

AGREEMENT #19028 FOR PROFESSIONAL SERVICES
For LAKE COUNTY and the CLERK OF THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT

This AGREEMENT is entered into as of _____, 2020 (the "Effective Date") by and between the County of Lake, Illinois ("County" or "Lake County"), the Clerk of the Circuit Court of the Nineteenth Judicial Circuit ("the Clerk") and HOV SERVICES INC., an Exela ("Exela" or "Vendor") Technologies company, with a principal place of business at 2701 East Grauwlyer Rd., Irving, Texas 75061 (collectively "the parties").

RECITALS

WHEREAS, the Clerk is seeking a Vendor to provide record digitization services as described in the Request for Proposal ("RFP") number 19028 ("RFP") to which Exela replied as reflected in Exela's Proposal dated May 7, 2019 ("Services"); and

WHEREAS, Vendor provided a Best and Final Offer in July of 2019, and clarifications regarding transportation of files, microfilm to PDF conversion and onshore indexing in October of 2019; and

WHEREAS, Vendor was selected and has the professional expertise and credentials to provide these Services and has agreed to assume responsibility to provide these services pursuant to this Agreement. Vendor confirms that the utilization of its general expertise which it brings to this project as is further described within the documents referenced in Section I, below is included in this Agreement for Professional Services and there be no additional fee for this utilization. Vendor shall be liable in the event that its expertise and experience was intentionally withheld, or was not delivered.

NOW, THEREFORE, in performance of the record digitization services described above, Lake County, the Clerk and Vendor agree as follows:

SECTION 1. AGREEMENT DOCUMENTS

The below reference documents constitute the entire Agreement between Lake County, the Clerk and the Vendor and are, in order of precedence:

- A. This Agreement and all exhibits thereto;
- B. Terms and Conditions identified in RFP 19028 – Record Digitization Services as Exhibit A;
- C. Vendor's RFP response to RFP 19028 proposal dated May 7, 2019 and all exhibits thereto identified within as Exhibit B;
- D. Best and Final pricing;
- E. Implementation Plan upon execution; and
- F. "Statements of Work" or "SOW" (as defined below), beginning with Exhibit C.

This Agreement only includes and expressly incorporates the above listed documents.

SECTION 2. SCOPE OF WORK

Vendor will provide to the County one or more Statement(s) of Work or a purchase order (each, an "SOW"). Each SOW shall be signed by an authorized representative of each party, will set forth the Services to be provided (the "Services") and shall include a description of, the pricing for, the delivery schedule of and any special terms and conditions applicable to the Services and/or deliverables.

The Scope of Work is generally described in pages 10-14 of RFP 19028 and the Statements of Work resulting

therefrom, beginning with Exhibit C, attached hereto.

SECTION 3. DURATION

This Agreement shall be effective beginning on the Effective date and continuing through 36 months thereafter unless work is complete or terminated sooner as otherwise provided in this Agreement.

The work is complete upon a determination of completion by the Clerk. A determination of completion shall not constitute a waiver of any rights or claims which Lake County or the Clerk or both may have or thereafter acquire with respect to any provision of this Agreement.

At the end of the Agreement term (36 months) Lake County or the Clerk shall have the option to extend this Agreement in one year increments for an additional period of up to three years by providing written notice of such extension not later than ninety (90) days prior to the expiration of the then-current term.

SECTION 4. AGREEMENT PRICE

The County will pay Vendor a fee for the Services as set forth in the pricing tables included in the applicable SOW. [*optional funding clause: Contingency of Funds: This Agreement is funded in the amount of \$2,645,271.00. Unless modified in writing by mutual agreement of the parties, Vendor is not obligated to incur expenses or make commitments in excess of the funded amount.*

SECTION 5. INVOICES & PAYMENT

- A. Vendor shall submit monthly status reports detailing the products, services and work performed as identified within Statements of Work. Vendor will submit a written invoice to the County on a monthly basis and payment of any undisputed amounts shall be made in accordance with the Illinois Local Government Prompt Payment Act (50 ILCS 505/1 et seq.) for the Services, deliverables and any expenses, as provided herein, incurred in the prior month (or other period as applicable) in U.S. dollars by check, wire transfer, ACH or other form agreeable to Vendor in accordance with the SOW or Change Order for such Services. In addition, the County shall reimburse Vendor for expenses, the reimbursement of which is provided for in a SOW or which are otherwise approved in writing by the County. The County shall provide Vendor with written notice of any disputed amounts withheld from the payment of any invoice.
- B. Within 30 days of receiving the Vendor's status report, the Clerk will review the product, services and work performed as identified within the status report for its functionality and compliance with the SOW. Within this 30 day period, if any lack of functionality is identified by the Clerk, the Clerk will provide Vendor a response to the status report identifying the areas in which products, services or work performed does not comply with the functionality identified within any SOW.
- C. Vendor shall maintain records showing Volume of work produced and supporting documentation that supports the the status report information specified in the implementation plan or the applicable SOW. Vendor shall permit a representative from Lake County and the Clerk to inspect and audit all data and records of Vendor for work and/or services provided under this Agreement. Vendor shall make these records available at reasonable times upon written request during the Agreement period

and for one year after the termination of this Agreement.

D. Permanent Removal or Destruction Services

Any costs or fees associated with permanent removal of boxes must be identified in the vendor's invoice. Boxes permanently removed from storage must not appear on subsequent monthly invoices for storage.

E. Estimated Quantities

The quantities indicated herein, are estimates of the total services to be provided. Lake County does not guarantee any specific amount and shall not be held responsible for any deviation. Lake County does not guarantee any or all estimated quantities or total amounts. This contract shall cover the County's requirements whether more or less than the estimated amount. All orders received by the Vendor during the term of the contract shall be completed in accordance with the terms and conditions set forth herein. In case of error in the extension of prices, the unit prices will prevail.

SECTION 6. CHANGE ORDERS

In the event changes to the Scope of the project and/or additional work become necessary or desirable to the parties, the parties shall follow the procedures set forth in this Section. A Change shall be effective only when documented by a written, dated agreement executed by both parties which expressly references this Agreement (a "Change Order"). The Change Order shall set forth in detail: (i) the Change requested, (ii) the reason for the proposed Change; (iii) the cost of the Change; and (iv) the impact of the Change on time for completion of the project.

In the event either party desires a Change, the Project Manager or Contract Administrator (as described in Section 14(B), below) for such party shall submit to the other party's designee a proposed Change Order. If the receiving party does not accept the Change Order in writing within ten (10) days, the receiving party shall be deemed to have rejected the Change Order. If the parties cannot reach agreement on a proposed Change, Vendor shall nevertheless continue to render performance under this Agreement in accordance with its (unchanged) terms and conditions.

Changes that involve or increase in the amounts payable by the County may require execution by the County Purchasing Agent. Some increases may also require approval by the County Board. In those cases where the County Purchasing Agent's signature is required, or County Board approval is needed, the Change Order shall not be deemed rejected by County or Clerk after ten (10) days provided the Project Manager has indicated in writing within the ten (10) day period of his intent to present the Change Order for appropriate signature or approval.

SECTION 7. INDEMNIFICATION/LIABILITY

Vendor agrees to indemnify, save harmless, and defend Lake County and the Clerk and their agents, servants, and employees, and each of them against and hold it and them harmless from any and all lawsuits, claims, demands, liabilities, losses, and expenses, including court costs and attorney's fees, for or on account of any injury to any person, or any death at any time resulting from such injury, or any damage to property, which

may arise or which may be alleged to have arisen out of or in connection with the work covered by this Agreement caused directly by the negligence or willful or wanton conduct of Vendor. The foregoing indemnity shall apply except if such injury, death, or damage is caused directly by willful or wanton conduct of Lake County, the Clerk, its agents, servants, or employees or any other person indemnified hereunder. The foregoing indemnity shall not apply to the County's failure to secure the appropriate rights (including the right to provide to Vendor) to all software, data, materials, or other information that Vendor copies, uses, processes, stores or distributes, as applicable, on the Clerk's behalf.

To the extent authorized by the laws and Constitution of the State of Illinois, Proposer's aggregate liability under this Agreement shall be limited to the maximum amount paid under this Agreement and Proposer shall not be liable under any circumstances for any special, indirect, incidental, consequential or other damages. The foregoing limitation shall not apply to Proposer's gross negligence, intentional misconduct, or claims relating to the infringement of intellectual property rights of third parties.

SECTION 8. INSURANCE

The Vendor must obtain, for the Contract term and any extension of it, insurance issued by a company or companies qualified to do business in the State of Illinois with an A.M. Best Rating of at least A-and provide the County with a Certificate of Insurance 15 days before the start of the project, and thereafter annually for contracts/ projects that will last more than one year. Insurance in the following types and amounts is necessary and/or where applicable:

Commercial General Liability Insurance

In a broad form on an occurrence basis shall be maintained, to include, but not be limited to, coverage for property damage, bodily injury (including death), personal injury and advertising injury in the following coverage forms where exposure exists:

- Premises and Operations
- Independent Contractors
- Products/Completed Operations
- Liability assumed under an Insured Contract/ Contractual Liability
- Personal Injury and Advertising Injury

With limits of liability not less than:

\$ 1,000,000 Each Occurrence

\$ 1,000,000 Products-Completed Operations

\$ 1,000,000 Personal and Advertising injury limit

\$ 2,000,000 General aggregate; the CGL policy shall be endorsed to provide that the General Aggregate limit applies separately to each of the contractor's projects away from premises owned or rented to contractor.

Automobile Liability Insurance (if applicable)

Automobile liability insurance shall be maintained to respond to claims for damages because of bodily injury, death of a person, or property damage arising out of ownership, maintenance, or use of a motor vehicle. This policy shall be written to cover any auto whether owned, leased, hired, or borrowed.

The Vendor's auto liability insurance, as required above, shall be written with limits of insurance not less than the following:

\$ 1,000,000 Combined single Limit (Each Accident)

Excess/ Umbrella Liability (if applicable)

The Vendor's Excess/ Umbrella liability insurance shall be written with the umbrella follow form and outline the underlying coverage, limits of insurance will be based on size of project:

\$ 2,000,000 per occurrence limit (*minimum, and may be higher depending on the project*)

Workers Compensation (Coverage A) and Employers Liability (Coverage B)

Workers Compensation Insurance covering all liability of the Vendor arising under the Worker's Compensation Act and Worker's Occupational Disease Act at limits in accordance with the laws of the State of Illinois. Employers' Liability Insurance shall be maintained to respond to claims for damages because of bodily injury, occupational sickness, or disease or death of the Contractor's employees, with limits listed below:

Employers Liability

- a) Each Accident \$1,000,000
- b) Disease-Policy Limit \$1,000,000
- c) Disease-Each Employee \$1,000,000

Such Insurance shall contain a waiver of subrogation in favor of Lake County and the Clerk.

Professional Liability – Errors and Omissions (if applicable)

The Engineers/Architects/Vendors for the plans of the project shall be written with limits of insurance not less than the following:

\$ 1,000,000 per claim per policy year

Coverage shall be provided for up to three (3) years after project completion. Policy is to be on a primary basis if other professional liability is carried.

Professional Liability – Cyber Liability (if applicable)

Cyber Liability Insurance for property damage to electronic information and/or data; first and third party risks associated with e-business, internet, etc., with limits of insurance not less than the following:

\$ 1,000,000 per occurrence limit

Technology Errors and Omissions (if applicable)

The Contractor's Software Developer and/or IT Vendor for the plans, including developing and implementing technology for Lake County and the Clerk, or of the project, shall be written with limits of insurance not less than the following:

\$ 1,000,000 per occurrence limit

Liability Insurance Conditions- highlights are additions in the County's template not contained originally in the RFP

Contractor agrees that with respect to the above required insurance:

- a) The CGL policy shall be endorsed for the general aggregate to apply on a "per Project" basis;
- b) The Contractor's insurance shall be primary in the event of a claim.
- c) Contractor agrees that with respect to the above required insurance, Lake County and the

Clerk shall be named as additional insured, including its agents, officers, and employees and be provided with thirty (30) days' notice, in writing by endorsement, of cancellation or material change. **A blanket additional insured ISO endorsement is preferred for Contractors who have multiple projects with the County.**

- d) Lake County and the Clerk shall be provided with Certificates of Insurance and **the appropriate corresponding ISO form** endorsements evidencing the above required insurance, prior to commencement of this Contract and thereafter with certificates evidencing renewals or replacements of said policies of insurance at least thirty (30) days prior to the expiration of cancellation of any such policies. **No manuscript endorsements will be accepted.** Any hard copies of said Notices and Certificates of Insurance and Endorsements shall be provided to:

**Lake County
Purchasing Division
18 N. County 9th Floor
Waukegan, Illinois 60085
Attn: RuthAnne Hall, Lake County Purchasing Agent**

- e) **Electronic copies of Notices, Certificates of Insurance and Endorsements can be emailed to Purchasing@lakecountyil.gov in place of hard copies.**

Failure to Comply: In the event the Contractor fails to obtain or maintain any insurance coverage required under this agreement and applicable to the Services, Lake County and the Clerk may purchase such insurance coverage and charge the expense to the Contractor.

SECTION 9. INDEPENDENT CONTRACTOR

Vendor is defined and identified as an independent contractor, not an employee or agent of Lake County and the Clerk, and the County has no right to control or direct Vendor's manner, detail, or means by which Vendor accomplishes tasks under this Agreement.

Vendor will be solely responsible for the supervision, daily direction, control and payment (including paying all employer taxes and benefits, e.g. workers' compensation and disability) of its employees (each, an "Employee"). No employee will be eligible for Lake County or Clerk's employee benefits. The relationship between the parties hereunder will at all times be that of independent contractors, and nothing herein will be construed to create any partnership, joint venture, agency, employment, or other similar relationship. Vendor may provide the Services directly or through HOV Services, Inc., as disclosed and as referenced in its Proposal in response to the RFP.

SECTION 10. DISPUTE RESOLUTION

All issues, claims, or disputes arising out of this Agreement shall be resolved in accordance with the Appeals and Remedies Provisions in Article 9 of the Lake County Purchasing Ordinance.

SECTION 11. NO IMPLIED WAIVERS

The failure of either party at any time to require performance by the other party of any provision of this

Agreement shall not affect in any way the full right to require such performance at any time thereafter. Nor shall the waiver by either party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself.

SECTION 12. SEVERABILITY

If any part of this Agreement shall be held to be invalid for any reason, the remainder of this Agreement shall be valid to the fullest extent permitted by law.

SECTION 13. JURISDICTION, VENUE, CHOICE OF LAW AND PROFESSIONAL STANDARDS

This Agreement shall be governed by and construed according to the laws of the State of Illinois. Jurisdiction and venue shall be exclusively found in the 19th Judicial Circuit Court, State of Illinois.

SECTION 14. NOTICES AND COMMUNICATIONS

- A. Relative to this Agreement: All notices and communications which may be given by Lake County or the Clerk to Vendor relative to this Agreement shall be addressed to the Vendor at the address shown herein below:

HOV Services, Inc.,
2701 E. Grauwylar
Irving, TX 75061
Attn: General Counsel

With a copy (which shall not constitute notice) to: legalnotices@exelatech.com and john.lancaster@exelatech.com

Copies of any notices and communications which propose to alter, amend, terminate, interpret, or otherwise change this Agreement shall be in writing and be provided to: Lake County Purchasing Division, 18 North County Street, Waukegan, Illinois 60085-4350; Attention: Purchasing Agent and the Clerk of the Circuit Court of the Nineteenth Judicial Circuit, 18 N. County Street, Waukegan, IL 60085, Attention: Purchasing Agent. (OR INSERT OTHER TITLED POSITION WHO SHOULD RECEIVE THIS NOTICE)

- B. For Implementation of SOW and day-to-day contract management, both parties will designate a "Contract Administrator" or "Project Manager" who will serve as the liaison between the County (and the Clerk) and Vendor. The parties may name separate Contract Administrators for onsite work and offsite work.

SECTION 15. ASSIGNMENT, ALTERATIONS AND MODIFICATIONS

Except as otherwise provided herein, this Agreement shall not be assigned, delegated, altered, or modified without the express written consent of both parties. This Agreement supersedes any and all other agreements, oral or written, between the parties hereto with respect to the subject matter hereof.

To the extent Lake County and the Clerk agree to an assignment, delegation, or subcontract by Vendor, Vendor shall remain liable to Lake County and the Clerk with respect to each and every item, condition and

other provision hereof to the same extent that Vendor would have been obligated if it had done the work itself and no assignment, delegation, or subcontract had been made.

Excelsa shall have the right to assign this Agreement with prior written consent from the County to any successor in interest to the business of Excelsa, pursuant to any purchase, merger, or other reorganization.

SECTION 16. TERMINATION

Lake County and the Clerk reserve the right to terminate this Agreement as set forth hereunder.

16.1 Termination Due to Default:

If either party defaults in the performance of any of its material obligations hereunder or breaches any representation or warranty, and such default is not cured within thirty (30) days after receiving written notice of the breach, non-defaulting party will have the right to suspend services or terminate this Agreement and pursue all legal and equitable remedies to which it is entitled. Under this provision of the Agreement, Lake County shall not be held liable for permanent removal fees nor incidental equipment charges.

16.2 Termination for Convenience:

Except as otherwise set forth in a Statement of Work, either party may terminate the agreement for convenience upon on thirty (30) days prior written notice. Upon termination, Lake County shall remit payment for all work completed and approved or accepted by the Clerk pursuant to Section 5, above, to the date of written notice of termination. Under this provision of the Agreement, vendor is entitled to all contractual charges incidental to the purchase of any equipment or supplies necessary to deliver services contained herein after which the ownership of said equipment or supplies will be transferred to Lake County.

16.3 Termination Due to Lack of Appropriations:

If sufficient funds are not appropriated by the Lake County Board to continue the functions performed as set forth in the applicable SOW and for the payment of the charges hereunder, Lake County may terminate this agreement at the end of its current fiscal year. Lake County agrees to give written notice of termination to vendor at least thirty (30) days prior to the end of its current fiscal year. Lake County shall remit payment for all work completed and approved or accepted by the Clerk pursuant to Section 5 above, to the date of written notice of termination. Under this provision of the Agreement, vendor is entitled to all contractual charges incidental to the purchase of any equipment or supplies necessary to deliver services contained herein after which the ownership of said equipment or supplies will be transferred to Lake County. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to Lake County.

16.4 Termination Due to Emergent or Exigent Circumstances

If sufficient funds are not appropriated by the Lake County due to an emergency or exigency, to continue the functions as set forth in the applicable SOW and for the payment of the charges hereunder, Lake County may terminate this agreement immediately, without any prior notice. Lake County shall remit payment for all work completed and approved or accepted by the Clerk pursuant

to Section 5, above, to the date of written notice of termination. Under this provision of the Agreement, Lake County shall not be held liable for permanent removal fees nor incidental equipment charges. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to Lake County.

16.4 Force Majeure; Excuse

Neither party will be responsible or incur liability for any delay/failure to the extent it results from causes beyond its control, including but not limited to fire, explosion, act of terrorism, war, labor dispute, embargo, government order or requirement, civil or military authority, natural disaster, epidemic, general internet or communication line failures, power surges, civil disturbance, flood, earthquake, tornado, crime, riot, sabotage or other similar types of situations. If such situation occurs, the affected party will give prompt written notice to the other party and will use commercially reasonable efforts to resume operations as soon as practicable. Vendor will only perform the Services in conditions it deems to be safe for its Employees. Except as set forth in a SOW, Vendor will not be obligated to manage or handle hazardous wastes or hazardous chemicals.

SECTION 17. CONFIDENTIALITY

Both parties acknowledge that this Agreement may be subject to the Illinois Open Meetings Act (5 ILCS 120/1 et seq.) and the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.), unless otherwise protected or exempted by law.

Separately, the Clerk is in possession of data that may be confidential and protected by law though the Vendor will utilize this data when rendering Services. Said data shall be strictly confidential and the sole property of the Clerk. Vendor shall return all data to the Clerk upon request and/or termination and shall not utilize any of the data, or the information contained therein, for purposes outside the scope of this Agreement or without express written approval of the Clerk.

SECTION 18. WORK PRODUCT

All work product prepared for the County by Vendor pursuant to this Agreement, including, but not limited to, policies, reports, analysis, plans, designs, calculations, work drawings, studies, photographs, models, and recommendations shall be the property of the Clerk. Work product includes all deliverables outlined in the SOW that is governed by this Agreement. Vendor shall deliver the entire work product to the Clerk upon completion of Vendor's work, or termination of the Agreement, whichever comes first. Vendor may retain copies of such work product for its records; however Vendor may not use, print, share, disseminate, or publish any work product related to this Agreement without the consent of the Clerk. Notwithstanding the foregoing, all rights in and to any intellectual property used or disclosed by Exela in providing the Services, whether developed prior to, during or after the Effective Date, are and will remain the sole and exclusive property of Exela and its affiliates and licensors, as applicable.

SECTION 19. JOINT PURCHASING

The purchase of goods and services pursuant to the terms of this Agreement shall also be offered for purchases to be made by other governmental units, as authorized by the Governmental Joint Purchasing Act, 30 ILCS 525/0.01, et seq. (the "Act"). All purchases and payments made under the Act shall be made directly by and between each governmental unit and the Vendor. The Vendor agrees that the County and/or Clerk

shall not be responsible in any way for purchase orders or payments made by the other governmental units. The Vendor further agrees that all terms and conditions of this Agreement shall continue in full force and effect as to other contracting governmental units during this Agreement's initial and extended terms. The credit or liability of each governmental unit shall remain separate and distinct. Disputes between Vendor and governmental units shall be resolved between the immediate parties.

The Vendor and the other governmental units may negotiate such other and further terms and conditions to this Agreement ("Other Terms") as individual projects may require without impact to the instant Agreement between Vendor and Lake County and the Clerk. To be effective, other governmental units contracting with Vendor shall reduce the terms of their agreement to writing and said agreement shall be signed by a duly authorized representative of both Vendor and the other governmental unit.

Vendor shall provide the other governmental units with all required documentation set forth in the solicitation including but not limited to: performance and payment bonds, Certificates of Insurance naming the respective governmental unit as an additional insured, and certified payrolls to the other governmental unit as required.

SECTION 20. NEWS RELEASES

Vendor may not issue any news releases regarding this Agreement without prior approval from Lake County and the Clerk.

IN WITNESS HEREOF, the undersigned have caused this Agreement to be executed in their respective names on the dates hereinafter enumerated.

Lake County:

HOV Services, Inc.

Purchasing Agent
Lake County

Title

Date _____

Date _____

Clerk of the Circuit Court
19th Judicial Circuit, Lake County, Illinois

Clerk of the Circuit Court

Date _____