



CSC Recording Solutions Agreement

A Response to City of Franklin, TN

Prepared for: City of Franklin, TN

Prepared by:

Andrew Singleton
E-Recording Corporate Consultant

Prepared on:

October 25, 2018

CSC® 251 Little Falls Drive Wilmington, DE 19808-1674

Phone: 800-927-9800 x 63134

Phone: 302-636-5401 x 63134

Fax: 302-636-5454

Web: www.cscglobal.com

Contents of this proposal are confidential and are presented
for the exclusive use of City of Franklin, TN

Copyright © 2018 Corporation Service Company. All Rights Reserved.

CSC Recording Solutions Agreement

This CSC Recording Solutions Agreement ("Agreement") shall become effective on the date the Submitter signs below ("Effective Date") and is between **City of Franklin, TN** with its principal offices located at: **109 3rd Ave S, Franklin, Tennessee, 37064-2519** including its affiliates ("Submitter"), and Corporation Service Company, a Delaware corporation with a principal place of business located at 251 Little Falls Drive, Wilmington, DE 19808 ("CSC"), and the parties agree as follows:

1. SCOPE OF SERVICES

- a. **Scope.** During the term of this Agreement, CSC grants Submitter a non-exclusive, non-transferable right for its authorized user(s) ("Authorized User") to use one or more of CSC's document preparation and submission application tools (referred to herein as the "Recording Solutions").
- b. **Restrictions on Use or Access.** The foregoing rights to use various components of the Recording Solutions are subject to the following restrictions: (i) Submitter shall only use the Recording Solutions for internal purposes; (ii) Submitter shall not provide access or use of the Recording Solutions to unauthorized users or third parties; (iii) Submitter shall not provide false or inaccurate names or information, use or access the Recording Solutions for any unlawful purposes, or any purposes other than as specifically permitted under this Agreement and (iv) Submitter shall not resell CSC's services to third-parties. CSC may exercise its right to terminate this Agreement under Section 9(a) for any violation(s) of this subparagraph.

2. OWNERSHIP RIGHTS

- a. **Intellectual Property.** Submitter agrees that all title and ownership rights to the Recording Solutions including, without limitation, any changes, modifications, or upgrades and enhancements, in design, functionality or otherwise and any and all copyrights, marks, trade secret, patent rights, or other intellectual property or proprietary information therein or related to, shall reside with CSC or land record management software providers, as the case may be. Submitter agrees that CSC is the sole and exclusive owner of the Recording Solutions, the network relationships with government recording offices including without limitation counties, parishes, townships, municipalities/cities, registers, states and similar offices ("Government Recording Office"), CSC's Internet sites and/or any successor products, systems, networks or sites, and any CSC trademarks which shall not be used without CSC's written consent. Nothing in this Agreement shall be interpreted to require CSC to develop or release any upgrades or enhancements to Recording Solutions.
- b. **Data.** Subject to Section 5 (Confidentiality) of this Agreement, CSC may use, access, reproduce and retain all data for auditing, billing, diagnosis and correction of incidents, or for security and system enhancements.

3. OBLIGATIONS OF SUBMITTER

- a. **Submitter Service and Recording Fees.** Submitter agrees to pay all service fees and expenses (if applicable) ("Service Fees") as set forth in Exhibit A, which may be modified by CSC upon commercially reasonable notice to Submitter. CSC shall have the right to increase Services Fees annually after the expiration of the Initial Term (defined below). Submitter further agrees to pay all applicable recording fees, access fees and any related taxes imposed by a Government Recording Office as a condition of recording ("Recording Fees") and acknowledges that CSC's sole responsibility is to transfer such Recording Fees from Submitter (through the ePay system described on Exhibit A) to the Government Recording Office. Submitter agrees to execute any applicable Memorandums of Understanding (MOUs) as required by Government Recording Office in order to use Recording Solutions in such jurisdiction(s).
- b. **Protection from Unauthorized Uses.** In order to ensure compliance with the terms and conditions of this Agreement, Submitter shall take reasonable security measures, including without limitation: safeguarding computer equipment, passwords, logins and other sensitive information so as to prevent the unauthorized use or access to the Recording Solutions. Submitter shall immediately inform CSC of any of the following security breaches, including without limitation, the theft of Submitter's equipment or information, unauthorized access to the Recording Solutions, or an illegal or improper use of the Recording Solutions.
- c. **Privacy of Data.** Submitter agrees to refrain from placing any personally identifiable information on a document except to the extent required by a Government Recording Office to complete a particular transaction.
- d. **Acceptance of Electronic Transactions.** Except for jurisdictions where paper copy recordings are requested or required, Submitter agrees that CSC may conduct Recording Solutions transactions in an electronic format, including electronic records, electronic signatures, and electronic notarizations. Submitter further agrees to conduct all Recording Solutions transactions by electronic means, including the acceptance of electronic records and transactions and the application of electronic signatures. Failure to comply with Government Recording Office requirements may result in the inability to file documents and records at such Government Recording Office.
 - i. Submitter agrees that electronic documents or attachments shall be considered an "original" record of the transaction in substitution for, and with the same intended effect as, paper documents and, in the case that such documents bear a digital, digitized, or electronic signature, as paper documents bearing handwritten signatures.
 - ii. By using electronic digitized signatures or digital certificates to sign documents, Submitter intends to be bound by those electronic signatures affixed to any documents, and such electronic signature shall have the same legal effect as if that signature was manually affixed to a paper version of the document.
 - iii. Submitter attests to the accuracy, authenticity, and completeness of the records, including signatures and notary seals, and acknowledges responsibility for the content of the documents regardless of how submitted to CSC and/or the Government Recording Office. In the event of a dispute or legal action concerning a transaction, Submitter agrees to hold the Government Recording Office and CSC harmless, and such Government Recording Office and CSC shall not to be liable for any damages to Submitter.
 - iv. Submitter shall record only original documents bearing original signatures and acknowledgements.

- v. Submitter shall be responsible for tracking in the Recording Solutions that documents transmitted were in fact recorded.
- vi. All documents and data submitted by Submitter shall comply with the current county, state, and federal laws and standards for the recording jurisdiction where submitted including requirements for indexing purposes.

4. IMPLEMENTATION AND CUSTOMER SUPPORT

- a. **Support, Training, and Implementation Services.** CSC will provide customer and technical support for the Recording Solutions to Submitter, including online training support. Submitter may request and CSC may provide, in its sole discretion, additional training, support, implementation, and integration services on terms and conditions as the parties may mutually agree. Except as expressly set forth in this section, CSC is not obligated to provide consulting or any other services.
- b. **Use of any Other Services.** CSC makes no representations or warranties regarding (i) the availability of any interface between the Recording Solutions and other services or systems, hardware or software, and (ii) the availability of access to or by any specific provider of other services, systems, hardware or software. Submitter acknowledges and agrees that (i) CSC will not be responsible for any losses that may result from Submitter's use of any other services, systems, hardware or software, despite the fact that the same may interface with the Recording Solutions.

5. CONFIDENTIALITY

Protection of Confidential Information. "Confidential Information" means the terms of this Agreement (including its Exhibits and Schedules) and all confidential and proprietary information of CSC or Submitter, including without limitation all business plans, product plans, financial information, personally identifiable information, software, designs, formulas, methods, know how, processes, and materials provided to the receiving party in the course of engaging and performing Services under this Agreement, and technical, business and financial data of any nature whatsoever (including, without limitation, any marketing, pricing and other information regarding the Services), provided that such information is marked or designated in writing as "confidential," "proprietary," or any other similar term or designation, or information that a reasonable person would deem confidential. Confidential Information does not include information that is (i) submitted by Submitter to Government Recording Office through the use of the Recording Solutions, (ii) rightfully in the receiving party's possession without obligation of confidentiality prior to receipt from the disclosing party; (iii) a matter of public knowledge through no fault of the receiving party; (iv) rightfully furnished to the receiving party by a third party without restriction on disclosure or use; or (v) independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information. Each party shall (i) use Confidential Information of the other party only for the purposes of performing obligations in connection with this Agreement, and (ii) use at least the same degree of care it uses to protect its own Confidential Information of a similar nature from disclosure to any third parties, but no less than reasonable care. Each party's obligation shall remain in effect during the term of this Agreement and for a period of three (3) years thereafter, provided, however, that Confidential Information that constitutes, contains or reveals, in whole or in part, CSC's proprietary rights described in section 2(a) shall not be disclosed by the receiving party at any time. Notwithstanding the foregoing, a receiving party may disclose Confidential Information pursuant to a valid order of a court or authorized government agency provided that the receiving party, unless prohibited by law or legal process, has given the disclosing party prompt notice so that the disclosing party will have an opportunity to defend, limit or protect against such disclosure.

6. REPRESENTATIONS AND WARRANTIES

- a. **CSC Warranties.** CSC provides the following limited representations and warranties:
 - (i) that work performed hereunder will be performed in a workmanlike manner in accordance with general industry standards for similar services.
 - (ii) it shall be liable to Submitter for the performance and all actions and inaction by its subcontractors or agents, if any, used to fulfill services under this Agreement. Government Recording Office shall not be deemed subcontractors or agents of CSC.
 - (iii) it has full right and title to provide the Recording Solutions services to Submitter, and to CSC's knowledge such Recording Solutions services do not infringe upon the copyrights, trademarks, patents, trade secrets or any intellectual property or proprietary rights of any third party under United States law.
 - (iv) that it does and will comply with all applicable federal, state, and local law and regulations.
 - (v) THE WARRANTIES SET FORTH IN THIS SECTION ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY CSC IN CONNECTION WITH THE RECORDING SOLUTIONS OR OTHERWISE UNDER THIS Agreement. CSC HEREBY EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.
 - (vi) The warranties given by CSC set forth in this Section shall not apply to any irregularities, errors, problems or defects arising from: (i) modification of Recording Solutions by any party other than CSC which was not approved by CSC or from accident, neglect, abuse, misuse or misapplication unrelated to CSC; (ii) any change to the Recording Solutions by Submitter to interface with other services, providers, or systems; (iii) Submitter's use of the Recording Solutions for an unauthorized or unlawful purpose; or (iv) any signature or notarial act in connection with the Recording Solutions not being in compliance with federal, state, local or other law.
- b. **Submitter Warranties.** Submitter provides the following representations and warranties:
 - (i) it does and will comply with all applicable federal, state, and local law and regulations.

- (ii) it is authorized to file the documents it files, such filed documents are complete and accurate and are not in violation of the rights of any third parties.
- (iii) It will not use the Recording Solutions for unlawful or unauthorized purposes and will comply in all respects with this Agreement.

7. Limitation of Liability

- a. ONLY TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL THE TOTAL CUMULATIVE LIABILITY OF EITHER PARTY (AND ITS RESPECTIVE AFFILIATES, PARTNERS, OFFICERS, EMPLOYEES, DIRECTORS, AGENTS, CONTRACTORS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS) TO THE OTHER PARTY FOR ALL LOSSES, INCLUDING, WITHOUT LIMITATION, CAUSES OF ACTION AND CLAIMS BASED UPON BREACH OF CONTRACT, TORT, BREACH OF WARRANTY, OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE RECORDING SOLUTIONS, OR ANY OTHER SOFTWARE, SERVICE, OR INFORMATION EXCEED THE LESSER OF (i) THE ANNUAL SERVICE FEES PAID OR PAYABLE BY SUBMITTER TO CSC (ii) OR \$15,000.
- b. ONLY TO THE EXTENT PERMITTED BY LAW, EXCEPT WITH RESPECT TO ANY BREACH OF SECTION 3, 5, 6(a)(iv), AND 6(a)(v) OF THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY OR THEIR RESPECTIVE AFFILIATES, PARTNERS, OFFICERS, EMPLOYEES, DIRECTORS, AGENTS, CONTRACTORS, REPRESENTATIVES, SUCCESSORS OR ASSIGNS, AS SUCH, BE LIABLE TO THE OTHER PARTY OR ANYONE CLAIMING UNDER OR THROUGH THE OTHER PARTY FOR ANY PUNITIVE, EXEMPLARY, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE RECORDING SOLUTIONS OR ANY OTHER SERVICES, SERVICES OR INFORMATION, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, INTEREST, REVENUE, DATA OR USE, OR INTERRUPTION OF BUSINESS, INCURRED BY THE OTHER PARTY, WHETHER BASED UPON CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, DUTY TO WARN AND STRICT LIABILITY), WARRANTY OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
- c. CSC AND SUBMITTER EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS AND EXCLUSIONS CONTAINED HEREIN (I) REPRESENT THE PARTIES' INTENTION AS TO THE ALLOCATION OF RISK BETWEEN THE PARTIES (INCLUDING, WITHOUT LIMITATION, THE POSSIBILITY THAT A REMEDY MAY FAIL OF ITS ESSENTIAL PURPOSE AND CAUSE CONSEQUENTIAL LOSS) AND THAT THE AMOUNTS PAYABLE TO CSC PURSUANT TO THIS AGREEMENT REFLECT SUCH ALLOCATION OF RISK, WITHOUT WHICH CSC WOULD NOT HAVE BEEN WILLING TO ENTER INTO THIS AGREEMENT, AND (II) FORM AN ESSENTIAL BASIS FOR THE BARGAIN BETWEEN THE PARTIES.

8. INDEMNIFICATION AND HOLD HARMLESS

- a. **Indemnification.** CSC, at its own expense, shall indemnify, defend and hold Submitter harmless from any and all costs losses, damages, claims, suits or any liability whatsoever, including attorney's fees, resulting from injury including death to person or damage to property arising out of, or in any manner connected with CSC's use of Submitter's property and from any violation of any applicable law or regulation arising out of or relating to this Agreement.

9. TERM AND TERMINATION

- a. **Term, Termination.** The Initial Term of this Agreement shall be for one year from the Effective Date. On the expiration of the Initial Term, the Term of this Agreement will automatically renew and remain in effect not more than two (2) consecutive one- (1-) year periods (each a "Renewal Term") unless either party provides the other party at least thirty (30) days' advance written notice of non-renewal prior to the end of the then-current Term.
 - i. Notwithstanding the foregoing, CSC may terminate this Agreement effective immediately (even during the Initial Term), upon notice to Submitter if CSC reasonably believes that:
 - (1) Submitter has willfully attempted to cause or has willfully caused the Recording Solutions or any related system to malfunction or suffer damage, or Submitter has failed to take steps reasonably requested by CSC to correct a malfunction or damage.
 - (2) Submitter has violated a law or is using the Recording Solutions in an unlawful manner or in contravention to its obligations under this Agreement;
 - (3) Submitter's actions or inactions impair or threaten to impair CSC's relationship with any Government Recording Office; or
 - (4) CSC is named in a lawsuit due to Submitter's actions or inactions, or by virtue of a document filed by Submitter.
 - ii. CSC has the right to terminate this Agreement upon five (5) days' notice to Submitter for failure to pay Recording Fees or Service Fees and immediately suspend access to the Recording Solutions under section 9(b).
 - iii. This Agreement will automatically terminate if either party becomes insolvent or enters into bankruptcy, suspension of payments, moratorium, reorganization, or any other proceedings that relates to insolvency or protection of creditor's rights.
 - iv. Either party may immediately terminate this Agreement upon written notice to the other party if such party reasonably believes the other party has breached or is likely going to breach its confidentiality obligations hereunder.
- b. **Suspension of Services.** CSC shall have the right to immediately suspend services, including Submitter's access and use of the Recording Solutions, in the event Submitter fails to adequately fund Submitter's account for Recording Fees, until such time that such account is adequately funded.

c. **Survival.** Neither party shall have any continuing obligations to the other party after the effective date of termination except that (i) Submitter shall pay all Service Fees and Recording Fees accrued and owing prior to the termination date and (ii) any provisions of this Agreement that contemplate continuing obligations shall survive any termination of this Agreement, including without limitation, sections 2, 3, 5 through 10 as applicable.


10. GENERAL PROVISIONS

- a. **Assignment.** This Agreement may not be assigned or otherwise transferred by either party without the prior written consent of the other party, and such consent shall not be unreasonably withheld.
- b. **Notices.** Unless otherwise specified in this Agreement, all notices and other communications (other than routine operational or billing communications) shall be in writing and sent to the addresses specified above. A copy of such notices to CSC shall also be sent to Corporation Service Company, Attention: General Counsel, 251 Little Falls Drive, Wilmington, DE 19808.
- c. **Governing Law; Severability.** This Agreement shall be governed by and construed solely and exclusively in accordance with the laws of the State of Tennessee, without reference to or application of its conflicts of law principles. Venue for any action brought in connection with this Agreement shall be in the courts of Williamson County, Tennessee. In the event that a provision of this Agreement is found to be unenforceable, a court shall construe the remaining provisions to have maximum effect and be individually severable.
- d. **Force Majeure.** Neither party shall be responsible for delays or failure of performance (other than the payment of money) resulting from acts beyond the reasonable control of such party. Such acts shall include without limitation acts of God, riots, acts of war, epidemics, denial of service attack, governmental regulations, power failures, shortages, brownouts or blackouts, earthquakes, or other disasters.
- e. **Amendments.** This Agreement may be amended solely by a writing expressly purporting to create an amendment to this Agreement and executed by an authorized representative of each party.
- f. **Entire Agreement.** The parties agree that this Agreement (including its attached Exhibits and Schedules) shall constitute the complete and exclusive agreement between CSC and Submitter, and supersedes all prior or contemporaneous communications, proposals or this Agreement, oral or written, relating to the subject matter hereof. For paper copy recordings, an authorizing board resolution (if applicable) and power of attorney (if applicable) are incorporated by reference into this Agreement.
- g. **Misc.** The titles and headings of the various sections and paragraphs in this Agreement are intended solely for convenience of reference and are not intended to explain, modify or place any construction or limitation upon any of the provisions of this Agreement. No term, provision or clause of this Agreement shall be deemed waived and no breach excused unless such waiver or consent is in writing executed by a duly authorized representative of the party to be bound thereby.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

CORPORATION SERVICE COMPANY

CITY OF FRANKLIN, TN



SIGNED

SIGNED

Mark Rosser

Eric S. Stuckey

PRINT NAME

PRINT NAME

Vice President

CITY ADMINISTRATOR

TITLE

TITLE

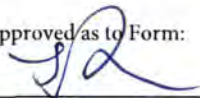
October 25, 2018

11-27-2018

DATE

DATE

Approved as to Form:



Tiffani M. Pope, Staff Attorney

Exhibit A – CSC Fee Schedule

Implementation

One-time Implementation and Set-Up Fee \$ 0.00

- One-time Implementation & Set-Up Fee Includes:
 - System set-up
 - Any connector development to handle Submitter documents
 - ePay setup
 - Web-based staff training
 - CSC will provide Submitter with any applicable Memorandum of Understanding (MOU) that needs to be executed by Submitter as part of the initial set-up process.

Technical Support and Upgrades

Subsequent Years \$0.00 / year, starting year two

Document Recording

Service Fee Per Electronically Recorded Document – Level 2 \$4.00 / document

Service Fees will be billed and paid on a daily or monthly basis, per Submitter's preference. Terms will be payable upon receipt.

PAYMENT PROCESSING OF RECORDING FEES TO GOVERNMENT RECORDING OFFICE

- a. **Insufficient funds.** In the event of insufficient funds, whether by check or ACH debit, Submitter agrees to pay a \$25 fee per event. CSC reserves the right to require additional deposits or alternative funding arrangements in the event of multiple insufficient fund events.
- b. **ePay System.** Submitter will utilize CSC'S ePay system to pay Recording Fees incurred and owed to a Government Recording Office. CSC will process payment to Government Recording Office for Recording Fees associated with documents that were recorded on behalf of Submitter the previous business day.
- c. **ePay Reports.** Each evening Submitter will receive from CSC a Daily Activity Report listing all the documents that recorded that day, the Recording Fees associated with each document, the total by Government Recording Office, and the total for the day. If using an ePay Draw Account (described below), each evening Submitter will receive a Daily Balance Report indicating the beginning balance in the ePay Draw Account, all debits or credits to the account, and the ending balance. At the end of each month CSC will send Monthly Activity Reports showing the month's activity.
- d. **Funding Options.** Submitter may choose one of two options to fund payment of Recording Fees for the document recordings:
 - i. CSC will directly debit Submitter's bank account, or
 - ii. CSC will draw funds from an ePay Draw Account using funds placed in the account by Submitter.
- e. **ePay Draw Account.** If Submitter chooses to fund payment of Recording Fees through a Draw Account, Submitter will maintain funds in an account and bank designated by CSC. This account, and the funds in this account, will be solely used to pay Recording Fees owed to Government Recording Office for Submitter's recorded documents. CSC's ePay system performs a daily accounting of all funds paid out of the Draw Account by CSC and all funds paid into the Draw Account by Submitter. Submitter will receive a daily report from CSC describing the amounts paid for each document into each Government Recording Office and the replenishment requirements. To replenish the Draw Account, Submitter will send additional funds by wire or ACH into the Draw Account. Submitter controls the amount of funds in the Draw Account and the frequency of replenishment, and must maintain sufficient funds to pay Recording Fees as incurred. The Draw Account will be maintained separately at the designated bank and is accessible only to Submitter and CSC. CSC recognizes that funds deposited in the Draw Account are owned by Submitter and are placed there solely for the purpose of paying Recording Fees associated with documents recorded by CSC on Submitter's behalf. CSC acknowledges that it has no claim on Recording Fees, and the remaining funds are to be returned to Submitter when the Draw Account program is terminated by Submitter.