

PS



**Township Council**  
1 Municipal Plaza  
Bloomfield, NJ 07003

**Louise M. Palagano**  
*Municipal Clerk*

<http://www.bloomfieldtwpnj.com>

Meeting: 07/16/12 07:00 PM

**2012 RESOLUTION AWARD OF CONTRACT**

**RECORDS MANAGEMENT AND STORAGE**

WHEREAS, the Township of Bloomfield, Municipal Clerk's Department, received a proposal from File Bank, 23 Thornton Road, Oakland, NJ 07436, for a five (5) year contract to provide Record Management Services at the following cost:

Initial Cost: \$25,263.79  
Year 1:\$19,195.00 + \$11.00 a scan  
Year 2:\$19,195.00 + \$11.00 a scan  
Year 3:\$19,195.00 + \$11.00 a scan  
Year 4:\$19,195.00 + \$11.00 a scan  
Year 5:\$19,195.00 + \$11.00 a scan

WHEREAS, the proposals were referred to the Township Municipal Clerk; and

WHEREAS, after review of the attached proposal it was determined that File Bank was qualified to perform the Records Management and the cost of the yearly services may be decreased based on the number of boxes that are left after the purging and inventorying is done; and

WHEREAS, the Director of Finance hereby certifies that funding is available in the Township of Bloomfield operating budget to pay for these services.

**NOW, THEREFORE, BE IT RESOLVED**, that the Mayor and Council of the Township Of Bloomfield, County of Essex, State of New Jersey hereby accepts the recommendation of the Township Municipal Clerk and she may enter into a contract for the Records Management with File Bank for a five (5) year contract at the annual rates indicated herein.

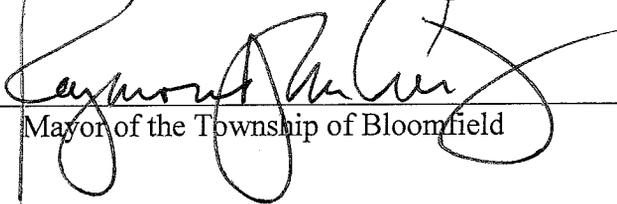
\* \* \* \* \*

APPROVED AS TO FORM AND PROCEDURE  
ON BASIS OF FACTS SET FORTH

Director of Law – Township Attorney

I hereby certify that the above resolution was duly adopted by the Mayor and Council of the Township of Bloomfield at a meeting of said Township Council held on July 16, 2012.

  
 \_\_\_\_\_  
 Municipal Clerk of the Township of Bloomfield

  
 \_\_\_\_\_  
 Mayor of the Township of Bloomfield

✓ Vote Record - Resolution 1921					
		Yes/Aye	No/Nay	Abstain	Absent
<input checked="" type="checkbox"/> Adopted					
<input checked="" type="checkbox"/> Adopted as Amended	Elias Chalet	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/> Defeated	Nicholas Joanow	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Withdrawn	Carlos Bernard	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Tabled	Michael Venezia	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Approved	Peggy O'Boyle Dunigan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Approved by Consensus	Bernard Hamilton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Not Discussed	Raymond McCarthy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Tabled with No Vote					
<input type="checkbox"/> Discussed					
<input type="checkbox"/> Veto by Mayor					



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# Customer Agreement

**FileBank** (Company) hereby agrees to accept for storage and to service under its management system such materials (Stored Material) as 7/10/8, 2012 (Client) requests, subject to all terms and conditions herein, including those incorporated as attachments hereof. Client agrees to pay Company for its services according to Company's current rate schedule, or any revisions thereto. The attached Schedule of Rates (Schedule A) is incorporated herein and made a part hereof.

Unless modified by specific provisions set forth in Schedule A, the following terms and conditions shall apply to this Agreement.

1. **STORED MATERIAL** - From and after the effective date for a period of three (3) years, the Company shall store and service the Stored Material identified in the Company's records management software. Client and Company may modify or add to the record materials included in the Company's records management software. Such additional Stored Material shall, unless otherwise agreed in writing, be deemed to be held under the same terms and conditions as the Stored Material.
2. **ACCEPTANCE** - In the absence of an executed contract, the act of tendering said material for storage and/or other services by Company constitute acceptance by Client to the terms, conditions and rates of this contract.
3. **RATES** - Client agrees to pay Company for its services according to Company's then current Schedule of Rates and any revisions thereto. Payment for storage and services are due upon receipt of invoice. Monthly storage/retention charges shall be due in advance. For Stored Material received during a month or stored for a portion of a month, charges will be pro-rated for that month according to the then current Schedule of Rates based upon the date of receipt by the Company of the Stored Material. Rates may be changed upon thirty (30) days notice to the Client. Additional Service Charges and late payment fees, if any, shall be paid simultaneously with the monthly storage/retention charges. If the Client fails to pay the charges when due, Client shall be liable for late charges at the rate of 15% per annum (or such lesser rate as may be legally permissible under the laws of the jurisdiction governing this Agreement), and Client shall also be liable for all expenses incurred in collecting charges which are in arrears, including reasonable attorneys' fees.
4. **ACCESS TO STORED MATERIALS**
  - a. Stored Material and information contained in said Stored Material shall be delivered only to Client's Authorized Representative. Client represents that the Authorized Representative has full authority to order any service for or removal of the Stored Material, and to deliver and receive such. Such order may be given via telephone, electronically, fax, in writing or in person.
  - b. When any Stored Material is ordered out, a reasonable time shall be given to the Company to carry out said instructions; and if it is unable to do so (or to provide any other service herein contemplated) because of acts of God or public enemy, seizure or legal process, strikes, lockouts, riots and civil commotions, or other reason beyond the Company's control, or because of loss or destruction of goods for which the Company is not liable, or because of any other excuse provided by law, the Company shall not be liable for failure to carry out such instructions or services.
  - c. The Company reserves the right to deny access to or delivery of Stored Material until such time as Client has cured any default under this Agreement.

- d. Authorized representatives of Client shall have the right at reasonable times and upon reasonable notice to examine the media and/or records and compilations of data of the Company which pertain to the performance of the provisions of the Agreement.
- e. ***The Company shall not be liable for damage to Client materials in transit, or to items that may receive sudden and accidental damage, pursuant to conditions specified in Section 5, below.***

**5. LIMITATIONS OF LIABILITY**

- a. ***The Company shall not be liable for any loss or damage to Stored Material, however caused, unless such loss or damage resulted from the failure by the Company to exercise such care in regard thereto as a reasonably careful person would exercise in like circumstances. The Company is not responsible for the repair, replacement or restoration of lost or damaged property, subject to the conditions and limitations imposed by this agreement. Company's liability, if any, for loss, damage, or destruction to part or all of the Stored Material stored hereunder shall be limited to \$1.00 per carton, linear foot, container, tape or disk pack, which amount Client declares to be the value of Stored Materials, unless Client declares an excess valuation and pays an additional monthly charge for said excess valuation, as provided in section 6. In such case, Company's liability shall be limited to the amount of the excess valuation per carton, container, tape or disk pack. Such limitation of liability shall apply irrespective of the cause of loss, damage, or destruction of the stored material.***
- b. Company shall not be liable for any loss of profit or special, indirect, incidental or consequential damages of any kind.
- c. Stored Materials are not insured by Company against loss or injury, however caused.
- d. ***The Company accepts no liability for the deterioration of media in storage.***
- e. Claims by the Client for loss, damage, or destruction must be presented in writing to the Company within a reasonable time and in no event longer than sixty (60) days after Client is notified by the Company or otherwise receives notice that loss, damage or destruction to part or all of the Stored Material has occurred, whichever time is shorter.
- f. No action or suit may be maintained by the Client or others against the Company for loss, damage or destruction of the Stored Material, unless timely written claim has been given as provided in Section 5.e of this Agreement, and unless such action or suit is commenced either within twelve (12) months after date of delivery or return by the Company, or within twelve (12) months after the Client is notified or otherwise receives notice that loss, damage or destruction to part or all of said Stored Material has occurred, whichever is shorter.

**6. DECLARATION OF EXCESS VALUATION** - Client declares that the valuation of deposits made hereunder is \$\_\_\_\_\_ per carton, container, tape, or disk pack and agrees to pay an additional monthly rate of \$\_\_\_\_\_ per \$1000.00 of declared Excess Valuation, of which payment shall be made simultaneously with the normal monthly rate specified herein. The Company may, at its discretion, elect to repair, replace or restore lost or damaged property up to the valuation declared by the Client, whether the property is lost in whole or in part.

\_\_\_\_\_  
(Client Signature)

\_\_\_\_\_  
(Date)

**7. TERM** - Unless sooner terminated as provided herein, the term of this Agreement shall continue until the Authorized Representative gives Company reasonable (at least sixty (60) days) advance written

notice of a termination date and an address for delivery of the Stored Material. This Agreement may be terminated by either party, with or without cause, upon sixty (60) days prior written notice.

## 8. DEFAULT

- 8.1 The occurrence of any one or more of the following events shall constitute a default ("Events of Default"):
- a. Failure to pay any sum due hereunder within fifteen (15) days of when due; or
  - b. Breach of any provisions of this Agreement; or
  - c. Client becomes insolvent or files, or has filed against it, any proceeding in federal or state court seeking debtor relief.
- 8.2 Upon the occurrence of any of the Events of Default, Company, at its sole option, may exercise any or all of the following remedies without terminating the Agreement:
- a. Demand payment in advance by certified check, cashier's check, money order, or wire transfer prior to the performance of any services on behalf of the Client.
  - b. Demand in writing that Client pick up the Stored Material; or
  - c. Deliver the Stored Material to the Delivery Address, if none specified, to the Client Address.
  - d. Upon thirty (30) days advance written notice to Client, Company may dispose of Stored Material. (In this regard, the Client recognizes that, since the Stored Material has little or no market value, that sale of the material would be impossible, and disposal of Client materials is the only way for the Company to mitigate its damage
  - e. If this Agreement shall not have been terminated, Client shall continue to pay all sums due under this Agreement up to and including the date of delivery of the Stored Material as provided in (b) above.
  - f. Terminate this Agreement, whereupon Company, shall recover all damages suffered by reason of such termination, including reasonable attorneys' fees.
- 8.3 In the event Company takes any action pursuant to this Section, it shall have no liability to Client or anyone claiming through Client. The exercise by Company of any one or more of the remedies provided in this Agreement shall not prevent the subsequent exercise by Company of any one or more of the other remedies herein provided. All remedies provided for in this Agreement are cumulative and may, at the election of Company, be exercised alternatively, successively or in any other manner and are in addition to any of the rights provided by law. Company shall be entitled to include all reasonable attorneys' fees and costs incurred in connection with the enforcement of this Agreement.

9. **STORAGE CARTONS** - Storage Cartons purchased by the Client from the Company to transport and store Clients records come with a lifetime guarantee. Any storage Carton purchased by the Client from the Company that becomes damaged or unmanageable due to reasonable wear and tear will be replaced free of charge. If the Client uses any Storage Cartons other than those that can be purchased from the Company that become damaged or unmanageable, the Client agrees to pay the Company for the labor to re-pack the records and the cost of the replacement Storage Carton(s).

10. **DESTRUCTION OF RECORDS** - Upon written instruction from the Client or Authorized Representative, the Company may dispose of Stored Material. The Client releases the Company from all liability by reason of the destruction of such Stored Material pursuant to such authority.

**11. TITLE WARRANTY** - The Client warrants that it is the owner or legal custodian of the Stored Material and has full authority to store said record material in accordance with the terms of this Agreement.

**12. INDEMNIFICATION** - Unless caused by the negligence of the Company, the Client agrees to fully indemnify and hold harmless the Company, its officers, employees and agents for any liability, cost or expense, including reasonable attorneys' fees, that the Company may suffer or incur as a result of claims, demands, costs or judgments against it arising out of its relations with the Client or third parties pursuant to this Agreement.

**13. RULES**

- a. The Client agrees to comply with the Standard Storage Operating Procedures of the Company.
- b. The Client shall not, at any time, store with the Company, any narcotics, materials considered to be highly flammable, explosive, toxic, radioactive, organic material which may attract vermin or insects, or any other materials which are otherwise illegal, dangerous and unsafe to store or handle in an enclosed area. The Company reserves the right to open and inspect any record materials tendered from storage and refuse acceptance of any record materials which fail to comply with the Company's storage restrictions and guidelines. Client shall not store negotiable instruments, jewelry, check stock, ticket stock or other items that have intrinsic market value.
- c. Unless the Company is contracted by the Client to inventory the contents of all materials stored, the Company shall not be liable for loss of goods due to inventory shortage or unexplained or mysterious disappearance of goods; and the Company shall not be liable for such loss unless the Client establishes such loss occurred because of the Company's failure to exercise the care required under section 5, above.

**14. CONFIDENTIALITY** - The Company shall exercise the same degree of care in safeguarding deposits entrusted to it by Client which a reasonable and careful Company would exercise with respect to similar records of its own provided; however, that liability of the Company to Client shall be limited as set forth in Section 5 above. The Company may comply with any subpoena or similar order related to the stored records, provided that the Company notifies Client promptly upon receipt thereof, unless such notice is prohibited by law. Client shall pay Company's reasonable charges, including attorneys' fees, for such compliance.

**15. DISPUTE RESOLUTION** - Should the parties be unable to resolve any differences resulting from the interpretation or administration or alleged breach by either party of this Agreement, or relating in any way to Stored material, the same shall be finally resolved by binding arbitration in Paterson, New Jersey, conducted by the American Arbitration Association before a panel of [one/three] arbitrators pursuant to the Commercial Arbitration Rules then in effect. Each party shall bear ½ of the expense of the arbitrator. Each party shall bear its own expenses and attorneys' fees related to the arbitration. Any award or decision by the arbitrator(s) shall be final and binding between the parties and enforceable by any court of competent jurisdiction.

**16. MISCELLANEOUS** - This instrument (together with any Schedules attached and documents incorporated herein) constitutes the entire Agreement between the parties, and supersedes any and all prior agreements, arrangements, understandings, and representations, whether oral or written, between the parties. This Agreement may not be assigned by Client without the consent of Company. No modification of this Agreement shall be binding unless in writing, attached hereto, and signed by the party against which it is sought to be enforced. No waiver of any right or remedy shall be effective unless in writing and nevertheless, shall not operate as a waiver of any other right or remedy on a future

occasion. Every provision of this Agreement is intended to be severable. If any term or provision is illegal, invalid or unenforceable, there shall be added automatically as part of this Agreement, a provision as similar in terms as necessary to render such provision legal, valid and enforceable. This Agreement shall be construed in accordance with the laws of New Jersey without giving affect to its conflict of laws principles In addition, the Company shall have, and may exercise, all rights granted to warehousemen by the Uniform Commercial Code as adopted in the state where the records are stored. All Schedules, if any, attached hereto are hereby incorporated by reference and made a part hereof. The term "Agreement" as used herein shall be deemed to include all such schedules. All notices under this Agreement shall be in writing. Unless delivered personally, all notices shall be addressed to the appropriate addresses noted herein, or as otherwise noted in writing in accordance with this provision. Notices shall be effective upon receipt unless mailed by certified or registered mail, in which event notices shall be deemed to have been received as of the third business day after the date of posting. All words and phrases in this Agreement shall be construed to include the singular or plural number, and the masculine, feminine or neuter gender, as the context requires. Nothing in this Agreement shall be deemed or construed to constitute or create a partnership, association, joint venture, agency or fiduciary relationship between the parties hereto.

Accepted by:

Customer name

Louise M. Palagano

Print Name

Township of Bloomfield

1 Municipal Plaza

Street Address

Bloomfield, NJ 07003

City

State

Zip

Louise M Palagano

Signature

FILEBANK

GREG COPELAND

Print Name

[Signature]

Signature

07/18/2012

Date

11/08/2012

Effective Date