



CITY OF AURORA, ILLINOIS

RESOLUTION NO. R19-175  
DATE OF PASSAGE June 11, 2019

A Resolution requesting approval to procure professional services for IT Risk Assessment, development of National Institute of Standards and Technology (NIST) 800-53-1 Policies and Incident Response Plan to heighten the security of the information systems and critical infrastructure used within the City of Aurora government. Total amount will not exceed \$86,000.

WHEREAS, the City of Aurora has a population of more than 25,000 persons and is, therefore, a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals, and welfare; and

WHEREAS, as part of the City of Aurora Technology Strategic Plan or "IT Roadmap" for 2019, the Information Technology Division was seeking to evaluate and improve Governance and Security citywide; and

WHEREAS, the Request for Qualifications (RFQ) 19-03: Managed Security Services for Risk Assessment, Policy Development and Incident Response Plan for the Information Technology Division was completed, and

WHEREAS, there were 18 responses received; three rounds of evaluation were performed and Data Defenders was identified and selected as the top scorer with 96%.

WHEREAS, Funding for this purchase comes from the account listed in the approved 2019 DP - Cyber Security & Managed Services; 2019 budget of account 101-1380-419.32-80 is \$388,000; while the contract will not to exceed the amount of \$86,000.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Aurora, Illinois, as follows: requesting approval to procure professional services for IT Risk Assessment, development of National Institute of Standards and Technology (NIST) 800-53-1 Policies and Incident Response Plan to heighten the security of the

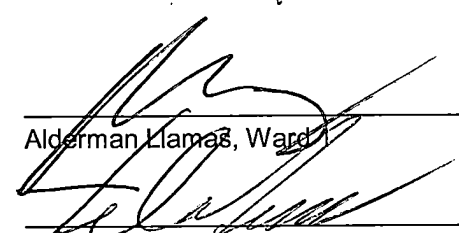
RESOLUTION NO. R19-175  
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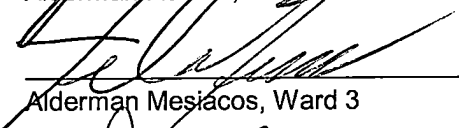
information systems and critical infrastructure used within the City of Aurora government from Data Defenders, LLC Chicago, IL in the total amount not exceed \$86,000.

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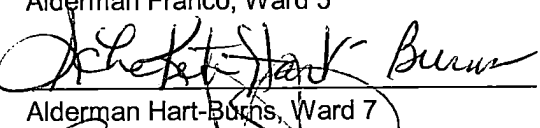
PASSED AND APPROVED ON June 11, 2019

AYES 12 NAYS 0 NOT VOTING 0 ABSENT 0

  
Alderman Llamas, Ward 1

  
Alderman Mesiacos, Ward 3

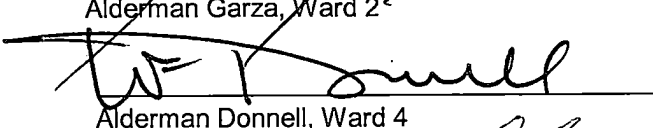
  
Alderman Franco, Ward 5

  
Alderman Hart-Burns, Ward 7

  
Alderman Bugg, Ward 9

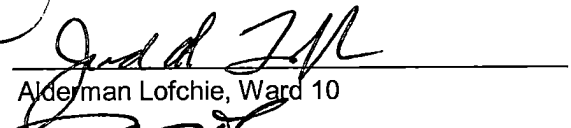
  
Alderman Jenkins, At Large

  
Alderman Garza, Ward 2

  
Alderman Donnell, Ward 4

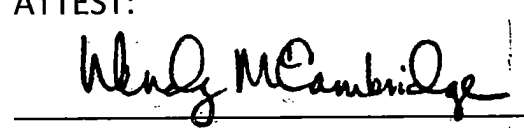
  
Alderman Saville, Ward 6

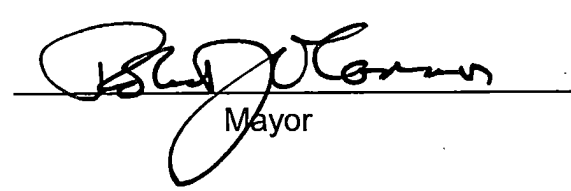
  
Alderman Smith, Ward 8

  
Alderman Lofchie, Ward 10

  
Alderman O'Connor, At Large

ATTEST:

  
City Clerk

  
Mayor

19-0265

## RECOMMENDATION

TO: THE COMMITTEE OF THE WHOLE

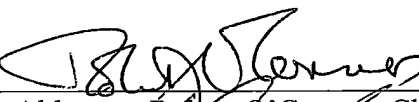
FROM: THE FINANCE COMMITTEE

The Finance Committee at the regular scheduled meeting on Tuesday, May 28, 2019

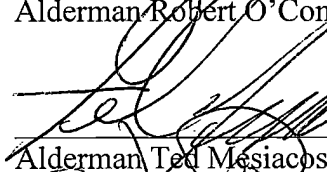
Recommended **APPROVAL** of a Resolution requesting approval to procure professional services for IT Risk Assessment, development of National Institute of Standards and Technology (NIST) 800-53-1 Policies and Incident Response Plan to heighten the security of the information systems and critical infrastructure used within the City of Aurora government. Total amount will not exceed \$86,000.

Vote 3-0

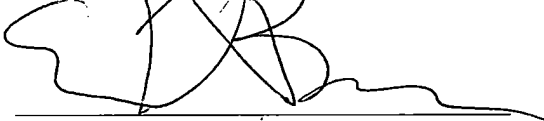
Submitted By



Alderman Robert O'Connor, Chairman



Alderman Ted Mesiacos



Alderman Edward Bugg

Alderman Rick Mervine, alternate

Dated this 28th day of May, 2019

**CITY OF AURORA REQUEST  
FOR QUALIFICATION 19-03**

**MANAGED SECURITY SERVICES FOR RISK ASSESMENT, POLICY  
DEVELOPMENT AND INCIDENT RESPONSE PLAN**

**CONTRACT**

**THIS AGREEMENT**, entered on this 28th day of June, 2019, Professional Services for IT Risk Assessment, development of National Institute of Standards and Technology (NIST) 800-53-1 Policies and Incident Response Plan is entered into between the **CITY OF AURORA** ("City"), a municipal corporation, located at 44 E. Downer Place, Aurora, Illinois and Data Defenders, LLC located at 10 W 35<sup>th</sup> St, STE 9F5-1, Chicago, Illinois 60616.

**WHEREAS**, the City issued a Request for Qualifications 19-03R **Managed Security Services for Risk Assessment, Policy Development and Incident Response Plan**; and

**WHEREAS**, the Contractor submitted a Request for Qualification in response to the RFQ and represents that it is ready, willing and able to perform the Services specified in the RFQ and herein as well as any additional services agreed to and described in the Agreement; and

**WHEREAS**, on June 11, 2019, the City's awarded a contract to  
Data Defenders, LLC, Chicago, Illinois. R19-175

**IN CONSIDERATION** of the mutual promises and covenants herein contained, the parties hereto do mutually agree to the following:

1. **Agreement Documents.** The Agreement shall be deemed to include this document, Contractor's response to the RFQ, to the extent it is consistent with the terms of the RFQ, any other documents as agreed upon by the parties throughout the term of this Agreement, along with any exhibits, all of which are incorporated herein and made a part of this Agreement. In the event of a conflict between this Agreement and any exhibit, the provisions of this Agreement shall control.

**RFQ 19-03R Managed Security Services for Risk Assessment, Policy Development and  
Incident Response Plan  
Addendum #1**

In connection with the RFQ and this Agreement, Contractor acknowledges that it has furnished and will continue to furnish various certifications, affidavits and other information and reports, which are incorporated herein. Contractor represents that such material and information furnished in connection with the RFQ and this Agreement is truthful and correct. Contractor shall promptly update such material and information to be complete and accurate, as needed, to reflect changes or events occurring after the Effective Date of this Agreement.

2. **Scope of Services.** Contractor shall perform the Services listed in the Scope of Services, attached hereto as Exhibit 1.

3. **Term.** This Agreement shall be completed in six months (180 days) from start, unless sooner terminated in accordance with the terms contained herein.

4. **Compensation.**

a. **Maximum Price.** In accordance with the Contractor's Proposal, the maximum price for providing the Services shall be in accordance to the pricing on the RFQ proposal form. The maximum price may not be changed unless the City is provided with supporting documentation to warrant the change in maximum price or as otherwise provided in this Agreement.

b. **Schedule of Payment.** The City shall pay the Contractor for the Services in accordance with the amounts set forth in Exhibit 2. The Contractor shall be required to submit an itemized invoice as well as any supporting documentation as required by the City. Payment shall be made upon the basis of the approved invoices and supporting documents. The City shall utilize its best efforts to make payment within thirty (30) days after approval of the invoice. Each invoice shall be accompanied by a statement of the Contractor of the percentage of completion of the Services through the date of the invoice, where applicable.

5. **Performance of Services.**

**Standard of Performance.** Contractor shall perform all Services set forth in this Agreement, and any other agreed documents incorporated herein, with the degree, skill, care and diligence customarily required of a professional performing services of comparable scope, purpose and magnitude and in conformance with the applicable professional standards. Contractor shall, at all times, use its best efforts to assure timely and satisfactory rendering and completion of the Services. Contractor shall ensure that Contractor and all of its employees or subcontractors performing Services under this Agreement shall be: (i) qualified and competent in the applicable discipline or industry; (ii) appropriate licensed as required by law; (iii) strictly comply with all City of Aurora, State of Illinois, and applicable federal laws or regulations; (iv) strictly conform to the terms of this Agreement. Contractor shall, at all times until the completion of the Services, remain solely responsible for the professional and technical accuracy of all Services and deliverables furnished, whether such services are rendered by the Contractor or others on its behalf, including, without limitation, its subcontractors. No review, approval, acceptance, nor payment for any and all of the Services by the City shall relieve the Contractor from the responsibilities set forth herein.

Notwithstanding the foregoing, Contractor shall not be responsible for the performance of construction contracts, work or products, or any deficiencies or effects resulting therefrom, of any contractor, subcontractor, manufacturer, supplier, fabricator, or consultant retained by the City or any other third-party, including any person working on their behalf. Nothing herein shall be construed as giving the Contractor the responsibility for or the authority to control, direct, or supervise construction, construction means, methods, techniques, sequences, procedures, and

safety measures and programs except those which directly relate solely to Contractor's performance of Services as set forth in this Agreement.

**6. Termination.**

**Termination for Convenience.** The City has the right to terminate this Agreement, in whole or in part, for any reason or if sufficient funds have not been appropriated to cover the estimated requirement of the Services not yet performed, by providing Contractor with thirty (30) days' notice specifying the termination date. On the date specified, this Agreement will end. If this Agreement is terminated by the City, as provided herein, the City shall pay the Contractor only for services performed up the date of termination. After the termination date, Contractor has no further contractual claim against the City based upon this Agreement and any payment so made to the Contractor upon termination shall be in full satisfaction for Services rendered. Contractor shall deliver to the City all finished and unfinished documents, studies and reports and shall become the property of the City.

- (a) Either Party may terminate this Agreement at the end of the Initial Term or upon written notice to the other Party not less than thirty (30) days prior to the end of the Initial Term.
- (b) Data Defenders, LLC may terminate this Agreement at any time upon thirty (30) days written notice for nonpayment of undisputed invoices billed to the City.
- (c) Either Party may terminate this Agreement, "for cause", by giving the other no less than thirty (30) days prior written notice, provided that upon termination of this Agreement, with respect to any policies continuing in force, claims arising under policies written pursuant to this Agreement, and premium or other accounts or matters remaining unsettled between Data Defenders, LLC and the City, the terms of this Agreement governing same shall survive such termination.

For purposes of this Agreement, "for cause" means:

- (i) any material breach of this Agreement, or
- (ii) gross negligence, or willful or intentional misconduct, by a Party in performing its responsibilities under this Agreement.

In the case of (i), a Party shall have thirty (30) days to cure such cause after receiving written notice from the other Party of the intention to terminate "for cause".

**7. Audit and Inspection.**

The City reserves the right at reasonable times and upon reasonable advance notice, to inspect and audit, or cause a designated agent to inspect and audit, at Data Defenders LLC offices, at City of Aurora's expense, any and all files and records maintained by Data Defenders LLC in connection with the subject matter of this confidentiality Agreement.

Upon the City's request, Data Defenders LLC shall deliver to the City copies of all, files and records that pertain to the services provided. Such records shall then be maintained in accordance with state law.

The City may:

- (i) based on its own discretion, audit and/or monitor Data Defenders LLC when deemed necessary,
- (ii) review Data Defenders LLC audit documents, including but not limited to Data Defenders LLC annual financials SOC-1, Type II and IT controls SOC-2, Type II

Data Defenders LLC shall:

- (i) promptly remediate non-trivial audit findings or other service deficiencies identified by the City,
- (ii) meet with the City on a periodic basis to review and discuss service performance, and
- (iii) Promptly provide the City with any information that it reasonably requests in connection with the Services provided.

## **8. Confidentiality and Non-Disclosure**

During the term of this Agreement, Data Defenders, LLC, 10 W. 35th St. STE 9F5-1, Chicago, IL 60616 will be given access to, and be entrusted with, trade secrets and other confidential or proprietary information concerning the business and affairs of the City of Aurora, Illinois ("City") and its affiliates, and other third parties who entrust information to such Party with the understanding, express or implied, that it will be kept confidential, including without limitation information regarding the City's subservicing borrowers defined as "Non-Public Personal Information" as defined in the Gramm-Leach-Bliley Act ("NPI") ("Confidential Information").

Confidential Information will not include information that the Receiving Party demonstrates:

is or had become generally known to the public, other than by a breach of this Agreement or a breach of the Receiving Party's duties to the Disclosing Party During the term of this Agreement and at all times thereafter, the Receiving Party shall not, directly or indirectly, use or disclose any Confidential Information, except:

- (i) as may be required for the Receiving Party to perform properly the Receiving Party's duties and responsibilities for the benefit of the Disclosing Party, as described under this Agreement, or
- (ii) as may be required by applicable law (and in that case only after compliance with the remaining sentences of this paragraph).

If the Receiving Party is required by applicable law to disclose any Confidential Information, the Receiving Party shall notify the Disclosing Party immediately in writing and shall cooperate with the Disclosing Party to obtain a protective order or other remedy. If such order or other remedy is not obtained prior to the time the Receiving Party is legally required to make the disclosure, the Receiving Party:

- (2) shall disclose only that portion of the Confidential Information that is legally required to be disclosed; and
- (3) shall cooperate with the Disclosing Party to obtain reliable assurance that confidential treatment will be accorded the Confidential Information required to be disclosed.



Data Defenders, LLC shall implement and maintain administrative, technical and physical safeguards (the "Security Procedures") designed to:

- (i) ensure the security and confidentiality of Confidential Information and of NPI;
- (ii) protect against any anticipated threats or hazards to the security or integrity of Confidential Information and NPI;
- (iii) protect against unauthorized access to or use of Confidential Information and NPI that could result in harm or inconvenience to the City, its employees, customers or consumers; and
- (iv) detect relevant identity theft "red flags" that may arise in the performance of the Services.

Data Defenders, LLC shall, upon detecting a red flag as described in clause (iv) either report the red flag to the City or to the affected individual(s) or take appropriate steps to prevent or mitigate identify theft associated with such red flag.

Data Defenders, LLC shall identify to the City a representative who will serve as a 24/7 data security contact. In no event shall Data Defenders, LLC send or store Confidential Information or NPI outside the United States.

#### **9. Business Continuity.**

Data Defenders, LLC shall maintain, throughout the term of this Agreement, a services continuity plan in compliance with applicable law (the "Plan"). Data Defenders, LLC shall provide the City a copy of the Plan, any updates to the Plan and testing of the Plan. Results of testing of these plans will be provided to City of Aurora.

Data Defenders, LLC shall coordinate with the City of Aurora all telecommunication modifications necessary to achieve connectivity to Data Defenders, LLC alternative site as necessary and, during any period the alternative site is in actual use, shall provide status updates to the City as appropriate for the circumstances.

#### **10. Miscellaneous Provisions.**

**a. Illinois Freedom of Information Act.** The Contractor acknowledges the requirements of the Illinois Freedom of Information Act (FOIA) and agrees to comply with all requests made by the City of Aurora for public records (as that term is defined by Section 2(c) of FOIA in the undersigned's possession and to provide the requested public records to the City of Aurora within two (2) business days of the request being made by the City of Aurora. The undersigned agrees to indemnify and hold harmless the City of Aurora from all claims, costs, penalty, losses and injuries (including but not limited to, attorney's fees, other professional fees, court costs and/or arbitration or other dispute resolution costs) arising out of or relating to its failure to provide the public records to the City of Aurora under this agreement.

**b. Entire Agreement.** This Agreement, along with the documents set forth in Section 1 and incorporated by reference elsewhere in this Agreement, with consent of the parties, represents the entire agreement between the parties with respect to the performance of the Services. No other contracts, representations, warranties or statements, written or verbal, are binding on the

parties. This Agreement may only be amended as provided herein.

c. **Consents and Approvals.** The parties represent and warrant to each other that each has obtained all the requisite consents and approvals, whether required by internal operating procedures or otherwise, for entering into this Agreement and the undertakings contemplated herein.

d. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

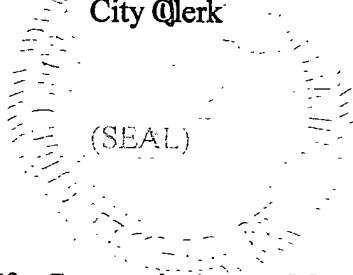
FOR CITY OF AURORA

By:

*John C. ...*  
Director of Purchasing

ATTEST:

*Wendy M. Cambridge*  
City Clerk



FOR \_\_\_\_\_

By \_\_\_\_\_

(CORPORATE SEAL)

If a Corporation) CORPORATE NAME \_\_\_\_\_

(SEAL)

By \_\_\_\_\_  
President – Contractor

ATTEST:

\_\_\_\_\_  
Secretary

(If a Co-Partnership)

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Partners doing Business under the firm

\_\_\_\_\_  
Contractor

(If an Individual)

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)  
Contractor

**CITY OF AURORA  
REQUEST FOR QUALIFICATION 19-03R**

**MANAGED SECURITY SERVICES FOR RISK ASSESMENT, POLICY  
DEVELOPMENT AND INCIDENT RESPONSE PLAN**

**CONTRACT**

**THIS AGREEMENT**, entered on this 28th day of June, 2019, Professional Services for IT Risk Assessment, development of National Institute of Standards and Technology (NIST) 800-53-1 Policies and Incident Response Plan is entered into between the **CITY OF AURORA** ("City"), a municipal corporation, located at 44 E. Downer Place, Aurora, Illinois and Data Defenders, LLC located at 10 W 35<sup>th</sup> St, STE 9F5-1, Chicago, Illinois 60616.

**WHEREAS**, the City issued a Request for Qualifications 19-03R **Managed Security Services for Risk Assessment, Policy Development and Incident Response Plan**; and

**WHEREAS**, the Contractor submitted a Request for Qualification in response to the RFQ and represents that it is ready, willing and able to perform the Services specified in the RFQ and herein as well as any additional services agreed to and described in the Agreement; and

**WHEREAS**, on June 11, 2019, the City's awarded a contract to  
Data Defenders, LLC, Chicago, Illinois. R19-175

**IN CONSIDERATION** of the mutual promises and covenants herein contained, the parties hereto do mutually agree to the following:

1. **Agreement Documents.** The Agreement shall be deemed to include this document, Contractor's response to the RFQ, to the extent it is consistent with the terms of the RFQ, any other documents as agreed upon by the parties throughout the term of this Agreement, along with any exhibits, all of which are incorporated herein and made a part of this Agreement. In the event of a conflict between this Agreement and any exhibit, the provisions of this Agreement shall control.

**RFQ 19-03R Managed Security Services for Risk Assessment, Policy Development and  
Incident Response Plan  
Addendum #1**

In connection with the RFQ and this Agreement, Contractor acknowledges that it has furnished and will continue to furnish various certifications, affidavits and other information and reports, which are incorporated herein. Contractor represents that such material and information furnished in connection with the RFQ and this Agreement is truthful and correct. Contractor shall promptly update such material and information to be complete and accurate, as needed, to reflect changes or events occurring after the Effective Date of this Agreement.

2. **Scope of Services.** Contractor shall perform the Services listed in the Scope of Services, attached hereto as Exhibit 1.

3. **Term.** This Agreement shall be completed in six months (180 days) from start, unless sooner terminated in accordance with the terms contained herein.

4. **Compensation.**

a. **Maximum Price.** In accordance with the Contractor's Proposal, the maximum price for providing the Services shall be in accordance to the pricing on the RFQ proposal form. The maximum price may not be changed unless the City is provided with supporting documentation to warrant the change in maximum price or as otherwise provided in this Agreement.

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5. **Performance of Services.**

**Standard of Performance.** Contractor shall perform all Services set forth in this Agreement, and any other agreed documents incorporated herein, with the degree, skill, care and diligence customarily required of a professional performing services of comparable scope, purpose and magnitude and in conformance with the applicable professional standards. Contractor shall, at all times, use its best efforts to assure timely and satisfactory rendering and completion of the Services. Contractor shall ensure that Contractor and all of its employees or subcontractors performing Services under this Agreement shall be: (i) qualified and competent in the applicable discipline or industry; (ii) appropriate licensed as required by law; (iii) strictly comply with all City of Aurora, State of Illinois, and applicable federal laws or regulations; (iv) strictly conform to the terms of this Agreement. Contractor shall, at all times until the completion of the Services, remain solely responsible for the professional and technical accuracy of all Services and deliverables furnished, whether such services are rendered by the Contractor or others on its behalf, including, without limitation, its subcontractors. No review, approval, acceptance, nor payment for any and all of the Services by the City shall relieve the Contractor from the responsibilities set forth herein.

Notwithstanding the foregoing, Contractor shall not be responsible for the performance of construction contracts, work or products, or any deficiencies or effects resulting therefrom, of any contractor, subcontractor, manufacturer, supplier, fabricator, or consultant retained by the City or any other third-party, including any person working on their behalf. Nothing herein shall be construed as giving the Contractor the responsibility for or the authority to control, direct, or supervise construction, construction means, methods, techniques, sequences, procedures, and

safety measures and programs except those which directly relate solely to Contractor's performance of Services as set forth in this Agreement.

**6. Termination.**

**Termination for Convenience.** The City has the right to terminate this Agreement, in whole or in part, for any reason or if sufficient funds have not been appropriated to cover the estimated requirement of the Services not yet performed, by providing Contractor with thirty (30) days' notice specifying the termination date. On the date specified, this Agreement will end. If this Agreement is terminated by the City, as provided herein, the City shall pay the Contractor only for services performed up to the date of termination. After the termination date, Contractor has no further contractual claim against the City based upon this Agreement and any payment so made to the Contractor upon termination shall be in full satisfaction for Services rendered. Contractor shall deliver to the City all finished and unfinished documents, studies and reports and shall become the property of the City.

- (a) Either Party may terminate this Agreement at the end of the Initial Term or upon written notice to the other Party not less than thirty (30) days prior to the end of the Initial Term.
- (b) Data Defenders, LLC may terminate this Agreement at any time upon thirty (30) days written notice for nonpayment of undisputed invoices billed to the City.
- (c) Either Party may terminate this Agreement, "for cause", by giving the other no less than thirty (30) days prior written notice, provided that upon termination of this Agreement, with respect to any policies continuing in force, claims arising under policies written pursuant to this Agreement, and premium or other accounts or matters remaining unsettled between Data Defenders, LLC and the City, the terms of this Agreement governing same shall survive such termination.

For purposes of this Agreement, "for cause" means:

- (i) any material breach of this Agreement, or
- (ii) gross negligence, or willful or intentional misconduct, by a Party in performing its responsibilities under this Agreement.

In the case of (i), a Party shall have thirty (30) days to cure such cause after receiving written notice from the other Party of the intention to terminate "for cause".

**7. Audit and Inspection.**

The City reserves the right at reasonable times and upon reasonable advance notice, to inspect and audit, or cause a designated agent to inspect and audit, at Data Defenders LLC offices, at City of Aurora's expense, any and all files and records maintained by Data Defenders LLC in connection with the subject matter of this confidentiality Agreement.

Upon the City's request, Data Defenders LLC shall deliver to the City copies of all, files and records that pertain to the services provided. Such records shall then be maintained in accordance with state law.

The City may:

- (i) based on its own discretion, audit and/or monitor Data Defenders LLC when deemed necessary,
- (ii) review Data Defenders LLC audit documents, including but not limited to Data Defenders LLC annual financials SOC-1, Type II and IT controls SOC-2, Type II

Data Defenders LLC shall:

- (i) promptly remediate non-trivial audit findings or other service deficiencies identified by the City,
- (ii) meet with the City on a periodic basis to review and discuss service performance, and
- (iii) Promptly provide the City with any information that it reasonably requests in connection with the Services provided.

## **8. Confidentiality and Non-Disclosure**

During the term of this Agreement, Data Defenders, LLC, 10 W. 35th St. STE 9F5-1, Chicago, IL 60616 will be given access to, and be entrusted with, trade secrets and other confidential or proprietary information concerning the business and affairs of the City of Aurora, Illinois ("City") and its affiliates, and other third parties who entrust information to such Party with the understanding, express or implied, that it will be kept confidential, including without limitation information regarding the City's subservicing borrowers defined as "Non-Public Personal Information" as defined in the Gramm-Leach-Bliley Act ("NPI") ("Confidential Information").

Confidential Information will not include information that the Receiving Party demonstrates:

is or had become generally known to the public, other than by a breach of this Agreement or a breach of the Receiving Party's duties to the Disclosing Party During the term of this Agreement and at all times thereafter, the Receiving Party shall not, directly or indirectly, use or disclose any Confidential Information, except:

- (i) as may be required for the Receiving Party to perform properly the Receiving Party's duties and responsibilities for the benefit of the Disclosing Party, as described under this Agreement, or
- (ii) as may be required by applicable law (and in that case only after compliance with the remaining sentences of this paragraph).

If the Receiving Party is required by applicable law to disclose any Confidential Information, the Receiving Party shall notify the Disclosing Party immediately in writing and shall cooperate with the Disclosing Party to obtain a protective order or other remedy. If such order or other remedy is not obtained prior to the time the Receiving Party is legally required to make the disclosure, the Receiving Party:

- (2) shall disclose only that portion of the Confidential Information that is legally required to be disclosed; and
- (3) shall cooperate with the Disclosing Party to obtain reliable assurance that confidential treatment will be accorded the Confidential Information required to be disclosed.

Data Defenders, LLC shall implement and maintain administrative, technical and physical safeguards (the "Security Procedures") designed to:

- (i) ensure the security and confidentiality of Confidential Information and of NPI;
- (ii) protect against any anticipated threats or hazards to the security or integrity of Confidential Information and NPI;
- (iii) protect against unauthorized access to or use of Confidential Information and NPI that could result in harm or inconvenience to the City, its employees, Customers or consumers; and
- (iv) detect relevant identity theft "red flags" that may arise in the performance of the Services.

Data Defenders, LLC shall, upon detecting a red flag as described in clause (iv) either report the red flag to the City or to the affected individual(s) or take appropriate steps to prevent or mitigate identify theft associated with such red flag.

Data Defenders, LLC shall identify to the City a representative who will serve as a 24/7 data security contact. In no event shall Data Defenders, LLC send or store Confidential Information or NPI outside the United States.

#### **9. Non-Solicit, Non-Hire**

During the Term of this Agreement and for twelve (12) months thereafter, each Party will not (i) solicit for employment or hire—directly or through any third party—any person employed by or contractor of Data Defenders or the City.

#### **10. Marketing & Publicity**

The City agrees that Data Defenders may publicly disclose that it is providing Services to the City and may use City's name and logo to identify it as a City in promotional materials, including press releases. Data Defenders will not use the City's name or logo in a manner that suggests an endorsement or affiliation.

#### **11. Disclaimer of Warranties; Limitation of Liability**

***Disclaimer of warranties; limitation of liability.*** IN ADDITION TO THE DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY SPECIFICALLY SET FORTH IN THIS SECTION 10 ABOVE, DATA DEFENDERS DOES NOT MAKE ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONTRACTURAL SERVICES RENDERED BY ITS PERSONNEL OR THE RESULTS OBTAINED FROM THEIR WORK, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

***Total Liability.*** City agrees that Data Defenders' liability hereunder for damages, regardless of the form of action, shall not exceed the total amount paid for Services under this Agreement.

***Force Majeure.*** Data Defenders shall not be liable to the City for any failure or delay caused by events beyond Data Defenders' control, including, without limitation, the City's failure to furnish necessary information, sabotage, failures or delays in transportation or communication, failures or substitutions of equipment, labor disputes, accidents, shortages of labor, fuel, raw materials, or equipment, or technical failures.



**12. Business Continuity.**

Data Defenders, LLC shall maintain, throughout the term of this Agreement, a services continuity plan in compliance with applicable law (the "Plan"). Data Defenders, LLC shall provide the City a copy of the Plan, any updates to the Plan and testing of the Plan. Results of testing of these plans will be provided to City of Aurora.

Data Defenders, LLC shall coordinate with the City of Aurora all telecommunication modifications necessary to achieve connectivity to Data Defenders, LLC alternative site as necessary and, during any period the alternative site is in actual use, shall provide status updates to the City as appropriate for the circumstances.

**13. Governing Law and Venue.**

This Agreement is governed by the laws of the State of Illinois and venue shall be proper only in the Circuit Court of Kane County, Illinois.

**14. Miscellaneous Provisions.**

a. **Illinois Freedom of Information Act.** The Contractor acknowledges the requirements of the Illinois Freedom of Information Act (FOIA) and agrees to comply with all requests made by the City of Aurora for public records (as that term is defined by Section 2(c) of FOIA in the undersigned's possession and to provide the requested public records to the City of Aurora within two (2) business days of the request being made by the City of Aurora. The undersigned agrees to indemnify and hold harmless the City of Aurora from all claims, costs, penalty, losses and injuries (including but not limited to, attorney's fees, other professional fees, court costs and/or arbitration or other dispute resolution costs) arising out of or relating to its failure to provide the public records to the City of Aurora under this agreement.

b. **Entire Agreement.** This Agreement, along with the documents set forth in Section 1 and incorporated by reference elsewhere in this Agreement, with consent of the parties, represents the entire agreement between the parties with respect to the performance of the Services. No other contracts, representations, warranties or statements, written or verbal, are binding on the parties. This Agreement may only be amended as provided herein.

c. **Consents and Approvals.** The parties represent and warrant to each other that each has obtained all the requisite consents and approvals, whether required by internal operating procedures or otherwise, for entering into this Agreement and the undertakings contemplated herein.

d. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

**By:**

City Clerk

**FOR**

By Cyrus Walker Managing Principal

CORPORATE SLAVE

**CORPORATE NAME** Data Defenders, LLC

By Cyrus Walker Managing Principal  
President – Contractor

**Secretary**

### Partners doing Business under the firm

**Contractor**

(SEAL)

(SEAL)

### Contractor