matters existing prior to the Commencement Date or performs any other service for Customer not expressly identified in this Agreement, Customer will pay Unicorn additional fees and charges, which will be computed on the basis of work expended by Unicorn.

b) Two (2) banking days prior to the applicable payroll check date, Unicorn will collect tax data and funds to cover the total payroll tax liability transmitted to Unicorn. Unicorn will direct the transfer of funds from Customer’s designated bank account to Unicorn’s account by electronic funds transfer. Customer agrees to maintain good and sufficient collected funds in the Customer’s designated bank account to cover all funding transactions to be made by Unicorn under this Agreement. In the event Customer fails to maintain such good and sufficient collected funds, Unicorn may terminate the tax filing services under this Agreement upon notice to Customer and charge Customer for any applicable fees, penalties, and interest. Funds held in the account will be segregated from other similar funds held by Unicorn, but may be commingled by Unicorn with funds that have been transferred to the account. Unicorn will be entitled to receive all net income generated on any funds held by Unicorn.

c) Upon receipt of any and all records of tax disbursements prepared by Unicorn pursuant to this Agreement, Customer will examine them for their validity and accuracy according to The Customer’s records. Customer will promptly notify Unicorn of any inaccuracies. Unicorn will not be liable for any invalidity or inaccuracy which would have been revealed as a result of such examination by Customer. Unicorn is not liable for any tax amount that may result from the processing of the Customer’s payroll. Unicorn will not be liable for any penalties related to Unicorn not filing on time unless the failure to file on time results from the gross negligence or willful misconduct of Unicorn.

d) The record retention schedules established by taxing authorities for the Customer are not affected by this Agreement. Unicorn has no responsibility or liability for maintaining or retaining records for the Customer.

e) Any changes in services or changes that affect the information provided by the Customer to Unicorn subsequent to the Commencement Date must be communicated in writing to the Unicorn Tax Filing Department within ten (10) days from such change. Any penalty or other charges that result from incorrect, incomplete, or changed tax information is Customer’s sole and exclusive liability and responsibility.

f) Service fees are due when tax filing services listed in “Services and Applications Manifest” exhibit (Schedule A-1) are performed by either payment method as described in section 4.4c