

**REQUEST FOR PROPOSALS**  
**CATS ORIGIN-DESTINATION STUDY**

**RFP # 269-2019-811**



**CHARLOTTE<sup>SM</sup>**



**CITY OF CHARLOTTE**  
**NORTH CAROLINA**

**MARCH 4, 2020**

**REQUEST FOR PROPOSALS**  
**RFP # 269-2019-811**  
**CATS ORIGIN-DESTINATION STUDY**

March 4, 2020

Dear Sir or Madam:

The City of Charlotte, North Carolina, is now accepting Proposals for CATS ORIGIN-DESTINATION STUDY. The requirements for submitting a Proposal are stated in the attached Request for Proposals (the "RFP"). Please review them carefully.

A **Non-Mandatory** Pre-Proposal Conference for the purpose of reviewing the RFP and answering questions regarding the Services will be held on **March 18, 2020 at 1:30 p.m.**, at the Charlotte-Mecklenburg Government Center (CMGC), 600 East Fourth Street, Charlotte, North Carolina 28202, 9<sup>th</sup> Floor Large Conference Room 986. Please bring a copy of the RFP with you at that time. All interested Companies should return a completed Request For Proposals Acknowledgement Form (see Section 6, Form 1) by the date stated in the schedule in Section 2.1 of this RFP.

An electronic copy of the RFP in Microsoft Word format may be obtained by contacting Procurement Officer at [Jeff.Demary@ci.charlotte.nc.us](mailto:Jeff.Demary@ci.charlotte.nc.us).

All Proposals are due to City of Charlotte Department of General Services, City Procurement, 9th Floor, CMGC 600 East Fourth Street, Charlotte, North Carolina 28202, no later than **March 27, 2020 at 3:00 p.m.**

One (1) electronic copy of the Proposal on a CD or flash drive in a searchable format such as MS Word or Adobe Acrobat and one (1) original Proposal signed in ink by a company official authorized to make a legal and binding offer, plus six (6) copies of your Proposal must be submitted in a sealed box or opaque envelope plainly marked with the Proposal number and service description as follows:

**Request for Proposals**

**Attention: Jeffery Demary**

**[Name of Company Submitting Proposal]**

**CATS Origin-Designation Study**

**RFP # 269-2019-811**

RFP questions must be directed to Procurement Officer, Department of General Services – City Procurement, per the enclosed instructions in Section 2.3. The City is an equal opportunity purchaser.

Sincerely,

Kay Elmore  
Chief Procurement Officer

cc: RFP Project Team  
RFP file

### **Checklist for submitting a Proposal:**

**Step 1-Read the document fully.**

**Step 2-**If you plan on submitting a Proposal then fax or email **Form 1 in Section 6** to the number or email address listed on the sheet.

**Steps 3-**If you have any questions send them before the deadline listed in **Section 2.3**.

**If you plan to submit a Proposal you must follow this checklist and must include everything detailed below.**

**Proposal Copies** - Please provide the specified number for each format

- ☐ 1 Copy on CD or flash drive
- ☐ 1 Copy marked "Original"
- ☐ 6 Copies marked "Copy"

**Proposal Format** - Proposals should be formatted as follows:

- ☐ Cover Letter per **Section 4.1.1**
- ☐ Proposed Solution per **Section 4.1.2**
- ☐ **Section 6, Form 2, Addenda Receipt Confirmation**
- ☐ **Section 6, Form 3, Proposal Submission**
- ☐ **Section 6, Form 4, Pricing Worksheet**
- ☐ **Section 6, Form 5, DBE Subcontractor/Supplier Utilization Commitment - Form A**
- ☐ **Section 6, Form 6, Company Background and Experience**
- ☐ **Section 6, Form 7, References**
- ☐ **Section 6, Form 8, Additional Company Questions**
- ☐ **Section 6, Form 9, Certification Regarding Debarment, Suspension and Other Responsibility Matters**
- ☐ **Section 6, Form 10, Byrd Anti-Lobbying Certification**
- ☐ **Section 6, Form 11, Environmental Purchasing Responses**
- ☐ Exceptions to any part of the RFP (If you take any exceptions to anything in this document list it in a category in your Proposal called "Exceptions" and offer an alternative solution).

**The above items constitute all that must be included in the Proposal.** If awarded a contract, you will be required to provide an insurance certificate that meets or exceeds the requirements set forth in Section 7.

**It is the Company's responsibility to check [www.ips.state.nc.us](http://www.ips.state.nc.us) or the City's [Contract Opportunities Site](#) for any addenda or changes to this Project. Search for bid #269-2019-811 to find if any documents or changes have been posted.**

**Section 1**

**Introduction and General Information**

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# Section 1

## Introduction and General Information

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### 1 INTRODUCTION.

#### 1.1 Objective.

The objective of this RFP is to solicit Proposals that will enable the City to determine which Company and Proposed Solution will best meet the City's needs for an Origin-Destination Study of CATS' sixty-six (66) weekday fixed transit routes, including both bus and rail modes of travel system-wide. This study shall include an "on-to-off" count and an on-board survey to collect transit passenger information by route and geographical area for on, off, origin, boarding, alighting, destination, trip purpose, access and egress modes, and rider demographic information.

#### 1.2 Definitions.

As used in this RFP, the following terms shall have the meanings set forth below:

<i>Acceptance:</i>	Refers to receipt and approval by the City of a Deliverable or Service in accordance with the acceptance process and criteria in the Contract.
<i>Affiliates:</i>	Refers to all departments or units of the City and all other governmental units, boards, committees or municipalities for which the City processes data or performs services.
<i>Biodegradable:</i>	Refers to the ability of an item to be decomposed by bacteria or other living organisms.
<i>CATS:</i>	Refers to the Charlotte Area Transit System, a Department of the City.
<i>City:</i>	Refers to the City of Charlotte, North Carolina.
<i>City Project Manager:</i>	Refers to a specified City employee representing the City's best interests in this Project.
<i>Company:</i>	During the solicitation process, refers to a company that has interest in providing the Services. After the solicitation process, refers to a company that has been selected by the City to provide the Services.
<i>Company Project Manager:</i>	Refers to a specified Company employee representing the best interests of the Company for this Project.
<i>Contract:</i>	Refers to a written agreement executed by the City and the Company for all or part of the Services.
<i>Disadvantaged Business Enterprise</i>	(DBA) means a for-profit small business concern
<i>Deliverables:</i>	Refers to all tasks, reports, information, designs, plans, and other items that the Company is required to deliver to the City in connection with the Contract.
<i>Department:</i>	Refers to a department within the City of Charlotte.
<i>Documentation:</i>	Refers to all written, electronic, or recorded works that describe the use, functions, features, or purpose of the Deliverables or Services or

## Section 1

### **Introduction and General Information**

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any component thereof, and which are provided to the City by the Company or its subcontractors, including without limitation all end user manuals, training manuals, guides, program listings, data models, flow charts, and logic diagrams.

*Environmentally*

*Preferable Products:* Refers to products that have a lesser or reduced effect on human health and the environment when compared with competing products that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.

*Evaluation Committee:* Refers to a City appointed committee that will evaluate Proposals and identify the Company(-ies) best meeting the needs of the City.

*Milestones:* Refers to an identified deadline for the completion of specific Services and/or the Acceptance of identified Deliverables, as specified in this RFP.

*DBE Goal:* This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. A contract goal of **11.7% DBE utilization** has been established for this procurement.

*Post-Consumer*

*Recycled Material:* Refers to material and by-products which have served their intended end-use by a consumer and have been recovered or diverted from solid waste. It does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

*Project:* Refers to the City's need for a company to provide CATS Origin-Destination Study Services for the City.

*Project Plan:* Refers to the detailed plan for delivery of the Services as described in Section 3, in the form accepted in writing by the City in accordance with the terms of this RFP and resultant Contract.

*Proposal:* Refers to the proposal submitted by a Company for the Services as outlined in this RFP.

*Recyclability:* Refers to products or materials that can be collected, separated or otherwise recovered from the solid waste stream for reuse, or used in the manufacture or assembly of another package or product, through an established recycling program. For products that are made of both recyclable and non-recyclable components, the recyclable claim should be adequately qualified to avoid consumer deception about which portions or components are recyclable.

*Recycled Material:* Refers to material and by-products which have been recovered or diverted from solid waste for the purpose of recycling. It does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

## Introduction and General Information

<i>Rider</i>	A person who is riding or who can ride something, especially a train or bus.
<i>Services:</i>	Refers to the CATS Origin-Destination Study as requested in this RFP.
<i>Specifications and Requirements:</i>	Refers to all definitions, descriptions, requirements, criteria, warranties, and performance standards relating to the Deliverables and Services that are set forth or referenced in: (i) this RFP, including any addenda; (ii) the Documentation; and (iii) any functional and/or technical specifications that are published or provided by the Company or its licensors or suppliers from time to time with respect to all or any part of the Deliverables or Services.
<i>Surveyor</i>	a person whose occupation is determining the size, shape, or boundaries
<i>Subcontracting Goals:</i>	Refers to the DBE (Disadvantaged Business Enterprise) Goals established for this RFP and resulting Contract.
<i>Trade Secrets:</i>	Information of the City or any of its suppliers, contractors or licensors: (a) that derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. See N.C. Gen. Stat. § 66-152 et seq. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.
<i>Work Product:</i>	Refers to the Deliverables and all other programs, algorithms, reports, information, designs, plans and other items developed by the Company in connection with this RFP, and all partial, intermediate or preliminary versions of any of the foregoing.

### 1.3 Accuracy of RFP and Related Documents.

Each Company must independently evaluate all information provided by the City. The City makes no representations or warranties regarding any information presented in this RFP, or otherwise made available during this procurement process, and assumes no responsibility for conclusions or interpretations derived from such information. In addition, the City will not be bound by or be responsible for any explanation or conclusions regarding this RFP or any related documents other than those provided by an addendum issued by the City. Companies may not rely on any oral statement by the City or its agents, advisors, or consultants.

If a Company identifies potential errors or omissions in this RFP or any other related documents, the Company should immediately notify the City of such potential discrepancy in writing. The City may issue a written addendum if the City determines clarification necessary. Each Company requesting an interpretation will be responsible for delivering such requests to the City's designated representative as directed in RFP Section 2.

### 1.4 City's Rights and Options.

The City reserves the right, at the City's sole discretion, to take any action affecting this RFP, this RFP process, or the Services or facilities subject to this RFP that would be in the best interests of the City, including:

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### **Introduction and General Information**

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- 1.4.1 To supplement, amend, substitute, or otherwise modify this RFP, including the schedule, or to cancel this RFP, at any time;
- 1.4.2 To require any Companies to supplement or clarify its Proposal or provide additional information relating to its Proposals;
- 1.4.3 To investigate the qualifications, experience, capabilities, and financial standing of each Company submitting a Proposal;
  - To waive any defect or irregularity in any Proposal received;
  - To reject any or all Proposals;
  - To share the Proposals with City employees and contractors in addition to the Evaluation Committee as deemed necessary by the City;
  - To award all, none, or any part of the Services and enter into Contracts with one or more of the responding Companies deemed by the City to be in the best interest of the City, which may be done with or without re-solicitation;
  - To discuss and negotiate with any Company(-ies) their Proposal terms and conditions, including but not limited to financial terms; and
  - To terminate discussions and negotiations with any Company at any time and for any reason.

#### **1.5 Expense of Submittal Preparation.**

The City accepts no liability, and Companies will have no actionable claims, for reimbursement of any costs or expenses incurred in participating in this solicitation process. This includes expenses and costs related to Proposal submission, submission of written questions, attendance at pre-proposal meetings or evaluation interviews, contract negotiations, or activities required for contract execution.

#### **1.6 Proposal Conditions.**

The following terms are applicable to this RFP and the Company's Proposal.

##### **1.6.1 RFP Not an Offer.**

This RFP does not constitute an offer by the City. No binding contract, obligation to negotiate, or any other obligation shall be created on the part of the City unless the City and the Company execute a Contract. No recommendations or conclusions from this RFP process concerning the Company shall constitute a right (property or otherwise) under the Constitution of the United States or under the Constitution, case law, or statutory law of North Carolina.

##### **1.6.2 Trade Secrets and Personal Identification Information**

###### Definition.

Upon receipt by City Procurement, all materials submitted by a Company (including the Proposal) are considered public records except for (1) material that qualifies as "trade secret" information under N.C. Gen. Stat. § 66-152 et seq. ("Trade Secrets") or (2) "personally identifiable information" protected by state or federal law, to include, but not be limited to, Social Security numbers, bank account numbers, and driver's license numbers ("Personally Identifiable Information" or "PII").

###### Instructions for Marking and Identifying Trade Secrets.

If any Proposal contains Trade Secrets or PII, such Trade Secrets and PII must specifically and clearly be identified in accordance with this Section 1.6.2 by clearly separating them from the rest of the Proposal. For hard copy documents, it must be submitted in a separate,



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### **Introduction and General Information**

sealed envelope, marked either “Personally Identifiable Information – Confidential” or “Trade Secret—Confidential and Proprietary Information.” For electronic submissions it must also be submitted on a separate CD or flash drive. In both hard copy or electronic format, the confidentiality caption stated above must appear on each page of the Trade Secret or PII materials.

#### Availability of Proposals to City Staff and Contractors.

By submitting a Proposal, each Company agrees that the City may reveal any Trade Secret materials and PII contained therein to all City staff and City officials involved in the selection process, and to any outside consultant or other third parties who serve on the Evaluation Committee or who are hired or appointed by the City to assist in the evaluation process.

#### Availability of Proposals via Public Records Requests.

Any person or entity (including competitors) may request Proposals submitted in response to an RFP. Only those portions of RFPs properly designated as Trade Secret or PII are not subject to disclosure. The public disclosure of the contents of a Proposal or other materials submitted by a Company is governed by N.C. Gen. Stat. §§ 132 and 66-152, et seq.

When determining whether to mark materials as Trade Secret, please note the following:

- Entire Proposals may not be marked as Trade Secret
- Pricing may not be marked as Trade Secret

The City may disqualify and Company that designates its entire Proposal as a trade secret, or any portion thereof that clearly does not qualify under applicable law as a Trade Secret or PII. Each Company agrees to indemnify, defend, and hold harmless the City and each of its officers, employees, and agents from all costs, damages, and expenses incurred in connection with refusing to disclose any material that the Company has designated as a Trade Secret or PII. This includes an obligation on the part of the Company to defend any litigation brought by a party that has requested Proposals or other information that the Company has marked Trade Secret or PII.

#### 1.6.3 Amendments to RFP.

If the City amends this RFP, addenda will be posted to the IPS website at [www.ips.state.nc.us](http://www.ips.state.nc.us) and the City’s [Contract Opportunities Site](#). Companies are required to acknowledge receipt of each addendum by including the Addenda Receipt Confirmation Form (Section 6, Form 2) with their Proposals.

#### 1.6.4 Proposal Terms Firm and Irreversible.

The signed Proposal shall be considered a firm offer on the part of the Company. The City reserves the right to negotiate price and other terms. All Proposal elements (including all statements, claims, declarations, prices, and specifications) shall be considered firm and irrevocable for purposes of future Contract negotiations unless specifically waived in writing by the City. The Company chosen for award should be prepared to have its Proposal and any relevant correspondence incorporated into the Contract, either in part or in its entirety, at the City’s election.

#### 1.6.5 Proposal Binding for 180 Days.

Section 6, Form 3 contains a statement to the effect that the Proposal is a firm offer for one-hundred-eighty (180) calendar day period from the date of the opening. This statement must be signed by an individual authorized to bind the Company. All prices quoted shall be firm and fixed for the full Contract period. The City shall have the option to accept subject to exception by Contract.

## Section 1

### **Introduction and General Information**

The DBE Subcontracting Goal for this Project has been set at 8.8% and may be met only with DBE(s). The Company is required to submit Section 6, Form A attached herein. Failure to submit this form with the Proposal shall render the Proposal non-responsive.

#### 1.6.6 Subcontracting.

The Company given contract award shall be the prime contractor and shall be solely responsible for contractual performance. In the event of a subcontracting relationship, the Company shall remain the prime contractor and will assume all responsibility for the performance of the Services that are supplied by all subcontractors. The City retains the right to approve all subcontractors.

#### 1.6.7 Equal Opportunity.

The City has an equal opportunity purchasing policy. The City seeks to ensure that all segments of the business community have access to supplying the goods and services needed by City programs. The City provides equal opportunity for all businesses and does not discriminate against any Companies regardless of race, color, religion, age, sex, and national origin or disability.

#### 1.6.8 Use of City's Name.

No advertising, sales promotion, or other materials of the Company or its agents or representatives may identify or reference the City in any manner absent the prior written consent of the City.

#### 1.6.9 Withdrawal for Modification of Proposals.

Companies may change or withdraw a previously-submitted Proposal at any time prior to the Proposal due date. Only formal written requests addressed in the same manner as the Proposal and received by the City prior to the Proposal due date will be accepted. The request must be in a sealed envelope that is plainly marked "**Modifications to Proposal.**" No oral modifications will be allowed. If the Company complies with this Section, after the Proposal due date, the Proposal, will be withdrawn or corrected in accordance with the written request(s).

#### 1.6.10 No Bribery.

In submitting a response to this RFP, each Company certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the foregoing has bribed, or attempted to bribe, an officer or employee of the City in connection with the Contract.

#### 1.6.11 Exceptions to the RFP.

Other than exceptions that are stated in compliance with this Section and Section 4.1.4, each Proposal shall be deemed to agree to comply with all terms, conditions, specifications, and requirements of this RFP including the Sample Contract language included in Section 7. An "exception" is defined as the Company's inability or unwillingness to meet a term, condition, specification, or requirement in the manner specified in the RFP including the Sample Contract language included as in Section 7. All exceptions taken must be identified and explained in writing in your Proposal and must specifically reference the relevant section(s) of this RFP. If the Company provides an alternate solution when taking an exception to a requirement, the benefits of this alternative solution and impact, if any, on any part of the remainder of the Company's solution, must be described in detail.

#### 1.6.12 Fair Trade Certifications.

By submitting a Proposal, the Company certifies that:

### **Introduction and General Information**

- The prices in its Proposal have been arrived at independently, without consultation, communication, or agreement with anyone, as to any matter relating to such prices for the purpose of restricting competition;
- Unless otherwise required by law, the prices quoted in its Proposal have not been knowingly disclosed by the Company and will not knowingly be so disclosed prior to the Proposal due date; and
- No attempt has been made or will be made by the Company to induce any other person or firm to submit or not to submit a Proposal for the purpose of restricting competition.

#### 1.6.13 Companies' Obligation to Fully Inform Themselves.

Companies or their authorized representatives must fully inform themselves as to all conditions, requirements, and specifications of this RFP before submitting Proposals. Failure to do so will be at the Company's own risk.

#### 1.6.14 Environmentally Preferable Purchasing.

The City promotes the practice of Environmentally Preferable Purchasing (EPP) in acquiring products or services. Applicable EPP attributes that may be taken into consideration as environmental criterion include the following:

Recycled content	Recyclability
Reduced packaging	Biodegradability
Compostability	Pollution prevention
Reduced toxicity	Energy efficiency
Water efficiency	Life cycle management
Low volatile organic compounds	End of life management

Companies able to supply products or services containing any of the applicable environmentally preferable attributes that meet performance requirements are encouraged to offer them in the Proposal. Companies must provide certification of environmental standards and other environmental claims, such as recycled content and emissions data or a formal statement signed by a senior company official.

## Section 2

### Procurement Process

## 2 PROCUREMENT PROCESS.

This Section 2 contains information about the procurement process for this Project.

### 2.1 Schedule and Process.

The following chart shows the schedule of events for the conduct of this RFP. The key events and deadlines for this process are as follows, some of which are set forth in more detail in the Sections that follow:

DATE	EVENT
March 4, 2020	<i>Issuance of RFP.</i> The City issues this RFP.
March 13, 2020	<i>Request for Proposals Acknowledgement.</i> Companies that intend to submit a Proposal shall submit the RFP Acknowledgement Form on this date to the email or fax number listed in Section 2.2.
March 13, 2020	<i>Submission of Written Questions Prior to Pre-Proposal Conference.</i> Companies are permitted to submit written questions for purposes of clarifying this RFP. All submissions must be pursuant to the instructions in Section 2.3 by 3:00 p.m.
March 18, 2020	<i>Non-Mandatory Pre-Proposal Conference</i> to be held at the location indicated in Section 2.4 at 1:00 p.m.
March 25, 2020	<i>Submission of Written Questions After the Pre-Proposal Conference.</i> Questions are due by 3:00 p.m.
March 27, 2020	<i>Proposal Submission.</i> Proposals are due by 3:00 p.m. at City Procurement, CMGC 9 <sup>th</sup> Floor.
April 8 & 9, 2020	<i>Evaluation.</i> The Evaluation Committee will assess each Proposal and conduct evaluation activities with Companies.
April 27, 2020	<i>Contract Award by Council.</i> \$535,000.00
May 4, 2020	<i>Services commence.</i> Company begins providing the Services.

### 2.2 Intent to Propose.

Please acknowledge receipt of this RFP via email or facsimile by **March 13, 2020** using the Request for Proposals Acknowledgement Form located in Section 6, Form 1. Complete the form in its entirety advising the City of your firm's intention to submit or not submit a Proposal. Email or fax a copy of the completed and signed form to the email address or number below. The City strongly encourages Companies to submit this form prior to the Pre-Proposal conference but Companies shall not be precluded from submitting a Proposal if they fail to submit this form.

### 2.3 Interpretations and Addenda.

There are two (2) ways to ask questions about this RFP: (1) submit a question in writing to the Procurement Officer at the e-mail address listed below; or (2) ask a question at the Pre-Proposal Conference. Other than these permitted methods, Companies should refrain from contacting City staff prior to the Proposal deadline. **The City is not bound by any statements, representations or clarifications regarding this RFP other than those provided in writing by the Procurement Officer.**

Jeffery Demary  
City of Charlotte  
City Procurement

## Section 2

### Procurement Process

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600 East 4<sup>th</sup> Street, CMGC 9<sup>th</sup> Floor  
Charlotte, NC 28202  
RFP # 269-2019-811  
E-mail: jeff.demary@ci.charlotte.nc.us

When submitting questions, please reference the RFP page and topic number. In order for questions to be addressed at the Pre-Proposal Conference, they must be submitted by **3:00 p.m. on March 13, 2020**.

After the Pre-Proposal Conference, questions must be submitted in writing by the deadline stated in Section 2.1. In the case of questions not submitted by the deadline, the Procurement Officer will, based on the availability of time to research and communicate an answer, decide whether an answer can be given before the Proposal deadline. When responding to Company questions or issuing addenda to the RFP, the City will post the answer or information to the Internet at <http://www.ips.state.nc.us> and the City's Contract Opportunities Site, referencing solicitation # 269-2019-811. Companies are required to acknowledge their receipt of each addenda by including in the Proposal a completed Addenda Receipt Confirmation Form (Section 6, Form 2).

#### 2.4 Pre-Proposal Conference.

A Non-Mandatory Pre-Proposal Conference will be conducted on **March 18, 2020 at 1:00 p.m.** The meeting will be held at the Charlotte-Mecklenburg Government Center (CMGC), 600 East Fourth Street, Charlotte, North Carolina 28202, 9<sup>th</sup> Floor Large Conference Room 986.

While attendance at the Pre-Proposal Conference is not mandatory, all interested Companies are encouraged to attend. If special accommodations are required for attendance, please notify Jeffery Demary in advance of the conference date and time identifying the special accommodations required.

#### 2.5 Submission of Proposals.

Proposals must be in the format specified in Section 4 of this RFP. One (1) electronic copy on a CD or flash drive in a searchable format such as MS Word or Adobe Acrobat and one (1) original Proposal signed in ink by a company official authorized to make a legal and binding offer, plus six (6) copies shall be submitted to the address listed in Section 2.3 above by **March 27, 2020 on or before but no later than 3:00 p.m.** The original Proposal and each of the copy/ies shall be complete and unabridged and shall not refer to any other copy of the signed and sealed original for any references, clarifications, or additional information.

When received, all Proposals and supporting materials, as well as correspondence relating to this RFP, shall become the property of the City. **Proposals sent by fax or email will not be accepted.**

**Due to security requirements at the Charlotte-Mecklenburg Government Center (CMGC), sealed box(es), including any portions marked as Confidential/Trade Secret, may be searched and thoroughly inspected prior to admittance. Please allow time for this search to take place and to re-seal the box if delivering your Proposal in person to the CMGC.**

Do not arrive at City Procurement on the Proposal due date for the purposes of reviewing your competitors' Proposals. The Proposals will not be read aloud or made available to inspect or copy until any trade secret issues have been resolved. All Proposals will be time-stamped upon receipt and held in a secure place until opening.

#### 2.6 Correction of Errors.

The person signing the Proposal must initial erasures or other corrections in the Proposal. The Company further agrees that in the event of any obvious errors, the City reserves the right to

## Section 2

### Procurement Process

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waive such errors in its sole discretion. The City, however, has no obligation under any circumstances to waive such errors.

#### **2.7 Evaluation.**

As part of the evaluation process, the Evaluation Committee may engage in discussions with one or more Companies. Discussions might be held with individual Companies to determine in greater detail the Company's qualifications, to explore with the Company the scope and nature of the required contractual Services, to learn the Company's proposed method of performance and the relative utility of alternative methods, and to facilitate arriving at a Contract that will be satisfactory to the City.

The City may in its discretion require one or more Companies to make presentations to the Evaluation Committee or appear before the City and/or its representatives for an interview. During such interview, the Company may be required to orally and otherwise present its Proposal and to respond in detail to any questions posed. Additional meetings may be held to clarify issues or to address comments, as the City deems appropriate. Companies will be notified in advance of the time and format of such meetings.

Since the City may choose to award a Contract without engaging in discussions or negotiations, the Proposals submitted shall state the Company's best offer for performing the Services described in this RFP.

#### **2.8 Contract Award by Council.**

As soon as practical after opening the Proposals, the name of the apparent successful Company will be submitted to the Council for final approval of award and the Procurement Officer will provide Contract documents to the Company. In the event the Council approval is not received within one hundred eighty (180) calendar days after opening of the Proposals, the Company may request that it be released from the Proposal.

#### **2.9 Vendor Inclusion.**

The City's vendor management philosophy supports a fair, open, and inclusive process that offers the same access and information to all Companies. Although Companies are not required to be registered in the City's vendor registration system prior to submitting a Proposal, in order to execute a contract with the City and receive payment from the City, all Companies must register with the City's vendor registration system.

Your registration provides the City with baseline information for your company including location, contact and demographic information, as well as your areas of expertise with specific commodity and/or service descriptions. You will also have the opportunity to complete any applicable certifications if your company desires to establish itself as an SBE, MBE, or WBE. The link below will provide you with the opportunity to complete your registration on-line with the City.

<http://charlottenc.gov/vendors>

### **3 SCOPE OF CATS ORIGIN-DESTINATION STUDY.**

#### **3.1 General Scope.**

CATS is seeking proposals from interested Companies to conduct an origin-destination survey of CATS' fixed transit routes which includes sixty-six (66) weekday routes, including both bus and rail modes system-wide. This Origin Destination Study Project will include an on-to-off count and an on-board survey to collect transit passenger information by route and geographical area for on, off, origin, boarding, alighting, destination, trip purpose, access and egress modes, and demographic information. The survey data must endure rigorous Quality Assurance and Quality Control checks to ensure its usefulness for tour-based regional travel demand forecasting model. The Company shall be responsible for collecting data from transit riders throughout the CATS system in a manner that is consistent with current on-board survey practices.

#### **3.2 Purpose.**

CATS is charged with the development of a Before-and-After Study report. The "Before" survey occurred in 2013. An electronic copy of the final survey methodology report for the "Before" survey will be provided upon request. As part of this project, CATS must collect data to document "After" conditions to document the system conditions upon completion of the CATS LYNX Blue Line Extension Northeast Corridor Light Rail Project. CATS must collect data to document system travel patterns, transit use, and related information to document the "After" conditions.

#### **3.3 Work and Services**

The Origin-Destination Study will gather updated travel behavior data from transit users in the CATS service area to gain a better understanding of today's transit riders. The data collected will also be used to improve transit forecasts by updating the tour-based regional travel demand model, mainly the mode choice model component. A recalibrated mode choice model, based on quality data, will enhance CATS' future competitiveness for funds.

#### **3.4 CATS Project Management and City Project Team.**

The Consultant shall be assisted by a CATS Project Manager and a City Project Team composed of representatives from CATS and Charlotte Department of Transportation (CDOT).

##### **3.4.1 Site Visitation/Meeting with Consultant Staff**

Site visitations may be required of the firms prior to and/or after the contract is awarded at the discretion of the selection committee. One or more meetings may be required between the City's project team and consultant staff at any time during the selection process and/or project at the discretion of the selection committee.

#### **3.5 Required Tasks.**

##### **Task 1: Develop a Work Plan, Schedule, and Data Needs.**

With input from the CATS Project Manager and City Project Team, the Consultant shall develop a detailed work plan for implementing the survey. The work plan will identify a project management plan, specific work products, schedules, staffing plan, and assignments.

The Work Plan shall include, at a minimum:

- A narrative description and list of each task/sub-task to be completed, identifying the consultant's intended approach, methods, practices, personnel, and other resources that will be used to achieve the desired project outcomes;

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- A project management plan inclusive of an outline of responsibilities of the members of the consultant team and the client;
- Key milestones and dates inclusive of a detailed implementation schedule that identifies how project activities will be sequenced, when key milestones will be reached, and when deliverables will be submitted;
- A list of data needs and auxiliary data needs for the survey; and
- A list of data the consultant will need from CATS in order to successfully execute the project.

Also, in this task, the consultant with the CATS Project Manager and City Project Team will also identify and agree upon the data needs and auxiliary data needs for the survey, focusing on understanding travel patterns and key characteristics of current riders.

Data needs shall include, at a minimum:

- On to Off locations;
- Trip purpose;
- Trip mode of access;
- Information on the complete one-way transit trip;
  - Boarding location for the transit trip surveyed;
  - Alighting location for the transit trip surveyed;
  - First boarding stop and last egress stop;
  - List of all routes planned to use on trip;
  - Number of routes/transfers to complete trip;
  - For walk access/egress – Walk distance/time to transit; and
  - For drive access – Park and Ride lot location & drive distance/time.
- Origin address and type of place;
- Destination address and type of place;
- Time of Day;
- Does the respondent have a valid Driver's License;
- Auto availability for this trip;
- Household size;
- Number of automobiles available in the household;
- Number of workers in the household;
- Life Cycle of respondent (retired, working, student, etc.);
- Age of respondent; and
- Household Income.

For the purposes of this survey effort, a complete transit trip is considered a one-way trip. The interview should reveal the primary origin and primary destination as well as any immediate stops for the trip. In Task IV, the actual questions used to gather the above information will be formulated and must be approved by the CATS Project Manager and City Project Team.

**Task Deliverable:** Draft Working Paper #1, documenting the work plan, schedule, and data needs.

#### **Task 2: Quality Assurance / Quality Control (QA/QC) Plan.**

The vendor will include and implement a highly effective quality assurance/quality control (QA QC) effort in conjunction with data collection and handling activities.

The Consultant should address how the QA/QC plan will:



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- Ensure the collection of enough samples to assure that the statistical sampling goals defined in the Survey Sampling Plan (Task III) are met;
- Ensure the completeness of the data collected from individual riders. This element of the plan should clearly define a complete sample;
- Approach data collection and sampling to ensure an adequate representation of short-trips, other under-represented populations, and for overcoming other types of non-response bias (per Section 3.7.7.);
- Relate to the data collection schedule; and
- Evaluate the quality of the collected data within the timeframe of the data collection period. Allow for the collection of more samples if the desired quality and completeness of responses is not initially met.

**Task Deliverable:** Draft Working Paper #2, documenting the QA/QC Plan.

#### **Task 3: Sampling Plan.**

The consultant will develop a Sampling Plan for the study. The consultant will conduct on-to-off counts of transit passengers and a full on-board survey to collect origin-destination data. The sampling plan shall detail proposed sampling for both data collection efforts. The surveys shall include all of CATS' weekday fixed transit routes, including both bus and rail modes, for the periods described in section 3.7.4. The surveys shall be conducted on non-holiday weekdays. See sections 3.6.1 and 3.6.2 for additional detail.

a. **On-to-Off Count.**

The Company shall assess on-to-off counts of passenger boarding and alighting flows for all of CATS' weekday fixed transit routes, including both bus and rail modes. The data obtained from the onto-off counts will aid in determining the appropriate sampling frames for the full survey. In the proposal, the Company shall assume a sampling goal of 20% of each route for the on-to-off counting; however, CATS encourage the consultant to recommend an appropriate sampling goal for the on-to-off counting with justification based on experience.

b. **Full On-Board Survey to Collect Origin-Destination Data**

The Company shall also assess the full on-board survey to collect origin-destination data that focuses on the understanding of travel patterns and key characteristics of current riders (meeting the data needs described and agreed upon in Task I). In the proposal, the consultant shall first assume the administration of a pilot survey to test the survey instrument. As part of the sampling plan, the consultant shall propose the number of routes and samples to be administered to determine the efficacy of the instrument.

In the proposal for the full survey, the consultant shall assume the collection of complete surveys from a minimum of ten percent (10%) of the ridership on all weekday fixed transit routes, including both bus and rail modes (See Appendix A for Average Weekday Ridership by Route). For routes with ridership of less than 200, the consultant shall propose a minimum sample size. The proposed allocation plan may later be revised based on the on-to-off count and the needs of the CATS Project Manager and City Project Team.

For the full survey, the sampling plan must identify which data elements are to be collected from various rider sub-groups, what results will attain in terms of confidence and precision thresholds, and how statistical validity will be ensured for all data collected by the consultant. Special considerations should be given to capture all travel markets

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that the transit system carries and ensure that all those markets are represented adequately in the completed dataset.

The Survey Sampling Plan shall be designed to account for the known biases encountered in other on-board surveys and develop measures to minimize those biases. In particular, approaches to identifying and correcting for non-response biases should be developed.

Potential reasons for differential non-response rates include: education levels, literacy rates, English proficiency, seat availability, riding time sufficiency, etc. Additional detail regarding non-response bias is included in Section 3.7.7.

**Task Deliverable:** Draft Working Paper #3, documenting the Survey Sampling Plan will be reviewed once it is submitted by the vendor to address, at a minimum:

- Sampling for the on-to-off count;
- Sampling for the pilot full survey (to evaluate the survey design and instrument); and
- Sampling for the full survey.

Draft Working Paper #3 is subject to review and comment by the CATS Project Manager and City Project Team after it is submitted by the vendor and may also be subject to review and comment by FTA.

#### **Task 4: Survey Design.**

The consultant will develop the survey design for the study with input from the CATS Project Manager and City Project Team. As part of the study, the consultant will develop and conduct two (2) separate efforts; (i) on-to-off counts, and (ii) a full on-board survey to collect origin-destination data. The surveys shall include all of CATS' weekday fixed transit routes, including both bus and rail modes, for the periods described in section 3.7.4. The surveys shall be conducted on non-holiday weekdays, see sections 3.6.1 and 3.6.2 for additional detail. Leveraging passive data and/or smart phone applications should be able to be considered to trace the movement of riders and better inform the tour-based regional travel demand model

##### **a. On-to-Off Count**

The consultant will design the on-to-off count to capture passenger boarding and alighting information for all of CATS' weekday fixed transit routes, including both bus and rail modes. The Company shall recommend the best survey approach for capturing boarding and alighting information for the on-to-off count, with justification based on past experience with on-to-off counting.

##### **b. Full On-Board Survey to Collect Origin-Destination Data**

The consultant will also design an on-board survey instrument to collect origin-destination for the full survey. CATS recommends a tablet-based, personal interview survey approach; however, the Company shall also provide their recommendation for the most appropriate survey approach, with justification based on past origin-destination survey design experience.

The consultant will formulate and provide a copy of the actual questions based on the data needs identified in Task I. The consultant will then design the instrument in English and Spanish; design of the instrument may also include the programming, program tests of the instrument on electronic tablets, or other data collection technologies as proposed by the consultant. The survey questions, instrument and survey design must be approved by the CATS Project Manager and City Consultant prior to administration.

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In addition to the design of the on-to-off counting and on-board survey instrument, the consultant shall develop a coding scheme for response choices/answers to facilitate the data entry and processing. The consultant should provide a proposed data dictionary with the proposed coding scheme for review and concurrence to ensure the ease of data hand-off once the survey effort is complete.

c. **Auxiliary Data**

Concurrent with the full survey, the consultant will be expected to also collect auxiliary data. The auxiliary data shall include the data needs agreed upon in Task I (e.g., control boarding and alighting counts for all routes surveyed, as well as the collection of CATS bus and rail park and ride data, ingress, vehicle occupancy, egress and lot totals in 15-minute increments). The consultant shall include the design of data collection forms for the auxiliary data as part of this task.

**Task Deliverable:** Draft Working Paper #4, documenting survey methodology, to include, at a minimum:

- A detailed description of how the on-to-off count will be administered;
- A detailed description of how the pilot survey will be administered, including survey procedures;
- The pilot survey instrument in both English and Spanish;
- A detailed description of how the full on-board survey will be conducted, including survey procedures, and a description of how the QC checks will be conducted;
- The full survey instrument in both English and Spanish;
- The survey coding scheme/draft data dictionary;
- The auxiliary data collection forms; and
- A description of auxiliary data collection.

Draft Working Paper #4 is subject to review and comment by the CATS Project Manager and City Project Team and may also be subject to review and comment by FTA.

#### **Task 5: Develop Survey Management Plan.**

The consultant will develop a Survey Management Plan that accounts for the following:

- Hiring plan for surveyors;
- Training plan for surveyors;
- Day-to-day management plan;
- Staffing and dispatch plan to ensure the adequate number and coverage of surveyors in the field each day;
- Plan for training surveyors;
- The plan for tracking (daily) and reporting (weekly) surveyor performance in the field; and
- The plan for remediation of poor surveyor performance.

In this task, surveyors shall be recruited by the Company. A Surveyor's Manual shall be prepared, describing the surveyor's job, from administrative matters through safeguarding of data and courtesy to the public for survey administration. Proper training, according to the Survey Management Plan, will be given to surveyors for: the on-to-off count, the pilot on-board survey and the full on-board survey. Please note the required CATS administered training detailed in Section 3.8.3.

**Task Deliverable:** Draft Working Paper #5, detailing the Survey Management Plan, Surveyor's Manual, and summary of the recruitment and training of the surveyors. A record of surveyor training shall also be provided to CATS.

#### **Task 6: Surveys Administration.**

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In this task, the consultant will conduct the data collection associated with the study. The work in this task includes: the in-field data collection for the on-to-off count, the development of the final sampling frames and allocations for the full on-board survey, the administration of the pilot survey, and the administration of the full on-board origin-destination survey.

Surveys will be conducted according to the survey procedures provided in the Surveyor's Manual in Task V. Data collected will meet the sampling goals established in Task III and the QA/QC criteria outlined in Task II. As survey assignments are returned from the field, the consultant will ensure that the work was successfully completed according to the requirements outlined in Sections 3.7.8 – 3.7.10.

a. Review of Surveyor Performance.

Complete work will be reviewed daily to identify surveyors with poor surveyor performance or other administration problems. Surveyors that perform below expected levels of accuracy shall be individually retrained by the consultant. This retraining shall be documented. Surveyors who consistently produce faulty work shall be dismissed by the consultant.

b. Pilot Survey.

The Consultant, with guidance from CATS, will conduct a pilot survey to pretest and evaluate the survey methodology and instrument. The pilot survey will include all aspects of the survey process and include all forms of existing transit in the system. The consultant will include performance of a pilot test of its proposed methodologies prior to conducting the full survey. The Consultant will evaluate the results and make recommendations for revisions to the survey instrument; and, in consultation with the CATS Project Manager and City Project Team, the consultant shall adjust and revise the instrument in a timely manner to ensure adequate time to conduct the in-field data collection activities for the full on-board survey.

c. Full On-Board Survey to Collect Origin-Destination Data.

The Consultant will conduct a full on-board survey using the instrument developed in Task IV, including revisions from the pilot survey. Survey administration should follow the procedures finalized in Task V. Data collected will meet the sampling goals established in Task 3 and the QA/QC criteria outlined in Task II.

In order for a survey to be complete it shall have answers to the following variables: boarding and alighting location, trip purpose, origin and destination locations, mode of access to transit, household size, household vehicles owned, household workers and household income. For teenagers and young adults living at home income information is desirable, however they may have no way of knowing this information. For these two (2) groups, blank income information will be accepted as long as household location is provided.

Weekly survey progress reports shall be provided to the CATS Project Manager throughout the duration of the in-field data collection. The weekly survey progress report statistics shall be agreed upon between the CATS Project Manager and the consultant prior to the start of in-field data collection activities and adjusted as necessary. At a minimum, these survey progress reports shall summarize the past week's collection efforts.

Statistics shall include, but are not limited to:

- The number of surveys conducted by route;
- The number of complete interviews by route;

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- The number of incentives distributed by route (the number of incentives shall also be tracked by surveyor and compared to the number of surveys distributed and completed);
- The percentage of surveys completed as compared to goal (by route and time of day); and
- An update on projected survey completion date based on the current progress.

**Task Deliverable:** Weekly survey progress reports, to be provided to the City Project Manager.

#### Task 7: Data Processing.

As the surveys are collected, the QA/QC checks should be completed to verify the accuracy and completeness of each record. Surveys which appear to be complete because they represent reasonable trip paths will be reviewed to ensure that information about the respondent's household meets logical tests as well. The consultant shall initially identify the tests which are believed to be sufficient to create a truly complete survey record.

Surveys which fail the required in-field logic tests shall be corrected or deemed incomplete. Additional surveying shall be completed to ensure survey samples meet the sampling goals established in Task III. The proposing consultant shall include a description of how these in-field logic tests will be conducted, and how to meet sampling goals if data is insufficient.

The consultant, if necessary, will then enter and code the dataset. After data entry and data coding is complete, the consultant will perform additional data verification, data processing, and quality control on the raw survey records. The data will be checked for logic and consistency in the answers. Address data will be geo-coded to the current State Plane <https://www.ngs.noaa.gov/datums/horizontal/north-american-datum-1983.shtml>, North Carolina West X,Y coordinates and the current traffic analysis zone structure. Those trip records indicating a trip which either originates or terminates outside the CATS service area will be assigned a TAZ (a federal government document, numbering thousands of pages that details the rules individuals and businesses must follow in remitting a percentage of their incomes to the federal or state government code) equivalent to the county's FIPS code (are numbers which uniquely identify geographic areas. The number of digits in FIPS codes vary depending on the level of geography. State-level FIPS codes have two digits, county-level FIPS codes have five digits of which the first two are the FIPS code of the state to which the county belongs).

**Task Deliverable:** Draft Working Paper #6 and the draft database. Draft Working Paper #6 summarizes the procedures and results of the data verification. Additionally, the consultant will provide the draft database to the City for review. The draft database shall include at a minimum:

- Unweighted, verified, geo-coded transit trip records;
- Full data dictionary;
- Results of the on-to-off count;
- Full on-board survey; and
- Auxiliary Data Collection.

#### Task 8: Data Analysis

##### 1. Data Cleaning.

The Consultant will analyze the cleaned and geocoded survey records prepared. Obvious errors in the origin, destination, access, egress, market segment, purpose,

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route sequence and home to home responses will be either corrected, deleted or returned to the survey consultant for additional processing. A scrubbed data set will be developed that can be used to improve the City's tour-based regional travel demand model and serve as the "after" condition for the before and after study. The City's mode choice model requires meaningful information on time of day, access mode, egress mode, travel mode, purpose, route sequence and market segment of the surveyed riders.

#### 2. **Data Preparation for Survey Expansion.**

The data from subtask 8.1 will be converted to Production/Attraction (P/A). Each data record will be assigned a purpose, a mode of access, a mode of egress, a market segment, etc. The Consultant will coordinate with CATS to obtain the Automatic Passenger Counter ("APC") data for the routes that were surveyed. The APC data will be processed along with the origin-to-destination counts to create survey expansion targets for each route-origin-destination-time period combination.

#### 3. **Assignable Survey Trip Table.**

Data obtained from subtask 8.2 will be processed to create assignable survey trip tables. The survey trip table will be based on the current Metrolina model zone numbering system and transit assignment paths (peak/off-peak, walk/drive/park-&-ride access) in Production-Attraction format. The Consultant will identify unassignable survey trips and investigate the relevant survey records for possible reason why the trip cannot be assigned. The analysis may identify issues with the survey record, the path building procedure, or both.

If the survey record can be corrected, it will be flagged, and relevant attributes will be corrected. If survey record cannot be corrected, then it will be flagged as un-usable record. The Consultant will generate statistics, at route level, of the assignable and unassignable records and notify CATS project manager if the issue is of significant nature.

#### 4. **Data Expansion.**

Expansion methods need careful review. Non-response or other biases in the dataset can be addressed by applying expansion methods that scale survey responses to represent key submarkets rather than just route or station-level totals. At a minimum, the survey data will be expanded by route, direction, and time-of-day using the APC data. Efforts shall be made to include stop or groups of stops during the expansion process, and to include mode of access and egress in survey expansion process to ensure that control totals for park-and-ride (PNR) trips are preserved at PNR station level. If only daily ridership data is available, the expansion would be done at the route-level. Also, any non-response bias identified during the expansion process will be noted and efforts will be made to resolve it if the observed data is available or can be easily gathered.

**Task Deliverable:** Draft Working Paper #7, summarizing the efforts to clean and assign the survey records and expansion process, as well as the expanded survey dataset ready for additional model calibration and validation work, to include, at a minimum:

- Survey expansion factors;
- Edits/corrections to the data; and
- Data dictionary.

### **Task 9: Survey Data Analysis.**

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Once the survey expansion and processing procedures have been validated, the next step is to analyze the transit rider characteristics. Basic tabulations will be developed using the expanded on-board survey data. The tabulations will include, at the minimum, CATS bus trips by mode of access, mode of egress, purpose and time-of-day. District-to-district transit linked trips will be developed for each access, egress and purpose for the buses that were surveyed. In addition, a comparison of the 2013 “Before” survey results will be performed. The Consultant will also provide an analysis of the impact the BLE project on ridership, an analysis of the accuracy of the ridership predictions at the key project development milestones, and summarize key findings and lessons learned. Two review/comment cycles on the draft report should be assumed.

**Task Deliverable:** Draft Working Paper #8, providing the detailed data analysis, comparison to the “Before” survey, analysis of the project’s impact, analysis of the accuracy of ridership predictions, and key findings.

#### **Task 10: Prepare Final Data File and Report**

Upon approval of Task IX, the consultant will prepare a final data file and report. This task includes the following sub-tasks.

- a. This documentation will include a Final Report containing all final versions of the working papers reflecting review and comments, summarizing the entire survey effort, data analysis and findings.
- b. Prepare the final data files on a thumb drive. The final database should include the weighted, verified, geo-coded transit trip records as well as a full data dictionary to define all fields. Additionally, a copy of the raw files should be provided. Electronic files are acceptable if survey records were recorded using an electronic device, however where hard copy surveys are used, scans of hard copy surveys should be included with the raw file database.

### **3.6 Completion Schedule.**

The proposing consultant shall hold a kick-off meeting with the CATS Project Manager and City Project Team. CATS encourages the proposing consultant to hold this meeting as close as possible to the Notice to Proceed date (at this time, CATS anticipates it will issue a Notice to Proceed by May 1, 2020).

The proposing consultant shall provide a realistic schedule for the tasks and deliverables listed above. The consultant shall comply with the dates listed in 3.6.1. and 3.6.2. All tasks and deliveries included in the scope of services should be completed within 8 months of the Notice to Proceed.

#### **3.6.1 Field Work Schedule Notes.**

Field work for the pilot survey (pre-test) shall begin no earlier than August 17, 2020 and must conclude no later than September 11, 2020. Field work for the full survey shall begin no later than September 28, 2020 and must conclude no later than December 4, 2020.

#### **3.6.2 Field Work Blackout Dates.**

CATS will provide a list of blackout dates due to holidays and other special events that significantly alter customer travel patterns and would be anticipated for this time period. Proposals shall discuss potential unforeseen circumstances and tactics for which could affect the conduct of the survey.

At this time, CATS is aware of the following dates that would significantly alter customer travel patterns and would be anticipated for this period:

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No Surveying:

- 8/24/20-8/28/20 Republic National Convention
- 9/7/20 Labor Day
- 10/12/20 – 10/13/20 UNCC Student Recess
- 11/23/20 – 11/27/20 Thanksgiving Week
- 12/7/20 – 12/11/20 UNCC Final Exams
- 1/18/21 – 1/19/21 MLK
- 2/8/21 Monday after Super Bowl
- 2/15/21 Presidents Day
- 3/7/21 – 3/12/21 UNCC Spring Break

Limited Surveying:

- 10/12/20-10/13/20 CPCC Fall Break

#### 3.6.3 Draft Schedule and Delivery of End Products.

While CATS is providing a draft schedule, CATS highly encourages the proposing consultant to provide their most realistic schedule based on their past experience with origin-destination studies. The proposing consultant shall detail a realistic draft schedule in their proposal, and shall include activities, anticipated duration and completion dates. The consultant shall meet the criteria outlined in 3.6.1 and 3.6.2 in their draft schedule.

draft schedule.

#### Draft Schedule with Delivery of End Products

Start Date	End Date	Task	Deliverable
May 4, 2020	May 4, 2020	1 Day Kickoff Meeting	Meet with Project Manager & Project Team
May 4, 2020	August 10, 2020	Tasks 1 - 5 Underway	Required Biweekly Progress Reports
May 4, 2020	June 5, 2020	Task 1 Complete	Draft working paper # 1
May 4, 2020	June 5, 2020	Task 2 Complete	Draft working paper #2
May 4, 2020	July 3, 2020	Task 3 & 4 Complete	Draft working paper #3 & 4 (Survey Instrument May Require Revisions Based on Results of Pilot Survey)
May 4, 2020	August 10, 2020	Task 5 Complete	Draft Working Paper #5 (Training to be Completed Prior to On-to-Off Counts, Pilot Survey Administration, and prior to Full Survey Administration)
August 10, 2020	December 4, 2020	Task 6 Underway	Required Weekly Progress Reports
August 17, 2020 August 31, 2020	August 20, 2020 September 11, 2020	On-to-off counts Pilot Survey (In-Field)	
September 28, 2020	December 4, 2020	Full Survey (In-Field)	
December 7, 2020	April 19, 2021	Tasks 7 - 9 Underway	Monthly Progress Reports



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	January 11, 2021	Task 7 Complete	Draft Working Paper #6
	March 1, 2021	Task 8 Parts 1 - 4 Complete	Draft Working Paper #7 Expanded survey dataset that is ready for additional model calibration and validation work
March 1, 2021	April 12, 2021	Task 9 Complete	Draft Working Paper #8
April 12, 2021	May 3, 2021	Task 10 Complete	Final Report Final Database

(\*Note: All Dates Assume a May 1, 2020 (Notice to Proceed Date)

The contractor will be responsible for all elements related to and necessary to complete the project tasks. The contractor shall complete all the services required by the contract in conformance with these specifications and any contractual modifications to these specifications. All services shall be executed to the satisfaction and acceptance of the CATS. Any deviation from these specifications, unless specifically authorized in writing from the City, shall be sufficient cause for rejection of any part or all of the services performed.

#### 3.7 Description of Survey and Data Expectations.

To ensure survey data quality and minimize sampling error and bias, CATS issues the following data requirements:

##### 3.7.1 Routes to be Surveyed.

All CATS' weekday fixed routes – including bus and rail modes.

##### 3.7.2 Sample Size.

- Sample size adequate for analysis of weekday bus and train service
- A goal of completing surveys for, at minimum, ten percent (10%) of the ridership on all transit routes or stations
- For routes with ridership of less than 200, the Consultant should propose a minimum sample size
- Representative of time of day (TOD) parts and distribution of riders, including station-to-station flows and bus boarding's by stop and segment

##### 3.7.3 Survey Fielding.

- Cost-effective fielding of the survey will be paramount for the consultant
- Since most CATS bus routes are interlined and scheduling is by block, trips should be clustered by block for the purpose of efficient use of survey labor. The use of clustering by block also assists in defacto stratification by direction since most runs consist of trips alternatively traveling (inbound/outbound/inbound, etc.)
- Many routes will either deadhead out to the end of the line at the beginning or end of the day, particularly express routes. This is also a concern for surveyors who will begin their shift prior to the service day, requiring them to garage-in or out with the vehicle or operator for their scheduled block or run.
- Due to security reasons, the CATS bus garages and rail maintenance facilities are not open to the public. Therefore, if any surveyors will need to depart with an operator from a garage facility, the consultant must contact the CATS Project Manager at least 36 hours in advance of the assignment to detail the scheduled route, trips, block, time

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of trip, and surveyor name and contact information. Approval must be received before surveyors will be granted access to these facilities.

CATS operates its bus operations out of two (2) garages: the North Davidson Bus Garage at 900 N. Davidson St. Charlotte NC 2826 704-336-4040 and South Tryon Bus Garage at 3145 S. Tryon St. Charlotte NC, 704-336-7433 Schedule Blocks are coded accordingly.

CATS operates rail services out of one (1) light rail maintenance facility: South Boulevard Light Rail Vehicle Maintenance Facility at 4127 S. Blvd Charlotte NC 704-209-4077.

#### 3.7.4 Time of Day Parts.

- Coverage of WEEKDAY trips during: AM PEAK, MIDDAY, PM PEAK, and EVENING time periods.
- Stratification by service type, bus trips for each route, time of day
- Project Definition of time of day (TOD) parts:

AM PEAK	(6:30 a.m. – 9:29 a.m.)
MIDDAY	(9:30 a.m. – 3:29 p.m.)
PM PEAK	(3:30 p.m. – 6:29 p.m.)
EVENING	(6:30 p.m. – 8:59 p.m.)
- No coverage of Saturday/Sunday or other TOD parts not listed

#### 3.7.5 Directions of Travel.

Coverage of both directions of trip travel: inbound and outbound.

#### 3.7.6 Administration Requirements.

- a. Age Restrictions.

Coverage of CATS system-wide passengers who qualify based on age cutoff requirements:

  - Age 15+ (based on visual estimation) permitted; and
  - Minors (less than age 15) only with guardian permission.
- b. Language Requirements.

Surveys must be available in both English and Spanish to ensure representative data sampling from non-English speaking populations. Surveys with bilingual staff inclusion to ensure representation.

#### 3.7.7 Use of Technology

The Company shall describe how it will achieve the data collection requirements within the allotted in-field data collection timeframe. Should the contractor propose the use of a tablet PC, etc. to administer the survey, it will be necessary for the contractor to provide the survey administrators with a back-up plan, should the supporting technology fail.

#### 3.7.8 Efforts to Address Non-Response Bias.

The consultant is highly encouraged to respond to and propose methods for addressing the following non-response bias. Examples of typical nonresponse bias are included, but not limited to those detailed below:

##### a. Sample Size Distribution Bias

Statistically significant sample sizes are highly correlated to the distribution of the variables to be analyzed. This distribution is either known or estimated through previous research or previously-conducted surveys. In cases where the distribution is impossible to know *a priori*, the distribution is simply asserted. In the social

## Section 3

### Scope of Services

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sciences, variables are typically assumed to be normally distributed. Normal distributions have the practical consequence of requiring very small sample sizes, thereby minimizing the resources needed to conduct a survey. For some variables, such as gender and income, this assumption has been found to be accurate. For other key information, such as travel flows, this assumption has been found to be inadequate. Unfortunately, the sample sizes are not increased to address the non-normality of these variables, usually for budgetary and schedule reasons but also if those non-normally distribution variables are not a primary focus of the survey. Efforts should be made to ensure adequate sampling.

b. Access Bias

Some access types tend to be lower due to the respondent's knowledge of the system. Walk and bike-access riders, typically respond less frequently than auto-access riders. Efforts should be made to ensure a representative distribution of surveys by mode of access.

c. Language Bias

Low English Proficiency ("LEP") populations can be under represented as survey instruments tend to be text-based questions. Use of pictures and symbols, where practicable are highly encouraged. Furthermore, known language populations (e.g. Spanish) should be addressed with non-English survey instruments when possible.

3.7.9 Age Bias

Riders who are less than 16 years of age are typically under-represented as they either do not know enough demographic information (e.g. income) to complete a survey; or who are unable to complete a survey due to the CATS policy to have the guardian present. Efforts should be evaluated to address non-response bias in age. Evaluation of variables for acceptable records for this age category should be reviewed (e.g. income may be unknown by teens or young adults).

3.7.10 Afternoon and Evening Fatigue

Afternoon and evening riders tend to suffer from "survey fatigue" after completing an identical survey form for their trips earlier in the day. Therefore, these TOD parts tend to be under-represented. Efforts should be made to ensure representative response for these day parts.

3.7.11 Heavy Load Conditions

Trips that occur in heavy load conditions tend to make the process of distributing and completing surveys very challenging. Efforts should be made to ensure representative response for these conditions.

3.7.12 Short Trips

In the past, CATS has struggled to address non-response bias due to short trips in its origin-destination surveys, particularly for the light rail. Nonresponse bias in origin-destination surveys can result from the practical consequence that surveys are completed and returned at a rate unequal to their distribution rate. As such, completion and return rates may be lower on routes that carry passengers who travel short distances or who wait for a short period of time at a stop or station. Typical origin-destination survey instruments cannot be reasonably completed in less than 7-10 minutes, so trips of that length or shorter are unable to complete the instrument. Additionally, mail-back or phone-interview procedures tend to fail to generate significant response rates.

Innovative methods for reducing non-response bias are encouraged. CATS would like the proposing consultant to propose methods for addressing non-response bias, particularly on short-trips.

## Section 3

### Scope of Services

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#### 3.7.13 Complete / Useable Data Record.

The sampling plan shall consider a survey record “complete” and “useable”:

- The respondent has completed the survey questions related to origin, boarding, alighting, destination, trip purpose, mode of access/egress, and transfer information.
- All locations must be collected with sufficient specificity to enable geocoding to the Traffic Analysis Zone (TAZ) level, geocoding to be performed by the contractor.

#### 3.7.14 In-Field Data Checks.

Surveys shall be checked for validity and completion at the time of return, and survey administrators shall (to the extent possible) verify any invalid or incomplete data with the respondent at that time. Examples of invalid data are misspelled street names and the wrong street name. An example of incomplete data is no street name. Every effort should be made at the time of administration to avoid invalid or incomplete data. A complete survey record is detailed above.

A refusal will not be accepted as a complete record for attaining the specified required number of complete survey records.

#### 3.7.15 Data Reporting.

- Editing and cleaning should be implemented, checking for logic and consistency in answers.
- Extensive address editing procedures by the contractor to geo-code as many locations as possible.
- Data processing procedures should include checking the consistency of trip direction with locations and transit routing information; verifying addresses against geographic information system databases to improve geo-coding accuracy and using landmark look-up tables.
- Data should be edited, coded, and geo-coded as soon as surveys are completed to ensure that corrective action can be taken to mitigate aspects of the remaining fieldwork that may be affecting data quality.

### 3.8 Description of Available CATS Survey Resources to Consultant.

#### 3.8.1 Incentives.

- CATS does not plan to provide free-ride or other incentives for the consultant to distribute to passengers in exchange for survey completion.
- The Consultant should include recommendations for incentives, if any, in its proposal.
- The contractor should NOT include the cost of survey incentives in the budget proposal
- The sampling plan must reflect what is needed to collect “complete” and “useable” survey data records.

#### 3.8.2 Staff Passes.

- CATS will provide the consultant with a set number of transit passes that will be valid on all CATS services during the survey period.
- The set number will be based on the number provided in the consultant’s staffing plan.
- The monthly bus passes are non-transferable, non-redeemable for cash, and are intended for the sole use by the consultant’s staff and/or subcontracted staff. The monthly bus passes must be returned to CATS at the conclusion of the survey period.

## Section 3

### Scope of Services

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- The consultant should NOT include the cost of either one-ride ticket incentives or monthly passes in the cost of the proposed budget.
- 3.8.3 Operations and Safety Training.
- All consultants and sub-consultants, including surveyors must receive CATS Operations and Safety Training. This is required by CATS and must be completed prior to the initiation of any field work or survey administration.
  - CATS will provide the staff for this particular type of training, but it will be the responsibility of the consultant to notify CATS of the dates and times of the surveyor training. The consultant must provide these dates at least two weeks in advance, so the staff may be secured to administer this portion of the surveyor training.
  - It should be noted that the consultant is still responsible for all other parts of the surveyor training (e.g. training how to survey, how to use technology to survey, how to execute quality assurance/quality control, etc.)
- 3.8.4 Electronic Data Available Upon Request.
- CATS requests that the consultant provide CATS staff with a detailed list of data needs and data file and format requirements.
- Route Maps
- Route maps are available on CATS website at [www.ridetransit.org](http://www.ridetransit.org).
- 3.8.5 Ridership Summary Reports
- For reference, Appendix A includes CATS September 2012 Average Weekday Ridership by Route for all CATS' fixed routes.
- 3.8.6 APC Data
- CATS APC data will be available for both the bus and rail operations. The APC data is available by route, trip, direction, time-of-day part, stop/station ID. CATS can provide the APC data export files at the request of the consultant. Data requests should be made at the earliest possible time, preferably within a week of the project kick-off meeting date.
- 3.8.7 GIS Data
- The City maintains a full GIS library, including a street centerline file, route network, bus stop layer and TAZ file. CATS can provide the GIS coverage files necessary to complete the geocoding task at the request of the consultant.
- 3.8.8 Schedule Data
- CATS utilizes the HASTUS scheduling system. The awarded consultant will not have access to the data stored in the HASTUS system; however, CATS staff can provide the awarded consultant with any pertinent scheduling or stop data either electronically in a .pdf, .txt or .gfts format, or in a hard copy record upon request.
  - It should be noted that at the time of this RFP, CATS is operating the June 2019 schedules. The June 2019 schedules are valid through October 6, 2019. The October schedules are currently available for preview.  
However, at the time of the full survey, CATS will be operating under a new February 3, 2020 schedule. Scheduling data is typically available 2 months prior to the service change.  
It is the responsibility of the consultant to develop and/or update the sampling plan and survey administration plan for the survey based on the February 3, 2020 schedules. These will be provided to the consultant as soon as they are available.

## Section 3

### Scope of Services

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#### 3.8.9 Graphic Data Files

- CATS Marketing maintains all CATS graphic files including logos. Should the contractor need CATS logos, the request for the logo files should be made at the time of the data request. The use of CATS logos are subject to the CATS Logo Policy, which will also be provided upon request.

### 3.9 Description of Resources Not Provided

The contractor shall furnish all locations (including training facilities), all survey materials, technology, transportation, and anything necessary to execute the study, not previously detailed; including, but not limited to: labor, supervision, training facilities, command centers, and equipment related to survey administration, data entry, data analysis, result reporting, and any other activities related to the successful consultant's study.

#### 3.9.1 Survey Command Center Facilities

It is the responsibility of the contractor to independently find and secure a location for a survey command center to conduct in-field survey operations

- CATS' Charlotte Transportation Center (CTC) - CATS primary and largest transfer facility) has non-exclusive, non-secure, public pavilion spaces with tables and chairs. At least one pavilion area will be open during the primary operation hours of the service day.
- Pavilion A has tables and chairs on both the first and second floor of the center, however there is no telephone or internet access. Pavilion B has a negligible amount of first floor seating and is the primary access point for the LYNX Blue Line.
- Both Pavilion A and Pavilion B should not be considered by the consultant as secure areas, since these facilities may not be exclusively reserved and must be maintained open to the public.

CATS is NOT responsible for lost, stolen, missing, or misplaced items that are either left attended or unattended in either of the pavilion areas, anywhere within the Charlotte Transportation Center, any CATS facilities or non-CATS facilities, at stations, stops, or on-board CATS vehicles.

## Section 4

### Proposal Content and Format

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#### 4 PROPOSAL CONTENT AND FORMAT.

The City desires all Proposals to be identical in format in order to facilitate comparison. While the City's format may represent departure from the Company's preference, the City requires strict adherence to the format. The Proposal will be in the format described below:

- A. Cover letter;
- B. Executive Summary
- C. Background and Experience as requested in Section 6;
- D. Proposed Solution;
- E. The "Addenda Receipt Confirmation" set forth in Section 6, Form 2;
- F. The "Proposal Submission" set forth in Section 6, Form 3;
- G. The "Pricing Worksheet" set forth in Section 6, Form 4;
- H. The "Project DBE Subcontractor/Supplier Utilization Commitment Form A" set forth in Section 6, Form A
- I. The "Company's Background Response" form set forth in Section 6, Form 6;
- J. The "References" set forth in Section 6, Form 7;
- K. The "Additional Company Questions" set forth in Section 6, Form 8;
- L. The "Certification Regarding Debarment, Suspension and Other Responsibility Matters" set forth in Section 7, Form 9;
- M. The "Byrd Anti-Lobbying Certification" set forth in Section 7, Form 10 and;
- N. Exceptions to the Remainder of the RFP, including the Sample Contract in Section 7.

The City encourages Proposals to be compatible with the City's waste reduction goals and policies. Therefore, it is desired that all responses meet the following requirements:

- All Proposals be printed 8 1/2" x 11" format with all standard text no smaller than eleven (11) points;
- All copies be printed double-sided;
- All copies be printed on recycled paper (at least 30% post-consumer recovered material and at least 30% total recovered material);
- Unless necessary, all Proposal originals and copies should minimize or eliminate use of non-recyclable or non-reusable materials such as 3- ring binders, plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Glued materials, paper clips, and staples are acceptable; and
- Materials be submitted in a format that allows for easy removal and recycling.

Proposals must also include a CD or flash drive including the entire Proposal in a searchable format such as MS Word or Adobe Acrobat.

**Companies are required to organize the information requested in this RFP in accordance with the format and instructions outlined above and detailed below. Failure to do so may result in the City, at its sole discretion, deeming the Proposal non-responsive. The Company, however, may reduce the repetition of identical information within several sections of the Proposal by making the appropriate cross-references to other sections of the Proposal. Appendices for certain technical or financial information may be used to facilitate Proposal preparation.**

#### 4.1 Proposal Content.

##### 4.1.1 Cover Letter.

The Proposal must include a letter of transmittal attesting to its accuracy, signed by an individual authorized to execute binding legal documents. The cover letter shall provide the name, address, telephone and facsimile numbers of the Company along with the name, title, address, email

## Section 4

### Proposal Content and Format

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address, telephone and facsimile numbers of the executive that has the authority to contract with the City. The cover letter shall present the Company's understanding of the Project and a summary of the approach to perform the Services.

#### 4.1.2 Executive Summary.

The Consultant shall submit an executive summary, which outlines its Proposal, including the proposed general management philosophy. The executive summary shall, at a minimum, include an identification of the proposed project team, responsibilities of the project team, and a summary of the proposed Services. This section should highlight aspects of this Proposal, which make it superior or unique in addressing the needs of the City.

#### 4.1.3 Background and Experience.

The Consultant shall provide a concise description of the company, including origin, state of incorporation, background, and current size as requested in Section 5. Include information concerning general organization and staffing as well as experience with similar CATS ORIGIN-DESTINATION STUDY projects as described in Section 3.

#### 4.1.4 Proposed Solution.

Given the purpose of this Project and the City's goals as stated in this RFP, provide a creative solution to meet such goals. **For each component of the Project described in Section 3, state whether and how your Proposed Solution complies as well as any additional information requested.** If you wish to add supplemental information, it shall be labeled "Supplemental Information."

#### 4.1.5 Process.

What steps will your organization take to ensure that the transition/implementation for the Project runs smoothly?

##### 4.1.5.1 Pricing

The City is requesting a lump sum cost for services. Rates must be guaranteed for the term of the contract. Price should include all cost associated with the CATS ORIGIN-DESTINATION STUDY agreed upon by the Consultant and the City. A detailed cost breakdown is required to be attached to the pricing form. The respondent shall submit a list of cost items which are not included in the standard rates and for which the respondent intends to seek reimbursement from the City. The City shall approve all reimbursable costs in advance. The Consultant should include Rates for Supplemental Services

#### 4.1.6 Required Forms.

To be deemed responsive to this RFP, Companies must complete, in detail, all Proposal Forms listed in this Section 4, items numbered C through J.

#### 4.1.7 Exceptions to the RFP.

Exceptions must be submitted in accordance with Section 1.6.13 of this RFP. If exceptions are not identified in your Proposal they may not be considered during Contract negotiation and could result in Proposal being rejected from further consideration. If legal counsel needs to review the Sample Contract prior to signature, reviews must be completed before your Proposal is submitted.

The City intends to enter into a City-drafted Contract with the successful Company that contains the terms and conditions set forth in Section 7 ("Sample Terms"). The number



## **Section 4**

### **Proposal Content and Format**

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and extent of any exceptions and proposed additions to the Sample Terms will be one of the City's evaluation criteria.

Accordingly, each Company must state specifically in its Proposal any exceptions to the Sample Terms, or any such exceptions will be waived. Any Company-proposed additional terms or conditions must also be included in the Proposal, and the City reserves the right to refuse consideration of any terms not so included. Any proposed changes to the Sample Terms after tentative contract award may constitute a material change to the Company's Proposal and be grounds for revoking the award.

Notwithstanding the foregoing, the City reserves the right to modify the Sample Terms prior to or during contract negotiations if it is in the City's best interest to do so.

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## **Section 5**

### **Evaluation Criteria**

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#### **5 PROPOSAL EVALUATION CRITERIA.**

Proposals will be evaluated based on the Company's ability to meet the performance requirements of this RFP. This section provides a description of the evaluation criteria that will be used to evaluate the Proposals. To be deemed responsive, it is important for the Company to provide appropriate detail to demonstrate satisfaction of each criterion and compliance with the performance provisions outlined in this RFP. The Company's Proposal will be the primary source of information used in the evaluation process. Proposals must contain information specifically related to the proposed Services and requested herein. Failure of any Company to submit information requested may result in the elimination of the Proposal from further evaluation.

Proposals will be assessed to determine the most comprehensive, competitive and best value solution for the City based on, but not limited to, the criteria below. The City reserves the right to modify the evaluation criteria or waive portions thereof. Proposals will be evaluated on the following major categories:

- a. Qualifications and Experience;
- b. Project Approach and Proposed Solution;
- c. Cost Effectiveness and Value;
- d. MWSBE inclusion efforts; and
- e. Acceptance of the Terms of the Contract

##### **5.1 Qualifications and Experience**

Companies will be evaluated on the background and experience information provided in Section 6, Form 6.

##### **5.2 Project Approach / Proposed Solution.**

Companies will be evaluated based upon their understanding, experience and qualifications in performing the same or substantially similar Services, as reflected by its experience in performing such Services. The evaluation will include references regarding work for organizations with needs similar to the City's, and the feasibility of the Company's approach for the provision of the Services.

##### **5.3 Cost Effectiveness and Value.**

Under this criterion, Proposals will be compared in terms of the most reasonable and effective pricing options. The Evaluation Committee will also take into consideration any indirect costs associated with the Services and administration of the Contract.

##### **5.4 Disadvantage Business Opportunity (DBE).**

The City maintains a strong commitment to the inclusion of DBEs in the City's contracting and procurement process. For the purposes of this RFP, the City will consider a Consultant's DBE certification and/or DBE subcontracting inclusion efforts. To count towards a Department DBE Goal, DBE certified Companies and/or their DBE subcontractors must meet the following certification criteria prior to Proposal submission:

- Be designated as a City certified DBE;

DBE utilization is only one (1) criterion considered in the totality of all criteria listed in this Section 5.

The DBE contract goal for this project is set at **11.7%**.

##### **5.5 Acceptance of the Terms of the Contract.**

The City will evaluate the Proposals for compliance with the terms, conditions, requirements, and specifications stated in this RFP including the sample contract language provided in Section 7. Regardless of exceptions taken, Companies shall provide pricing based on the

## **Section 5**

### **Evaluation Criteria**

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requirements and terms set forth in this RFP. Exceptions shall be identified in accordance with Sections 1.6.13 and 4.1.4 of this RFP.

## Section 6 Required Forms

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### REQUIRED FORM 1 – REQUEST FOR PROPOSALS ACKNOWLEDGEMENT

RFP # 269-2019-811

#### CATS ORIGIN-DESTINATION STUDY

The Company hereby certifies receipt of the Request for Proposals for the City of Charlotte, North Carolina RFP #269-2019-811, CATS ORIGIN-DESTINATION STUDY. This form should be completed upon receipt of the City's Request for Proposals and emailed in time for the City to receive it by or before March 13, 2020. Failure to submit this form by the designated date shall not preclude the Company from submitting a proposal. Please email the completed Request for Proposals Acknowledgement Form to the attention of:

Jeffrey Demary  
Department of General Services – City Procurement  
Email: [jeff.demary@ci.charlotte.nc.us](mailto:jeff.demary@ci.charlotte.nc.us)

Date: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Contact E-mail address: \_\_\_\_\_

Please check the appropriate space below and provide the requested information:

\_\_\_\_\_ We plan to attend the Pre-Proposal Conference and plan on submitting a Proposal

Indicate number of attendees: In-Person \_\_\_\_\_ Via Teleconference \_\_\_\_\_

\_\_\_\_\_ We do not plan to attend the Pre-Proposal Conference but plan on submitting a Proposal

Reason: \_\_\_\_\_

\_\_\_\_\_ We do not plan to attend the Pre-Proposal Conference and do not plan on submitting a Proposal

Reason: \_\_\_\_\_

**Section 6**  
**Required Forms**

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**REQUIRED FORM 2 – ADDENDA RECEIPT CONFIRMATION**

**RFP # 269-2019-811**

**CATS ORIGIN-DESTINATION STUDY**

Please acknowledge receipt of all addenda by including this form with your Proposal. All addenda will be posted to the NC IPS website at [www.ips.state.nc.us](http://www.ips.state.nc.us) and the City's Contract Opportunities Site at

<http://charlottenc.gov/DoingBusiness/Pages/ContractOpportunities.aspx>.

**ADDENDUM #:**

**DATE ADDENDUM DOWNLOADED FROM NC IPS:**

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

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

I certify that this proposal complies with the Specifications and conditions issued by the City except as clearly marked in the attached copy.

\_\_\_\_\_  
(Please Print Name)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company Name

**REQUIRED FORM 3 – PROPOSAL SUBMISSION FORM**

**RFP # 269-2019-811**

**CATS ORIGIN-DESTINATION STUDY**

This Proposal is submitted by:

Company Name: \_\_\_\_\_

Representative (printed): \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Email address: \_\_\_\_\_

Telephone: \_\_\_\_\_

(Area Code) Telephone Number

Facsimile: \_\_\_\_\_

(Area Code) Fax Number

The representative signing above hereby certifies and agrees that the following information is correct:

1. In preparing its Proposal, the Company has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in or condoned prohibited discrimination.
2. For purposes of this Section, discrimination means discrimination in the solicitation, selection, or treatment of any subcontractor, vendor or supplier on the basis of race, ethnicity, gender, age or disability or any otherwise unlawful form of discrimination. Without limiting the foregoing, discrimination also includes retaliating against any person or other entity for reporting any incident of discrimination.
3. Without limiting any other provision of the solicitation for proposals on this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the City to reject the Proposal submitted by the Company on this Project and to terminate any contract awarded based on such Proposal.
4. As a condition of contracting with the City, the Company agrees to maintain documentation sufficient to demonstrate that it has not discriminated in its solicitation or selection of subcontractors. The Company further agrees to promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation and selection of subcontractors. Failure to maintain or failure to provide such information constitutes grounds for the City to reject the bid submitted by the Company or terminate any contract awarded on such proposal.
5. As part of its Proposal, the Company shall provide to the City a list of all instances within the past ten years where a complaint was filed or pending against the Company in a legal or

## Section 6

### **Required Forms**

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administrative proceeding alleging that the Company discriminated against its subcontractors, vendors or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.

6. The information contained in this Proposal or any part thereof, including its Exhibits, Schedules, and other documents and instruments delivered or to be delivered to the City, is true, accurate, and complete. This Proposal includes all information necessary to ensure that the statements therein do not in whole or in part mislead the City as to any material facts.
7. None of Company's or its subcontractors' owners, employees, directors, or contractors will be in violation of the City's Conflict of Interest Policy for City, Secondary and Other Employment Relationships (HR 13) if a Contract is awarded to the Company.
8. It is understood by the Company that the City reserves the right to reject any and all Proposals, to make awards on all items or on any items according to the best interest of the City, to waive formalities, technicalities, to recover and resolicit this RFP.
9. This Proposal is valid for one hundred and eighty (180) calendar days from the Proposal due date.

I, the undersigned, hereby acknowledge that my company was given the opportunity to provide exceptions to the Sample Contract as included herein as Section 7. As such, I have elected to do the following:

\_\_\_ Include exceptions to the Sample Contract in the following section of my Proposal: \_\_\_\_\_

\_\_\_ Not include any exceptions to the Sample Contract.

I, the undersigned, hereby acknowledge that my company was given the opportunity to indicate any Trade Secret materials or Personally Identifiable Information ("PII") as detailed in Section 1.6.2. I understand that the City is legally obligated to provide my Proposal documents, excluding any appropriately marked Trade Secret information and PII, upon request by any member of the public. As such, my company has elected as follows:

\_\_\_ The following section(s) of the of the Proposal are marked as Trade Secret or PII: \_\_\_\_\_

\_\_\_ No portion of the Proposal is marked as Trade Secret or PII.

**Representative (signed):** \_\_\_\_\_

## Section 6

### Required Forms

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#### REQUIRED FORM 4 – PRICING WORKSHEET

RFP # 269-2019-811

##### CATS ORIGIN-DESTINATION STUDY

Regardless of exceptions taken, Companies shall provide pricing based on the requirements and terms set forth in this RFP. Pricing must be all-inclusive and cover every aspect of the Project. Cost must be in United States dollars. **If there are additional costs associated with the Services, please add to this chart. Your Price Proposal must reflect all costs for which the City will be responsible.**

For purposes of this RFP, assume a term of two (2) years.

#### PRICE PROPOSAL SHEET

RFP #269-2019-2019

##### CATS ORIGIN-DESTINATION STUDY

##### Pricing worksheet

Regardless of exceptions taken, Consultants shall provide pricing based on the requirements and terms set forth in this RFP. Pricing must be all-inclusive and cover every aspect of the Project. Cost must be in United States dollars rounded to the nearest quarter of a dollar. **If there are additional costs associated with the Services, please add to this chart. Your Price Proposal must reflect all costs that the City will be responsible for.**

The City is requesting a firm fixed price contract for the life of the contract. The Consultant shall provide a lump sum cost to complete the study. Candidates should indicate minimum budget amount below which they would not be willing to provide the services requested hereunder.

Service	Price
Labor Hours	\$
Overhead	\$
Materials	\$
Profit	\$
<b>CATS Origin-Destination Study Total Price</b>	<b>\$</b>

**Attach a detailed program budget as required in Section 4. At a minimum the following categories must be included: personnel (position types and quantity), operational budget itemized by major expenditures, and administrative costs.** It is understood by the Consultant that the fees stated above includes all costs associated with providing the services required in this RFP.



# REQUIRED FORM 5 - PROJECT DBE SUBCONTRACTOR / SUPPLIER UTILIZATION COMMITMENT- FORM A



Federal Disadvantaged Business Opportunity Program. Note: This **MUST** be submitted with your bid. Make copies as needed.

If your company failed to meet the DBE Utilization Goal for this project, attach documentation of your company's Good Faith Efforts with your bid packet.

Bidders Name: \_\_\_\_\_ Project Name: \_\_\_\_\_

Below list **all subcontractors and suppliers** (including DBEs) that you intend to use on this contract. Continue listing on the supplemental form.

Subcontractor/Supplier's Name	Contact Person	Description of Work	NAICS code	NCDOT Reporting #	Total Projected \$	% of Bid Amount

☐ I acknowledge that I have confirmed the certification of each DBE listed above on <https://apps.dot.state.nc.us/vendor/directory/>.

Total DBE Utilization  \$ Total Bid Amount  \$ Percent DBE Utilization (Total DBE Utilization/Total Bid Amount)  %

**Please read the following “Certification” statement before signing.** “The undersigned certifies that he/she has read, understands, and agrees to be bound by the DBE Program Requirements, including these accompanying FORM(s) A, and the other terms and conditions in the Notice to Bidders. The undersigned further certifies that he/she is legally authorized by the Bidder to make the statements and representations and that said statements and representations are true and correct to the best of his/her knowledge and belief. It is the intent by the undersigned to enter into formal agreement(s) with subcontractors or suppliers named in this document conditioned upon execution of a contract with the owner (CATS). All DBE subcontractors and suppliers must provide proof of their DBE status or receive confirmation of their status from CATS’ Civil Rights Officer prior to contract award. The undersigned understands and agrees that if any of the statements and representations are made by the Bidder knowing them to be false, or if there is a failure of the successful Bidder (i.e., the Contractor) to implement any of the stated agreements, intentions, objectives, goals, commitments and substitutions set forth herein without prior approval by the Civil Rights Officer or a designee, then in any of such events the Contractor’s act or failure to act, as the case may be, shall constitute a material breach of the contract, entitling CATS to terminate the contract for default. The right to so terminate shall be in addition to, and not in lieu of, any other rights and remedies CATS may have for other defaults under the contract, or otherwise. Additionally, the Contractor will be subject to the loss of any future contract awards”.

---

Signature of Authorized Official

Printed Name Title

Submittal Date

Revised XXXXXXXX X, 2019 29, 2011



## Project DBE Subcontractor / Supplier Utilization Commitment- Form A

**Federal Disadvantaged Business Opportunity Program. Note:** This **MUST** be submitted with your bid. Make copies as needed.

[illegible]

**REQUIRED FORM 6 – COMPANY’S BACKGROUND RESPONSE**  
**RFP # 269-2019-811**

**CATS ORIGIN-DESTINATION STUDY**

Companies shall complete and submit the form below as part of their response to this RFP. Additional pages may be attached as needed to present the information requested.

Question	Response
Company’s legal name	
Company Location (indicate corporate headquarters and location that will be providing the Services).	
How many years has your company been in business? How long has your company been providing the Services as described in Section 3?	
How many public sector (cities or counties) clients does your company have? How many are using the Services? Identify by name some of the clients similar to City (e.g., similar in size, complexity, location, type of organization).	
List any projects or services terminated by a government entity. Please disclose the government entity that terminated and explain the reason for the termination.	
List any litigation that your company has been involved with during the past two (2) years for Services similar to those in this RFP.	
Provide an overview and history of your company.	
If your company is a subsidiary, identify the number of employees in your company or division and the revenues of proposing company or division.	
Identify the percentage of revenue used for research and/or development by the proposing company or division.	
Identify any certifications held by your company if you are implementing or reselling another company's products or services. Include how long the partnership or certification has been effect.	
Describe your company’s complete corporate structure, including any parent companies, subsidiaries, affiliates and other related entities.	
Describe the ownership structure of your company, including any significant or controlling equity holders.	

Provide a management organization chart of your company's overall organization, including director and officer positions and names and the reporting structure.	
Describe the key individuals along with their qualifications, professional certifications and experience that would comprise your company's team for providing the Services.	
If the Proposal will be from a team composed of more than one (1) company or if any subcontractor will provide more than fifteen percent (15%) of the Services, please describe the relationship, to include the form of partnership, each team member's role, and the experience each company will bring to the relationship that qualifies it to fulfill its role. Provide descriptions and references for the projects on which team members have previously collaborated.	
Explain how your organization ensures that personnel performing the Services are qualified and proficient.	
Provide information regarding the level of staffing at your organization's facilities that will be providing the Services, as well as the level of staffing at subcontractors' facilities, if known or applicable.	
If your company has been the subject of a dispute or strike by organized labor within the last five (5) years, please describe the circumstances and the resolution of the dispute.	
Describe your security procedures to include physical plant, electronic data, hard copy information, and employee security. Explain your point of accountability for all components of the security process. Describe the results of any third party security audits in the last five (5) years.	

**REQUIRED FORM 7 – REFERENCES**

**RFP # 269-2019-811**

**CATS ORIGIN-DESTINATION STUDY**

Companies shall complete the form below. The City's preference is for references from organizations of similar size or where the Company is performing similar services to those described herein. If such references are not available, individuals or companies that can speak to the Company's performance are adequate.

**REFERENCE 1:**

**Name of Client:** \_\_\_\_\_ **Main Phone:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Primary Contact:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Contact Phone:** \_\_\_\_\_ **Contact E-mail:** \_\_\_\_\_

**Service Dates:** \_\_\_\_\_

**Summary & Scope of Project:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Contract Value: \$** \_\_\_\_\_ **Number of Client Employees:** \_\_\_\_\_

**REFERENCE 2:**

Name of Client: \_\_\_\_\_ Main Phone: \_\_\_\_\_

Address: \_\_\_\_\_

Primary Contact: \_\_\_\_\_ Title: \_\_\_\_\_

Contact Phone: \_\_\_\_\_ Contact E-mail: \_\_\_\_\_

Service Dates: \_\_\_\_\_

Summary &amp; Scope of Project: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Contract Value: \$ \_\_\_\_\_ Number of Client Employees: \_\_\_\_\_

**REFERENCE 3:**

Name of Client: \_\_\_\_\_ Main Phone: \_\_\_\_\_

Address: \_\_\_\_\_

Primary Contact: \_\_\_\_\_ Title: \_\_\_\_\_

Contact Phone: \_\_\_\_\_ Contact E-mail: \_\_\_\_\_

Service Dates: \_\_\_\_\_

Summary &amp; Scope of Project: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Contract Value: \$ \_\_\_\_\_ Number of Client Employees: \_\_\_\_\_

**REFERENCE 4:**

Name of Client: \_\_\_\_\_ Main Phone: \_\_\_\_\_

Address: \_\_\_\_\_

Primary Contact: \_\_\_\_\_ Title: \_\_\_\_\_

Contact Phone: \_\_\_\_\_ Contact E-mail: \_\_\_\_\_

Service Dates: \_\_\_\_\_

Summary & Scope of Project: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Contract Value: \$ \_\_\_\_\_ Number of Client Employees: \_\_\_\_\_

**REFERENCE 5:**

Name of Client: \_\_\_\_\_ Main Phone: \_\_\_\_\_

Address: \_\_\_\_\_

Primary Contact: \_\_\_\_\_ Title: \_\_\_\_\_

Contact Phone: \_\_\_\_\_ Contact E-mail: \_\_\_\_\_

Service Dates: \_\_\_\_\_

Summary & Scope of Project: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Contract Value: \$ \_\_\_\_\_ Number of Client Employees: \_\_\_\_\_



**REQUIRED FORM 9 – CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND  
OTHER RESPONSIBILITY MATTERS**

**RFP # 269-2019-811**

**CATS ORIGIN-DESTINATION STUDY**

The bidder, contractor, or subcontractor, as appropriate, certifies to the best of its knowledge and belief that neither it nor any of its officers, directors, or managers who will be working under the Contract, or persons or entities holding a greater than 10% equity interest in it (collectively “Principals”):

1. Are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any or state department or agency in the United States;
2. Have within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust or procurement statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are presently indicted for or otherwise criminally or civilly charged by a government entity, (federal, state or local) with commission of any of the offenses enumerated in paragraph 2 of this certification; and
4. Have within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award or in some instances, criminal prosecution.

☐ **I hereby certify as stated above:**

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

☐ **I am unable to certify to one or more the above statements. Attached is my explanation. [Check box if applicable]**

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**REQUIRED FORM 10 – BYRD ANTI-LOBBYING CERTIFICATION**

**RFP # 269-2019-811**

**CATS ORIGIN-DESTINATION STUDY**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of and Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)].
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including all subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_ (the "Company") certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Company understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date

\_\_\_\_\_  
City/State/Zip

## REQUIRED FORM 11 – ENVIRONMENTAL PURCHASING RESPONSES

RFP # 269-2019-811

### CATS ORIGIN-DESTINATION STUDY

Companies shall complete and submit the form below regarding the products or supplies required to perform the Services.

Question	Response
<u>Recycled Content.</u> Products must contain a certain percentage of recycled content. Please include the amount of recycled content, both pre- and post-consumer, included in your product.	
<u>Recyclability.</u> Please include the types of materials included in your product, and if they are considered recyclable in typical municipal recycling streams.	
<u>Biodegradability.</u> Products must be capable of decomposing under natural conditions. Please state whether each Product offered in your proposal is biodegradable.	
<u>Compostability.</u> Products must be capable of composting at a commercial composting facility. Please state whether each product offered in your proposal is compostable.	
<u>Energy Consumption.</u> Please include the total amount of energy consumed for product or service manufacture, use and disposal. Different sources of energy are associated with different environmental impacts.	
<u>Energy Efficiency.</u> Products must meet or exceed the Department of Energy (DOE) and Environmental Protection Agency criteria for use of the ENERGY STAR trademark label; or is in the upper 25% of efficiency for all similar products as designated by the U.S. Department of Energy's Federal Energy Management Program.	
<u>Water Efficiency.</u> Eligible products must meet or exceed the Environmental Protection Agency's WaterSense program or be water-efficient or low-flow fixtures.	
<u>Low VOCs.</u>	

Products should contain low or no volatile organic compounds (VOCs). Please indicate any VOC content in each applicable product offered in your proposal.	
<u>Reduced Packaging.</u> Please include any efforts made to reduce the packaging of the products included in this proposal.	
<u>Pollution Prevention.</u> Please state your company's policy on source reduction. The Pollution Prevention Act defines source reduction to mean any practice that: (1) Reduces the amount of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment or disposal, and (2) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants or contaminants. The term includes: equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training or inventory control.	
<u>Life Cycle Management.</u> Please state how many times your product may be reused. (Since reusable products generally require more upfront costs than disposable products, they are often subjected to a cost/benefit analysis in order to determine the life cycle cost).	
<u>End of Life Management.</u> Will the manufacturer or designee accept the product back at the end-of-life? (who pays for the transportation of the product may be situation-specific).	

**6. SAMPLE CONTRACT.**

As used in this Section of the RFP, the term "Contract" shall refer to the agreement entered into between the City and the Company, and the term "Company" shall refer to the vendor that has been awarded a contract.

**STATE OF NORTH CAROLINA**  
**COUNTY OF MECKLENBURG**

**AGREEMENT TO PROVIDE  
CATS ORIGIN-DESTINATION STUDY**

THIS PROFESSIONAL SERVICES CONTRACT (the "Contract") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ 2020 (the "Effective Date"), by and between \_\_\_\_\_, a corporation doing business in North Carolina (the "Company"), and the City of Charlotte, a North Carolina municipal corporation (the "City").

**RECITALS**

**WHEREAS**, the City issued a Request For Proposals (RFP # 269-2019-811) for CATS ORIGIN-DESTINATION STUDY dated February 28, 2020 This Request for Proposals together with all attachments and addenda, is referred to herein as the "RFP"; and

**WHEREAS**, the City desires that the Company provide certain **CATS ORIGIN-DESTINATION STUDY** ("Services"), and the Company desires to provide such Services; and

**WHEREAS**, the City and the Company have negotiated and agreed regarding the above-referenced Services and desire to reduce the terms and conditions of their agreement to this written form.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in further consideration of the covenants and representations contained herein, the parties agree as follows:

**CONTRACT**

1. **EXHIBITS.** The Exhibits below are hereby incorporated into and made a part of this Contract. With the exception of Exhibit C (Federal Contract Terms and Conditions), any conflict between language in an Exhibit or Appendix to this Contract and the main body of this Contract shall be resolved in favor of the main body of this Contract and any inconsistency between the Exhibits will be resolved in the order in which the Exhibits appear below. Notwithstanding anything contained in this Contract or any Exhibit to the contrary, in the event of a conflict between the language of Exhibit C and the main body of this Contract or any other Exhibit to this Contract, the language of Exhibit C shall prevail. Each reference to COMPANY NAME in the Exhibits and Appendices shall be deemed to mean the Company.

EXHIBIT A:        PRICE SCHEDULE

EXHIBIT B:        SCOPE OF WORK

EXHIBIT C:        FEDERAL CONTRACT TERMS AND CONDITIONS

2. **DEFINITIONS.** This section may include, but not be limited to, terms defined in Section 1 of the RFP.

3. **DESCRIPTION OF SERVICES.**

- 3.1.    The Company shall be responsible for providing the Services described in Exhibit B attached to this Contract and incorporated herein by reference. Without limiting the foregoing, the Company will perform the Services and meet the requirements as set forth in Exhibit B. However, the Company shall not be responsible for tasks specifically assigned to the City in

this Contract or in Exhibit B.

- 3.2. The Company shall perform the Services on site at various City facilities throughout Charlotte, North Carolina, except as mutually agreed upon in writing in specific instances by the City.

**4. COMPENSATION.**

- 4.1. **TOTAL FEES AND CHARGES.** The City agrees to pay the Company a fixed price (the "Purchase Price") as full and complete consideration for the satisfactory performance of all the requirements of this Contract. This amount constitutes the maximum total fees and charges payable to the Company under this Contract including Expenses and will not be increased except by a written instrument duly executed by both parties, which expressly states that it amends this Section of the Contract.
- 4.2. **MILESTONE PAYMENT PLAN.** The Company shall invoice the City for the Purchase Price in accordance with the Milestone Plan, which shall be attached as Appendix B to the Statement of Work. The Company shall not invoice the City for any Services or Deliverables within a particular Milestone until all Services and Deliverables required in connection with that Milestone have been fully delivered, completed and Accepted by the City. .
- 4.3. **EXPENSES.** As used in this Contract, the term "Expenses" shall mean the following expenses which are actually incurred by employees of the Company or its subcontractors who live outside of a one hundred (100) mile radius of Charlotte, North Carolina and who travel to Charlotte in the performance of the Services, when such travel would not otherwise have been necessary for the performance of this Contract:
- Lodging at a local hotel.
  - A per diem meals reimbursement of \$40 per day.
  - Long distance calls made by employees of Company while in Charlotte, if a given call is necessary for performance of the Services detailed in this Contract.
  - Parking, tolls, or rental car.
  - Travel costs to and from the City.

For the Company or subcontractors and employees who stay in Charlotte over extended time periods, the Company will rent an apartment in the City if doing so proves to be more economical on a monthly average. Otherwise, the Company will attempt to obtain accommodations at the same rates as those applicable for federal government employees. The Company will attempt to minimize travel costs by obtaining the lowest fares reasonably practicable under the circumstances.

Each invoice for Expenses shall itemize in detail and provide documentation for all Expenses for which the Company seeks reimbursement. The parties acknowledge that the Expenses apply only to the Services covered by this Contract, and that the Company shall not be permitted to charge the City for Expenses related to services not performed under this Contract. The City shall not be required to pay for Expenses that are not reasonable.

- 4.4. **EMPLOYMENT TAXES AND EMPLOYEE BENEFITS.** The Company represents and warrants that the employees provided by the Company to perform the Services are actual employees of the Company, and that the Company shall be responsible for providing all salary and other applicable benefits to each Company employee. The Company further represents, warrants and covenants that it will pay all withholding tax, social security, Medicare, unemployment tax, worker's compensation and other payments and deductions that are required by law for each Company employee. The Company agrees that the Company employees are not employees of the City.
- 4.5. **INVOICES.** Each invoice sent by the Company shall detail all Services performed and delivered which are necessary to entitle the Company to the requested payment under the

terms of this Contract. All invoices must include an invoice number and the City purchase order number for purchases made under this Contract. Purchase order numbers will be provided by the City. Invoices must be submitted with lines matching those on the City-provided purchase order.

The Company shall email all invoices to [cocap@charlottenc.gov](mailto:cocap@charlottenc.gov).

- 4.6. **DUE DATE OF INVOICES.** Payment of invoices shall be due within thirty (30) days after receipt of an accurate, undisputed properly submitted invoice by the City.
- 4.7. **PRE-CONTRACT COSTS.** The City shall not be charged for any Services or other work performed by the Company prior to the Effective Date of this Contract.
- 4.8. **AUDIT.** During the term of this Contract and for a period of one (1) year after termination of this Contract, the City shall have the right to audit, either itself or through an independent auditor, all books and records and facilities of the Company necessary to evaluate Company's compliance with the terms and conditions of this Contract or the City's payment obligations. The City shall pay its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs of the Company. However, if non-compliance is found that would have cost the City in excess of \$10,000 but for the audit, then the Company shall be required to reimburse the City for the cost of the audit.
5. **RECORDS.** The City shall have the right to audit the Company's invoices, expense reports and other documents relating to the Services performed under this Contract and shall not be required to pay for Services which did not occur, or which occurred in breach of this Contract. The Company shall make such documents available for inspection and copying by the City in Charlotte, North Carolina between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday, whenever requested by the City.
6. **TIME IS OF THE ESSENCE.** Time is of the essence in having the Company perform all Services and deliver all Deliverables within the time frames provided by this Contract and Exhibit B, including all completion dates, response times and resolution times (the "Completion Dates"). Except as specifically stated in this Contract, there shall be no extensions of the Completion Dates. All references to days in this Contract (including the Exhibits) shall refer to calendar days rather than business days, unless this Contract provides otherwise for a specific situation.
7. **NON-APPROPRIATION OF FUNDS.** If the Charlotte City Council does not appropriate the funding needed by the City to make payments under this Contract for any given fiscal year, the City will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the City will promptly notify the Company of the non-appropriation and this Contract will be terminated at the end of the fiscal year for which the funds were appropriated. No act or omission by the City, which is attributable to non-appropriation of funds shall constitute a breach of or default under this Contract.
8. **COMPANY PROJECT MANAGER.** The duties of the Company Project Manager include, but are not limited to:
  - 8.1. Coordination of Project schedules and the Company's resource assignment based upon the City's requirements and schedule constraints;
  - 8.2. Management of the overall Project by monitoring and reporting on the status of the Project and actual versus projected progress, and by consulting with the City's Project Manager when deviations occur and by documenting all such deviations in accordance with agreed upon change control procedures;
  - 8.3. Provision of consultation and advice to the City on matters related to Project implementation strategies, key decisions and approaches, and Project operational concerns/issues and acting as a conduit to the Company's specialist resources that may be needed to supplement the

- Company's normal implementation staff;
- 8.4. Acting as the Company's point of contact for all aspects of contract administration, including invoicing for Services, and status reporting;
  - 8.5. Facilitation of review meetings and conferences between the City and the Company's executives when scheduled or requested by the City;
  - 8.6. Communication among and between the City and the Company's staff;
  - 8.7. Promptly responding to the City Project Manager when consulted in writing or by E-mail with respect to Project deviations and necessary documentation;
  - 8.8. Identifying and providing the City with timely written notice of all issues that may threaten the Company's Services in the manner contemplated by the Contract (with "timely" meaning immediately after the Company becomes aware of them);
  - 8.9. Ensuring that adequate quality assurance procedures are in place throughout the Contract; and
  - 8.10. Meeting with other service providers working on City projects that relate to this effort as necessary to resolve problems and coordinate the Services.
- 9. CITY PROJECT MANAGER.** The duties of the City Project Manager are to (i) ensure that the Company delivers all requirements and specifications in the Contract; (ii) coordinate the City's resource assignment as required to fulfill the City's obligations pursuant to the Contract; (iii) promptly respond to the Company Project Manager when consulted in writing or by E-mail with respect to project issues; and (iv) act as the City's point of contact for all aspects of the Services including contract administration and coordination of communication with the City's staff. The City shall be allowed to change staffing for the City Project Manager position on one (1) business days' notice to the Company.
- 10. PROGRESS REPORTS.** The Company shall prepare and submit to the City bi-weekly (or at such other times as may be agreed in Exhibit B) written progress reports, which accomplish each of the following:
- 10.1. Update the project schedule set forth in Exhibit B, indicating progress for each task and Deliverable.
  - 10.2. Identify all information, personnel, equipment, facilities and resources of the City that will be required for the Company to perform the Services for the subsequent month.
  - 10.3. Identify and report the status of all tasks and Deliverables that have fallen behind schedule.
  - 10.4. Identify and summarize all risks and problems identified by the Company, which may affect the performance of the Services.
  - 10.5. For each risk and problem, identify the action and person(s) responsible for mitigating the risk and resolving the problem.
  - 10.6. For each risk and problem identified, state the impact on the project schedule.
- 11. DUTY OF COMPANY TO IDENTIFY AND REQUEST INFORMATION, PERSONNEL AND FACILITIES.** The Company shall identify and request in writing from the City in a timely manner: (i) all information reasonably required by the Company to perform each task comprising the Services, (ii) the City's personnel whose presence or assistance reasonably may be required by the Company to perform each task comprising the Services, and (iii) any other equipment, facility or resource reasonably required by the Company to perform the Services. Notwithstanding the foregoing, the Company shall not be entitled to request that the City provide information, personnel or facilities other than those that Exhibit B specifically requires the City to provide, unless the City can do so at no significant cost. The Company shall not be relieved of any failure to perform under this Contract by virtue of the City's failure to provide any information, personnel, equipment,



facilities or resources: (i) that the Company failed to identify and request in writing from the City pursuant to this Section; or (ii) that the City is not required to provide pursuant to this Contract. In the event the City fails to provide any information, personnel, facility or resource that it is required to provide under this Section, the Company shall notify the City in writing immediately in accordance with the notice provision of this Contract. Failure to do so shall constitute a waiver by Company of any claim or defense it may otherwise have based on the City's failure to provide such information, personnel, facility or resource.

**12. COMPANY PERSONNEL REMOVAL, REPLACEMENT, PROMOTION, ETC.**

12.1. The City will have the right to require the removal and replacement of any personnel of the Company or the Company's subcontractors who are assigned to provide Services to the City based on experience, qualifications, performance, conduct, compatibility, and violation of City policy or any other reasonable grounds. The addition or promotion of any personnel to key positions within the Project must be approved by the City in writing. The Company will replace any personnel that leave the Project, including but not limited to Key Personnel, with persons having at least equivalent qualifications who are approved by the City in writing. As used in this Contract, the "personnel" includes all staff provided by the Company or its subcontractors, including but not limited to Key Personnel.

**13. BACKGROUND CHECKS.** Prior to starting work under this Contract, the Company is required to conduct a background check on each Company employee assigned to work under this Contract and shall require its subcontractors (if any) to perform a background check on each of their employees assigned to work under this Contract (collectively, the "Background Checks"). Each Background Check must include: (i) the person's criminal conviction record from the states and counties where the person lives or has lived in the past seven (7) years; and (ii) a reference check.

After starting work under this Contract, the Company is required to perform a Background Check for each new Company employee assigned to work under this Contract during that year and shall require its subcontractors (if any) to do the same for each of their employees. If the Company undertakes a new project under this Contract, then prior to commencing performance of the project the Company shall perform a Background Check for each Company employee assigned to work on the project and shall require its subcontractors (if any) to do the same for each of their employees.

If a person's duties under this Contract fall within the categories described below, the Background Checks that the Company will be required to perform (and to have its subcontractors perform) shall also include the following additional investigation:

The Company must follow all State and Federal laws when conducting Background Checks, including but not limited to the Fair Credit Reporting Act requirements, and shall require its subcontractors to do the same.

The Company shall notify the City of any information discovered in the Background Checks that may be of potential concern for any reason.

The City may conduct its own background checks on principals of the Company as the City deems appropriate. By operation of the public records law, background checks conducted by the City are subject to public review upon request.

**14. ACCEPTANCE OF TASKS AND DELIVERABLES** Within a reasonable time after a particular Deliverable has been completed (or such specific time as may be set forth in Exhibit B), the Company shall submit a written notice to the City's Project Manager stating the Deliverable(s) that have been met. This notice shall include a signature page for sign-off by the City Project Manager indicating acceptance of such Deliverable(s)..

If the City Project Manager is not satisfied that the Deliverable(s) has been met, a notice of rejection (a "Rejection Notice") shall be submitted to the Company by the City Project Manager that specifies the nature and scope of the deficiencies that the City wants corrected. Upon receipt of a Rejection

Notice, the Company shall: (i) act diligently and promptly to correct all deficiencies identified in the Rejection Notice, and (ii) immediately upon completing such corrections give the City a written, dated certification that all deficiencies have been corrected (the "Certification"). In the event the Company fails to correct all deficiencies identified in the Rejection Notice and provide a Certification within thirty (30) days after receipt of the Rejection Notice, the City shall be entitled to terminate this Contract for default without further obligation to the Company and without obligation to pay for the defective work.

Upon receipt of the corrected Deliverable(s), or a Certification, whichever is later, the above-described Acceptance procedure shall recommence. The City shall not be obligated to allow the Company to recommence curative action with respect to any deficiency previously identified in a Rejection Notice, or more than once for any given Deliverable (and shall be entitled to terminate this Contract for default if the Company does not meet this time frame).

**15. NON-EXCLUSIVITY.** The Company acknowledges that it is one of several providers of Professional Services to the City and the City does not represent that it is obligated to contract with the Company for any particular project.

**16. EACH PARTY TO BEAR ITS OWN NEGOTIATION COSTS.** Each party shall bear its own cost of negotiating this Contract and developing the exhibits. The City shall not be charged for any Services or other work performed by the Company prior to the Effective Date.

**17. REPRESENTATIONS AND WARRANTIES OF COMPANY.**

**17.1. GENERAL WARRANTIES.**

17.1.1. The Services shall satisfy all requirements set forth in this Contract, including but not limited to the attached Exhibits;

17.1.2. The Company has taken and will continue to take sufficient precautions to ensure that it will not be prevented from performing all or part of its obligations under this Contract by virtue of interruptions in the computer systems used by the Company;

17.1.3. All Services performed by the Company and/or its subcontractors pursuant to this Contract shall meet the highest industry standards and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;

17.1.4. Neither the Services nor any Deliverables provided by the Company under this Contract will infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party;

17.1.5. The Company and each Company employee provided by the Company to the City shall have the qualifications, skills and experience necessary to perform the Services described or referenced in Exhibit B;

17.1.6. All information provided by the Company about each Company employee is accurate; and

17.1.7. Each Company employee is an employee of the Company, and the Company shall make all payments and withholdings required for by law for the Company for such employees.

**17.2. ADDITIONAL WARRANTIES.** The Company further represents and warrants that:

17.2.1. It is a legal entity and if incorporated, duly incorporated, validly existing and in good standing under the laws of the state of its incorporation or licensing and is qualified to do business in North Carolina;

17.2.2. It has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Contract;

- 17.2.3. The execution, delivery, and performance of this Contract have been duly authorized by the Company;
- 17.2.4. No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Contract;
- 17.2.5. In connection with its obligations under this Contract, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses; and
- 17.2.6. The performance of this Contract by the Company and each Company employee provided by the Company will not violate any contracts or agreements with third parties or any third party rights (including but not limited to non-compete agreements, non-disclosure agreements, patents, trademarks or intellectual property rights).

**18. OTHER OBLIGATIONS OF THE COMPANY.**

- 18.1. **WORK ON CITY'S PREMISES.** The Company and all its employees will, whenever on the City's premises, obey all instructions and City policies that are provided with respect to performing Services on the City's premises.
- 18.2. **RESPECTFUL AND COURTEOUS BEHAVIOR.** The Company shall assure that its employees interact with City employees and the public in a courteous, helpful and impartial manner. All employees of the Company in both field and office shall refrain from belligerent behavior and/or profanity. Correction of any such behavior and language shall be the responsibility of the Company.
- 18.3. **REPAIR OR REPLACEMENT OF DAMAGED EQUIPMENT OR FACILITIES.** In the event that the Company causes damage to the City's equipment or facilities, the Company shall, at its own expense, promptly repair or replace such damaged items to restore them to the same level of functionality that they possessed prior to the Company's action.
- 18.4. **REGENERATION OF LOST OR DAMAGED DATA.** With respect to any data that the Company or any Company employees have negligently lost or negligently damaged, the Company shall, at its own expense, promptly replace or regenerate such data from the City's machine-readable supporting material, or obtain, at the Company's own expense, a new machine-readable copy of lost or damaged data from the City's data sources.
- 18.5. **NC E-VERIFY REQUIREMENT.** The Company shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes and shall require each of its subcontractors to do so as well.
- 18.6. **NC PROHIBITION ON CONTRACTS WITH COMPANIES THAT INVEST IN IRAN OR BOYCOTT ISRAEL.** Company certifies that: (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 147-86.58 (collectively, the "Treasurer's IDA List"); (ii) it has not been designated by the NC State Treasurer pursuant to N.C.G.S. 147-86.81 as a company engaged in the boycott of Israel (such designation being referred to as the "Treasurer's IB List"); and (iii) it will not take any action causing it to appear on the Treasurer's IDA List or the Treasurer's IB List during the term of this Contract. In signing this Contract Company further agrees, as an independent obligation, separate and apart from this Contract, to reimburse the City for any and all damages, costs and attorneys' fees incurred by the City in connection with any claim that this Contract or any part thereof is void due to Company appearing on the Treasurer's IDA List or the Treasurer's IB List at any time before or during the term of this Contract.

**19. REMEDIES.**

- 19.1. **RIGHT TO COVER.** If the Company fails to meet any completion date or resolution time set forth in this Contract (including the Exhibits) or the Project Plan, the City may take any of the following actions with or without terminating this Contract, and in addition to and without limiting any other remedies it may have:
- a. Employ such means as it may deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and the Company is again able to resume performance under this Contract; and
  - b. Deduct any and all expenses incurred by the City in obtaining or performing the Services from any money then due or to become due the Company and, should the City's cost of obtaining or performing the services exceed the amount due the Company, collect the amount due from the Company.
- 19.2. **RIGHT TO WITHHOLD PAYMENT.** If the Company breaches any provision of this Contract, the City shall have a right to withhold all payments due to the Company until such breach has been fully cured.
- 19.3. **SPECIFIC PERFORMANCE AND INJUNCTIVE RELIEF.** The Company agrees that monetary damages are not an adequate remedy for the Company's failure to provide the Services or Deliverables as required by this Contract, nor could monetary damages be the equivalent of the performance of such obligation. Accordingly, the Company hereby consents to an order granting specific performance of such obligations of the Company in a court of competent jurisdiction within the State of North Carolina. The Company further consents to the City obtaining injunctive relief (including a temporary restraining order) to assure performance in the event the Company breaches this Contract.
- 19.4. **SETOFF.** Each party shall be entitled to setoff and deduct from any amounts owed to the other party pursuant to this Contract all damages and expenses incurred or reasonably anticipated as a result of the other party's breach of this Contract.
- 19.5. **OTHER REMEDIES.** Upon breach of this Contract, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

**20. TERM AND TERMINATION OF CONTRACT.**

- 20.1. **TERM.** This Contract shall commence on the effective date and shall continue in effect for one (1) years with the City having the unilateral right to renew for one (1) consecutive one (1) year terms.
- 20.2. **TERMINATION FOR CONVENIENCE.** The City may terminate this Contract at any time without cause by giving thirty (30) days prior written notice to the Company. As soon as practicable after receipt of a written notice of termination without cause, the Company shall submit a statement to the City showing in detail the Services performed under this Contract through the date of termination. The foregoing payment obligation is contingent upon: (i) the Company having fully complied with Section 20.8; and (ii) the Company having provided the City with written documentation reasonably adequate to verify the number of hours of Services rendered through the termination date and the percentage of completion of each task.
- 20.3. **TERMINATION FOR DEFAULT BY EITHER PARTY.** By giving written notice to the other party, either party may terminate this Contract upon the occurrence of one or more of the following events:
- a. The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Contract, provided that, unless otherwise stated in this Contract, such failure or violation shall not be cause for termination if both of the

following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party; or

- b. The other party attempts to assign, terminate or cancel this Contract contrary to the terms hereof; or
- c. The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under the Contract shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.

Any notice of default shall identify this Section of this Contract and shall state the party's intent to terminate this Contract if the default is not cured within the specified period.

Notwithstanding anything contained herein to the contrary, upon termination of this Contract by the Company for default, the Company shall continue to perform the Services required by this Contract for the lesser of: (i) six (6) months after the date the City receives the Company's written termination notice; or (ii) the date on which the City completes its transition to a new service provider.

20.4. **ADDITIONAL GROUNDS FOR DEFAULT TERMINATION BY THE CITY.** By giving written notice to the Company, the City may also terminate this Contract upon the occurrence of one or more of the following events (which shall each constitute separate grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):

- a. Failure of the Company to complete a particular task by the completion date set forth in this Contract;
- b. The Company makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Contract, the Company's Proposal, or any covenant, agreement, obligation, term or condition contained in this Contract; or
- c. The Company takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Contract, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Contract, or failure to provide the proof of insurance as required by this Contract.

20.5. **NO SUSPENSION.** In the event that the City disputes in good faith an allegation of default by the Company, notwithstanding anything to the contrary in this Contract, the Company agrees that it will not terminate this Contract or suspend or limit the Services or any warranties or repossess, disable or render unusable any software supplied by the Company, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.

20.6. **CANCELLATION OF ORDERS AND SUBCONTRACTS.** In the event this Contract is terminated by the City for any reason prior to the end of the term, the Company shall, upon termination, immediately discontinue all service in connection with this Contract and promptly cancel all existing orders and subcontracts, which are chargeable to this Contract. As soon as practicable after receipt of notice of termination, the Company shall submit a statement to the City showing in detail the Services performed under this Contract to the date of termination.

- 20.7. **AUTHORITY TO TERMINATE.** The following persons are authorized to terminate this Contract on behalf of the City: (i) the City Manager, any Assistant City Manager, or any designee of the City Manager; or (ii) the Department Director of the City Department responsible for administering this Contract.
- 20.8. **OBLIGATIONS UPON EXPIRATION OR TERMINATION.** Upon expiration or termination of this Contract, the Company shall promptly return to the City (i) all computer programs, files, documentation, media, related material and any other material and equipment that are owned by the City; (ii) all Deliverables that have been completed or that are in process as of the date of termination; and (iii) a written statement describing in detail all work performed with respect to Deliverables which are in process as of the date of termination. The expiration or termination of this Contract shall not relieve either party of its obligations regarding “Confidential Information,” as defined in this Contract.
- 20.9. **NO EFFECT ON TAXES, FEES, CHARGES OR REPORTS.** Any termination of this Contract shall not relieve the Company of the obligation to pay any fees, taxes or other charges then due to the City, nor relieve the Company of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve the Company from any claim for damages previously accrued or then accruing against the Company.
- 20.10. **OTHER REMEDIES.** The remedies set forth in this Section and Section 19 shall be deemed cumulative and not exclusive, and may be exercised successively or concurrently, in addition to any other remedies available under this Contract or at law or in equity.
- 21. TRANSITION SERVICES UPON TERMINATION.** Upon termination or expiration of this Contract, the Company shall cooperate with the City to assist with the orderly transfer of the Services provided by the Company to the City. Prior to termination or expiration of this Contract, the City may require the Company to perform and, if so required, the Company shall perform certain transition services necessary to shift the Services of the Company to another provider or to the City itself as described below (the “Transition Services”). Transition Services may include but shall not be limited to the following:
- **Working with the City to jointly develop a mutually agreed upon Transition Services Plan to facilitate the termination of the Services;**
  - **Notifying all affected service providers and subcontractors of the Company;**
  - **Performing the Transition Services;**
  - **Answering questions regarding the Services on an as-needed basis; and**
  - **Providing such other reasonable services needed to effectuate an orderly transition to a new service provider.**
- 22. CHANGES.** In the event changes to the Services (collectively “Changes”), 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 that expressly references and is attached to this Contract (a “Change Statement”). The Change Statement shall set forth in detail: (i) the Change requested, including all modifications of the duties of the parties; (ii) the reason for the proposed Change; and (iii) a detailed analysis of the impact of the Change on the results of the Services and time for completion of the Services, including the impact on all Milestones and delivery dates and any associated price.

In the event either party desires a Change, the Project Manager for such party shall submit to the other party’s Project Manager a proposed Change Statement. If the receiving party does not accept the Change Statement in writing within ten (10) days, the receiving party shall be deemed to have rejected the Change Statement. If the parties cannot reach agreement on a proposed Change, the

Company shall nevertheless continue to render performance under this Contract in accordance with its (unchanged) terms and conditions.

Changes that involve or increase in the amounts payable by the City may require execution by the City Manager or a designee depending on the amount. Some increases may also require approval by Charlotte City Council.

**23. CITY OWNERSHIP OF WORK PRODUCT.**

- 23.1. The parties agree that the City shall have exclusive ownership of all reports, documents, designs, ideas, materials, reports, concepts, plans, creative works, and other work product developed for or provided to the City in connection with this Contract, and all patent rights, copyrights, trade secret rights and other intellectual property rights relating thereto (collectively the “Intellectual Property”). The Company hereby assigns and transfers all rights in the Intellectual Property to the City. The Company further agrees to execute and deliver such assignments and other documents as the City may later require to perfect, maintain and enforce the City’s rights as sole owner of the Intellectual Property, including all rights under patent and copyright law. The Company hereby appoints the City as attorney in fact to execute all such assignments and instruments and agree that its appointment of the City as an attorney in fact is coupled with an interest and is irrevocable.
- 23.2. The City grants the Company a royalty-free, non-exclusive license to use and copy the Intellectual Property to the extent necessary to perform this Contract. The Company shall not be entitled to use the Intellectual Property for other purposes without the City’s prior written consent and shall treat the Intellectual Property as “Confidential Information” pursuant to Section 27 of the Contract.
- 23.3. The Company will treat as Confidential Information under the Confidentiality and Non-Disclosure Contract all data in connection with the Contract. City data processed by the Company shall remain the exclusive property of the City. The Company will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the City in any manner except that contemplated by the Contract.

**24. RELATIONSHIP OF THE PARTIES.** The relationship of the parties established by this Contract is solely that of independent contractors, and nothing contained in this Contract shall be construed to (i) give any party the power to direct or control the day-to-day administrative activities of the other; or (ii) constitute such parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking; or (iii) make either party an agent of the other, or any Company employee an agent or employee of the City, for any purpose whatsoever. Neither party nor its agents or employees is the representative of the other for any purpose, and neither has power or authority to act as agent or employee to represent, to act for, bind, or otherwise create or assume any obligation on behalf of the other.

**25. INDEMNIFICATION.** To the fullest extent permitted by law, the Company shall indemnify, defend and hold harmless each of the “Indemnitees” (as defined below) from and against any and all “Charges” (as defined below) paid or incurred as a result of any claims, demands, lawsuits, actions, or proceedings: (i) alleging violation, misappropriation or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to the Services or any products or deliverables provided to the City pursuant to this Contract (“Infringement Claims”); (ii) seeking payment for labor or materials purchased or supplied by the Company or its subcontractors in connection with this Contract; (iii) arising from the Company’s failure to perform its obligations under this Contract, or from any act of negligence or willful misconduct by the Company or any of its agents, employees or subcontractors relating to this Contract, including but not limited to any liability

caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible; or (iv) arising from any claim that the Company or an employee or subcontractor of the Company is an employee of the City, including but not limited to claims relating to worker's compensation, failure to withhold taxes and the like. For purposes of this Section: (i) the term "Indemnitees" means the City, any federal agency that funds all or part of this Contract, and each of the City's and such federal agency's officers, officials, employees, agents and independent contractors (excluding the Company); and (ii) the term "Charges" means any and all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, royalties, interest charges and other liabilities (including settlement amounts).

If an Infringement Claim occurs, the Company shall either: (i) procure for the City the right to continue using the affected product or service; or (ii) repair or replace the infringing product or service so that it becomes non-infringing, provided that the performance of the overall product(s) and service(s) provided to the City shall not be adversely affected by such replacement or modification. If the Company is unable to comply with the preceding sentence within thirty (30) days after the City is directed to cease use of a product or service, the Company shall promptly refund to the City all amounts paid under this Contract.

This Section 25 shall remain in force despite termination of this Contract (whether by expiration of the term or otherwise).

**26. SUBCONTRACTING.** Should the Company choose to subcontract, the Company shall be the prime contractor and shall remain fully responsible for performance of all obligations that it is required to perform under the Contract. Any subcontract entered into by Company shall name the City as a third-party beneficiary.

**27. CONFIDENTIAL INFORMATION.**

27.1. **CONFIDENTIAL INFORMATION.** Confidential Information includes any information, not generally known in the relevant trade or industry, obtained from the City or its vendors or licensors or which falls within any of the following general categories:

27.1.1. *Trade secrets.* For purposes of this Contract, trade secrets consist of *information* of the City or any of its suppliers, contractors or licensors: (a) that derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.

27.1.2. *Information of the City or its suppliers, contractors or licensors marked "Confidential" or "Proprietary."*

27.1.3. *Information relating to criminal investigations conducted by the City, and records of criminal intelligence information compiled by the City.*

27.1.4. *Information contained in the City's personnel files, as defined by N.C. Gen. Stat. 160A-168.* This consists of all information gathered and/or maintained by the City about employees, except for that information which is a matter of public record under North Carolina law.

27.1.5. *Citizen or employee social security numbers collected by the City.*

27.1.6. *Computer security information of the City,* including all security features of electronic data processing, or information technology systems, telecommunications networks and electronic security systems. This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software and codes.



- 27.1.7. *Local tax records of the City that contains information about a taxpayer's income or receipts.*
- 27.1.8. *Any attorney / City privileged information disclosed by either party.*
- 27.1.9. *Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.*
- 27.1.10. *The name or address of individual homeowners who, based on their income, have received a rehabilitation grant to repair their home.*
- 27.1.11. *Building plans of city-owned buildings or structures, as well as any detailed security plans.*
- 27.1.12. *Billing information of customers compiled and maintained in connection with the City providing utility services.*
- 27.1.13. *Other information that is exempt from disclosure under the North Carolina public records laws.*

Categories stated in Sections 27.1.3 through 27.1.13 above constitute "Highly Restricted Information," as well as Confidential Information. The Company acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Contract, and agrees that: (i) all provisions in this Contract applicable to Confidential Information shall apply to Highly Restricted Information; and (ii) the Company will also comply with any more restrictive instructions or written policies that may be provided by the City from time to time to protect the confidentiality of Highly Restricted Information.

The parties acknowledge that in addition to information disclosed or revealed after the date of this Contract, the Confidential Information shall include information disclosed or revealed within one (1) year prior to the date of this Contract.

- 27.2. **RESTRICTIONS.** The Company shall keep the Confidential Information in the strictest confidence, in the manner set forth below:
  - 27.2.1. It shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information.
  - 27.2.2. It shall not, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information of the other to any third party or to any individual employed by the Company, other than an employee, agent, subcontractor or vendor of the City or Company who: (i) has a need to know such Confidential Information, and (ii) has executed a confidentiality agreement incorporating substantially the form of this Section of the Contract and containing all protections set forth herein.
  - 27.2.3. It shall not use any Confidential Information of the City for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written agreements between the parties hereto or is for the purpose for which such Confidential Information is being disclosed.
  - 27.2.4. It shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information of the other.
  - 27.2.5. The Company shall use its best efforts to enforce the proprietary rights of the City and the City's vendors, licensors and suppliers (including but not limited to seeking injunctive relief where reasonably necessary) against any person who has possession of or discloses Confidential Information in a manner not permitted by this Contract.
  - 27.2.6. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, the Company shall assert this Contract as

a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.

- 27.2.7. All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to the City or destroyed upon satisfaction of the purpose of the disclosure of such information.
- 27.3. EXCEPTIONS. The parties agree that the Company shall have no obligation with respect to any Confidential Information which the Company can establish:
- 27.3.1. Was already known to the Company prior to being disclosed by the disclosing party;
- 27.3.2. Was or becomes publicly known through no wrongful act of the Company;
- 27.3.3. Was rightfully obtained by the Company from a third party without similar restriction and without breach hereof;
- 27.3.4. Was used or disclosed by the Company with the prior written authorization of the City;
- 27.3.5. Was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, the Company shall first give to the City notice of such requirement or request;
- 27.3.6. Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the Company shall take use its best efforts to obtain an agreement or protective order providing that, to the greatest possible extent possible, this Contract will be applicable to all disclosures under the court order or subpoena.
- 27.4. UNINTENTIONAL DISCLOSURE. Notwithstanding anything contained herein in to the contrary, in the event that the Company is unintentionally exposed to any Confidential Information of the City, the Company agrees that it shall not, directly or indirectly, disclose, divulge, reveal, report or transfer such Confidential Information to any person or entity or use such Confidential Information for any purpose whatsoever.
- 27.5. REMEDIES. The Company acknowledges that the unauthorized disclosure of the Confidential Information of the City will diminish the value of the proprietary interests therein. Accordingly, it is agreed that if the Company breaches its obligations hereunder, the City shall be entitled to equitable relief to protect its interests, including but not limited to injunctive relief, as well as monetary damages.

## **28. INSURANCE.**

- 28.1. TYPES OF INSURANCE.[**CONFIRM LANGUAGE WITH CHRISLEE GIBSON FOR ALL CITY PROJECTS**] The Company shall obtain and maintain during the life of this Contract, with an insurance company rated not less than "A" by A.M. Best, authorized to do business in the State of North Carolina, acceptable to the Charlotte-Mecklenburg, Risk Management Division the following insurance:
- 28.1.1. Automobile Liability - Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit - bodily injury and property damage.
- 28.1.2. Commercial General Liability - Bodily injury and property damage liability as shall protect the Company and any subcontractor performing Services under this Contract,

from claims of bodily injury or property damage which arise from performance of this Contract, whether such operations are performed by the Company, any subcontractor, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate, or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, operations, personal and advertising injury, and contractual liability, assumed under the indemnity provision of this Contract.

- 28.1.3. Workers' Compensation and Employers Liability - meeting the statutory requirements of the State of North Carolina, \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit.

The Company shall not commence any Services in connection with this Contract until it has obtained all of the foregoing types of insurance and such insurance has been approved by the City. The Company shall not allow any subcontractor to commence Services on its subcontract until all similar insurance required of the subcontractor has been obtained and approved.

**28.2. OTHER INSURANCE REQUIREMENTS.**

- 28.2.1. The City shall be exempt from, and in no way liable for any sums of money, which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Company and/or subcontractor providing such insurance.
- 28.2.2. The City of Charlotte shall be named as an additional insured for operations or services rendered under the general liability coverage. The Company's insurance shall be primary of any self-funding and/or insurance otherwise carried by the City for all loss or damages arising from the Company's operations under this agreement.
- 28.2.3. Certificates of such insurance will be furnished to the City and shall contain the provision that the City be given thirty (30) days' written notice of any intent to amend coverage reductions or material changes or terminate by either the insured or the insuring Company.
- 28.2.4. Should any or all of the required insurance coverage be self-funded/self-insured, a copy of the Certificate of Self-Insurance or other documentation from the North Carolina Department of Insurance shall be furnished to the City.
- 28.2.5. If any part of the Services under this Contract is sublet, the subcontractor shall be required to meet all insurance requirements as listed above. However, this will in no way relieve the Company from meeting all insurance requirements or otherwise being responsible for the subcontractor.

- 29. COMMERCIAL NON-DISCRIMINATION.** As a condition of entering into this Contract, the Company represents and warrants that it will fully comply with the City's Commercial Non-Discrimination Policy, as described in Section 2, Article V of the Charlotte City Code, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the Company shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, age or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors or suppliers in connection with a City contract or contract solicitation process, nor shall the Company retaliate against any person or entity for reporting instances of such discrimination. The Company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on City contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace

## Section 7

### Sample Contract

discrimination that has occurred or is occurring in the marketplace. The Company understands and agrees that a violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of the Company from participating in City contracts or other sanctions.

As a condition of entering into this Contract, the Company agrees to: (i) promptly provide to the City in a format specified by the City all information and documentation that may be requested by the City from time to time regarding the solicitation, selection, treatment and payment of subcontractors in connection with this Contract; and (ii) if requested, provide to the City within sixty days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the Company has used on City contracts in the past five years, including the total dollar amount paid by the Company on each subcontract or supply contract. The Company further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Non-Discrimination Policy, to provide any documents relevant to such investigation that are requested by the City, and to be bound by the award of any arbitration conducted under such Policy.

The Company agrees to provide to the City from time to time on the City's request, payment affidavits detailing the amounts paid by the Company to subcontractors and suppliers in connection with this Contract within a certain period of time. Such affidavits shall be in the format specified by the City from time to time.

The Company understands and agrees that violation of this Commercial Non-Discrimination provision shall be considered a material breach of this Contract and may result in contract termination, disqualification of the Company from participating in City contracts and other sanctions.

- 29. NOTICES.** Any notice, consent or other communication required or contemplated by this Contract shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by telefax to the intended recipient at the address set forth below. Notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by telefax or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier. Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.

Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment, or waiver of any provision of this Contract shall be sent to:

<b>For the Company:</b>	<b>For the City:</b>
	Kay Elmore
	City of Charlotte
	City Procurement
	600 East Fourth Street, 9 <sup>th</sup> Floor
	Charlotte, NC 28202
Phone:	Phone: 704-336-2524
Fax:	Fax: 704-632-8252
E-mail:	E-mail: <a href="mailto:kelfmore@charlottenc.gov">kelfmore@charlottenc.gov</a>

<b>With Copy To:</b>	<b>With Copy To:</b>
	Adam Jones
	City of Charlotte
	City Attorney's Office
	600 East Fourth Street, 15 <sup>th</sup> Floor
	Charlotte, NC 28202
Phone:	Phone: 704-336-3012

E-mail:	E-mail: <a href="mailto:amjones@charlottenc.gov">amjones@charlottenc.gov</a>
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All other notices shall be sent to the other party's Project Manager at the most recent address provided in writing by the other party.

**31. MISCELLANEOUS.**

- 31.1. **ENTIRE AGREEMENT.** This Contract is the entire agreement between the parties with respect to its subject matter, and there are no other representations, understandings, or agreements between the parties with respect to such subject matter. This Contract supersedes all prior agreements, negotiations, representations and proposals, written or oral.
- 31.2. **AMENDMENT.** No amendment or change to this Contract shall be valid unless in writing and signed by both parties to this Contract.
- 31.3. **GOVERNING LAW AND JURISDICTION.** The parties acknowledge that this Contract is made and entered into in Charlotte, North Carolina, and will be performed in Charlotte, North Carolina. The parties further acknowledge and agree that North Carolina law shall govern all the rights, obligations, duties and liabilities of the parties under this Contract, and that North Carolina law shall govern interpretation and enforcement of this Contract and any other matters relating to this Contract (all without regard to North Carolina conflicts of law principles). The parties further agree that any and all legal actions or proceedings relating to this Contract shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By the execution of this Contract, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections, which they may have with respect to venue in any court sitting in Mecklenburg County, North Carolina.
- 31.4. **BINDING NATURE AND ASSIGNMENT.** This Contract shall bind the parties and their successors and permitted assigns. Neither party may assign any of the rights and obligations thereunder without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void.
- 31.5. **CITY NOT LIABLE FOR DELAYS.** It is agreed that the City shall not be liable to the Company, its agents or representatives or any subcontractor for or on account of any stoppages or delay in the performance of any obligations of the City or any other party hereunder caused by injunction or other legal or equitable proceedings or on account of any other delay for any cause beyond the City's reasonable control. The City shall not be liable under any circumstances for lost profits or any other consequential, special or indirect damages.
- 31.6. **FORCE MAJEURE.**
- 31.6.1. The Company shall be not liable for any failure or delay in the performance of its obligations pursuant to this Contract (and such failure or delay shall not be deemed a default of this Contract or grounds for termination hereunder if all of the following conditions are satisfied: (i) if such failure or delay: (a) could not have been prevented by reasonable precaution, and (b) cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and (ii) if and to the extent such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, or court order.
- 31.6.2. Upon the occurrence of an event which satisfies all of the conditions set forth above (a "Force Majeure Event") the Company shall be excused from any further performance of those of its obligations pursuant to this Contract affected by the Force Majeure Event for as long as (i) such Force Majeure Event continues; and (ii) the Company continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

- 31.6.3. Upon the occurrence of a Force Majeure Event, the Company shall immediately notify the City by telephone (to be confirmed by written notice within two (2) days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents the Company from performing its obligations for more than five (5) days, the City may terminate this Contract.
- 31.6.4. Strikes, slow-downs, walkouts, lockouts, and individual disputes are not excused under this provision.
- 31.7. SEVERABILITY. The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Contract shall not affect the validity of the remaining portion of the Contract so long as the material purposes of the Contract can be determined and effectuated. If any provision of this Contract is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Contract shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.
- 31.8. NO PUBLICITY. No advertising, sales promotion or other materials of the Company or its agents or representations may identify or reference this Contract or the City in any manner absent the written consent of the City.
- 31.9. APPROVALS. All approvals or consents required under this Contract must be in writing.
- 31.10. WAIVER. No delay or omission by either party to exercise any right or power it has under this Contract shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this Contract shall not be constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Contract shall be effective unless in writing and signed by the party waiving the rights.
- 31.11. SURVIVAL OF PROVISIONS. The following sections of this Contract shall survive the termination hereof:
- Section 4.4 "Employment Taxes and Employee Benefits"
  - Section 17 "Representations and Warranties of Company"
  - Section 20 "Term and Termination of Contract"
  - Section 23 "City Ownership of Work Product"
  - Section 25 "Indemnification"
  - Section 27 "Confidential Information"
  - Section 28 "Insurance"
  - Section 30 "Notices and Principal Contacts"
  - Section 31 "Miscellaneous"
- 31.12. CHANGE IN CONTROL. In the event of a change in "Control" of the Company (as defined below), the City shall have the option of terminating this Contract by written notice to the Company. The Company shall notify the City within ten (10) days of the occurrence of a change in control. As used in this Contract, the term "Control" shall mean the possession, direct or indirect, of either (i) the ownership of or ability to direct the voting of, as the case may be fifty-one percent (51%) or more of the equity interests, value or voting power in the Company or (ii) the power to direct or cause the direction of the management and policies of the Company whether through the ownership of voting securities, by contract or otherwise.
- 31.13. DRAFTER'S PROTECTION. Each of the Parties has agreed to the use of the particular language of the provisions of this Contract and any questions of doubtful interpretation shall not be resolved by any rule or interpretation against the drafters, but rather in accordance with the fair meaning thereof, having due regard to the benefits and rights intended to be conferred

- upon the Parties hereto and the limitations and restrictions upon such rights and benefits intended to be provided.
- 31.14. **FAMILIARITY AND COMPLIANCE WITH LAWS AND ORDINANCES.** The Company agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Services. The Company further agrees that it will at all times during the term of this Contract be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to, workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all OSHA regulations applicable to the Services.
- 31.15. **CONFLICT OF INTEREST.** The Company covenants that its officers, employees and shareholders have no interest and shall not acquire any interest, direct or indirect that would conflict in any manner or degree with the performance of Services required to be performed under the Contract.
- 31.16. **NO BRIBERY.** The Company certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the foregoing has bribed or attempted to bribe an officer or employee of the City in connection with the Contract.
- 31.17. **HARASSMENT.** The Company agrees to make itself aware of and comply with the City's Harassment Policy. The City will not tolerate or condone acts of harassment based upon race, sex, religion, national origin, color, age, or disability. Violators of this policy will be subject to termination.
- 31.18. **TRAVEL UPGRADES.** The City has no obligation to reimburse the Company for any travel or other expenses incurred in connection with this Contract.
- 31.19. **TAXES.** Except as specifically stated elsewhere in this Contract, the Company shall collect all applicable federal, state and local taxes which may be chargeable against the performance of the Services and remit such taxes to the relevant taxing authority. The Company consents to and authorizes the City to collect any and all delinquent taxes and related interest, fines, or penalties of the Company by reducing any payment, whether monthly, quarterly, semi-annually, annually, or otherwise, made by the City to the Company pursuant to this Contract for an amount equal to any and all taxes and related interest, fines, or penalties owed by the Company to the City. The Company hereby waives any requirements for notice under North Carolina law for each and every instance that the City collects delinquent taxes pursuant to this paragraph. This paragraph shall not be construed to prevent the Company from filing an appeal of the assessment of the delinquent tax if such appeal is within the time prescribed by law.
- 31.20. **COUNTERPARTS.** This Contract may be executed in any number of counterparts, all of which taken together shall constitute one single agreement between the parties.

*[Signature Page Follows]*

## Section 7

### Sample Contract

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**IN WITNESS WHEREOF**, and in acknowledgement that the parties hereto have read and understood each and every provision hereof, the parties have caused this Contract to be executed as of the date first written above.

**[INSERT COMPANY NAME]**

**BY:** \_\_\_\_\_  
(signature)

**PRINT NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**CITY OF CHARLOTTE:  
CITY MANAGER'S OFFICE**

**BY:** \_\_\_\_\_  
(signature)

**PRINT NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**This instrument has been pre-audited in the manner required by Local Government Budget and Fiscal Control Act.**

**BY:** \_\_\_\_\_  
(signature)

**DATE:** \_\_\_\_\_



**EXHIBIT A – PRICING SHEET**

**INTENTIONALLY LEFT BLANK FOR SAMPLE CONTRACT**

**EXHIBIT B – SCOPE OF SERVICES**

**INTENTIONALLY LEFT BLANK FOR SAMPLE CONTRACT**

**Section 7**  
**Sample Contract**

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**EXHIBIT C –**  
**[intentionally omitted]**

## Exhibit D-Sample Confidentiality and Non-Disclosure Agreement

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### SAMPLE CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality and Non-Disclosure Agreement (the "Confidentiality Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2020 (the "Effective Date"), by and between the City of Charlotte, a North Carolina municipal corporation (the "City") and \_\_\_\_\_ a company doing business in North Carolina, (the "Company").

#### RECITALS

**WHEREAS**, the City and Company are contemplating or have entered into certain business relationships; and

**WHEREAS**, the Company has obtained or may need to obtain confidential information of the City or its licensors, contractors or suppliers in connection with discussions of such relationships; and

**WHEREAS**, the City and Company desire to stipulate and agree that any disclosure of confidential information in connection with such relationships has occurred or will occur under circumstances and conditions that will protect and preserve the confidentiality of the information.

**NOW, THEREFORE**, in consideration of the pursuit of current discussions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and representations contained herein, the parties agree as follows:

#### AGREEMENT

1. **DEFINITIONS.** As used in this Confidentiality Agreement, the following terms shall have the meanings set forth below:

1.1. *Confidential Information.* The term "Confidential Information" shall mean any information, in any medium, whether written, oral or electronic, not generally known in the relevant trade or industry, obtained from the City or any of its suppliers, contractors or licensors which falls within any of the following general categories:

1.1.1. *Trade secrets.* For purposes of this Confidentiality Agreement, trade secrets consist of information of the City or the Company or any of its suppliers, contractors or licensors: (a) that derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.

1.1.2. *Information of the City or its suppliers, contractors or licensors marked "Confidential" or "Proprietary."*

1.1.3. *Information relating to criminal investigations conducted by the City, and records of criminal intelligence information compiled by the City.*

1.1.4. *Information contained in the City's personnel files, as defined by N.C. Gen. Stat. 160A-168.* This consists of all information gathered by the City about employees, except for that information which is a matter of public record under North Carolina law.

1.1.5. *Citizen or employee social security numbers collected by the City.*

1.1.6. *Computer security information of the City*, including all security features of electronic data processing, or information technology systems, telecommunications networks and electronic security systems. This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software and codes.

**Exhibit D-Sample Confidentiality and Non-Disclosure Agreement**

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- 1.1.7. *Local tax records of the City that contains information about a taxpayer's income or receipts.*
- 1.1.8. *Any attorney / client privileged information disclosed by either party.*
- 1.1.9. *Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.*
- 1.1.10. *The name or address of individual homeowners who, based on their income, have received a rehabilitation grant to repair their home.*

Categories 1.1.3 through 1.1.10 above constitute "Highly Restricted Information," as well as Confidential Information. The Company acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Confidentiality Agreement, and agrees that: (a) all provisions in this Confidentiality Agreement applicable to Confidential Information shall apply to Highly Restricted Information; and (b) the Company will also comply with any more restrictive instructions or written policies that may be provided by the City from time to time to protect the confidentiality of Highly Restricted Information.

The parties acknowledge that in addition to information disclosed or revealed after the date of this Confidentiality Agreement, the Confidential Information shall include information disclosed or revealed within one year prior to the date of this Confidentiality Agreement.

- 2. **RESTRICTIONS.** Company shall keep the Confidential Information in the strictest confidence, in the manner set forth below:
  - 2.1. Company shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information, except as authorized by the City in writing.
  - 2.2. Company shall not, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information to any third party, other than an agent, subcontractor or vendor of the City or Company having a need to know such Confidential Information for purpose of performing work contemplated by written agreements between the City and the Company, and who has executed a confidentiality agreement incorporating substantially the form of this the Confidentiality Agreement. Company shall not directly or indirectly, disclose, divulge, reveal, report or transfer Highly Restricted to any third party without the City's prior written consent.
  - 2.3. Company shall not use any Confidential Information for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Confidentiality Agreement or other written agreements between the parties hereto or is for the purpose for which such Confidential Information is being disclosed.
  - 2.4. Company shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information.
  - 2.5. Company shall use reasonable efforts (including but not limited to seeking injunctive relief where reasonably necessary) to prohibit its employees, vendors, agents and subcontractors from using or disclosing the Confidential Information in a manner not permitted by this Confidentiality Agreement.
  - 2.6. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, Company shall assert this Confidentiality Agreement as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.

**Exhibit D-Sample Confidentiality and Non-Disclosure Agreement**

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- 2.7. All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to the City or destroyed upon satisfaction of the purpose of the disclosure of such information.
- 2.8. Company shall restrict employee access to the Confidential Information to those employees having a need to know for purposes of their jobs.
- 2.9. Company shall take reasonable measures to prevent the use or disclosure of Confidential Information by its employees in a manner not permitted by this Confidentiality Agreement. The Company shall have each of its employees who will have access to the Confidential Information sign a confidentiality agreement which provides the City and its vendors, licensors, subcontractors, employees and taxpayers the same level of protection as provided by this Confidentiality Agreement.
3. *EXCEPTIONS.* The City agrees that Company shall have no obligation with respect to any Confidential Information that the Company can establish:
- 3.1. Was already known to Company prior to being disclosed by the City;
- 3.2. Was or becomes publicly known through no wrongful act of Company;
- 3.3. Was rightfully obtained by Company from a third party without similar restriction and without breach hereof;
- 3.4. Was used or disclosed by Company with the prior written authorization of the City;
- 3.5. Was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, Company shall first give to the other party notice of such requirement or request;
- 3.6. Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the Company shall take reasonable steps to obtain an agreement or protective order providing that this Confidentiality Agreement will be applicable to all disclosures under the court order or subpoena.
4. *REMEDIES.* Company acknowledges that the unauthorized disclosure of the Confidential Information will diminish the value of the proprietary interests therein. Accordingly, it is agreed that if Company breaches its obligations hereunder, the City shall be entitled to equitable relief to protect its interests, including but not limited to injunctive relief, as well as monetary damages.
5. *NOTICES.* Any notice, consent or other communication required or contemplated by this Confidentiality Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by telefax to the intended recipient at the address set forth below:

For the Company:

PHONE:

FAX:

With Copy To

PHONE:

FAX:

For the City:

PHONE:

FAX:

E-MAIL:

With Copy To

PHONE:

FAX:

E-MAIL:

**Exhibit D-Sample Confidentiality and Non-Disclosure Agreement**

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Notice shall be effective upon the date of receipt by the intended recipient provided that any notice, which is sent by telefax or electronic mail, shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier. Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.

**6. MISCELLANEOUS.**

6.1 *AMENDMENT.* No amendment or change to this Confidentiality Agreement shall be valid unless in writing and signed by both parties to this Confidentiality Agreement.

6.2 *GOVERNING LAW AND JURISDICTION.* The parties acknowledge and agree that this Contract is made and entered into in Charlotte, North Carolina, and will be performed in Charlotte, North Carolina. The parties further acknowledge and agree that North Carolina law shall govern all the rights, obligations, duties and liabilities of the parties under this Contract, and that North Carolina law shall govern the interpretation and enforcement of this Contract and any other matters relating to this Contract (all without regard to North Carolina conflicts of law principles). The parties further agree that any and all legal actions or proceedings relating to this Contract shall be brought in a federal or state court for Charlotte, North Carolina. By the execution of this Contract, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections which they may have with respect to venue in any court sitting in Charlotte, North Carolina.

6.3 *BINDING NATURE AND ASSIGNMENT.* This Confidentiality Agreement shall bind the parties and their successors and permitted assigns. Neither party may assign this Confidentiality Agreement without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void.

6.4 *SEVERABILITY.* The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Confidentiality Agreement shall not affect the validity of the remaining portion of the Confidentiality Agreement so long as the material purposes of the Confidentiality Agreement can be determined and effectuated. If any provision of this Confidentiality Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Confidentiality Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

6.5 *WAIVER.* No delay or omission by either party to exercise any right or power it has under this Confidentiality Agreement shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this Confidentiality Agreement shall not constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Confidentiality Agreement shall be effective unless in writing and signed by the party waiving the rights.

Nothing in this Confidentiality Agreement shall be deemed to eliminate or lessen any obligation either party may have at law with respect to protecting the confidentiality of Confidential Information.

## Section 8

### Exhibit E – FTA Contract Clauses

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**1. Energy Conservation** - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321, *et seq.*

This requirement extends to all third-party contractors and their contracts at every tier, and this clause shall be included in all such subcontracts.

#### **2. Clean Water –**

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### **3. Access to Records** - The following access to records requirements apply to this Contract:

- a. **Record Retention.** The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- b. **Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c. **Access to Records.** The Contractor agrees to provide sufficient access to the Purchaser, the FTA and their respective contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- d. **Access to the Sites of Performance.** The Contractor agrees to permit the Purchaser, the FTA and their respective contractors access to the sites of performance under this contract as reasonably may be required.

**4. Federal Changes** - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

**5. Clean Air** - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### **6. No Obligation by the Federal Government.**



## Section 8

### Exhibit E – FTA Contract Clauses

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- (1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- (2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### **7. Program Fraud and False or Fraudulent Statements or Related Acts.**

- (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- (2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

#### **8. Suspension and Debarment**

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or

## Section 8

### Exhibit E – FTA Contract Clauses

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f) Disqualified from participation in any federally assisted Award.

By executing this Contract, the Contractor certifies as follows: The certification in this clause is a material representation of fact relied upon by the Purchaser. If it is later determined by the Purchaser that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to the Purchaser, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, throughout the period of this contract. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**9. Civil Rights** - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49

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U.S.C. § 5332, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(d) Access to Services for Persons with Limited English Proficiency. The Contractor agrees to facilitate compliance with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and follow applicable provisions of USDOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005, except to the extent that FTA determines otherwise in writing.

(e) Environmental Justice. The Contractor agrees to facilitate compliance with the policies of: Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note; and USDOT Order 5620.3, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377 et seq., April 15, 1997, except to the extent that the Federal Government determines otherwise in writing.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary, to identify the affected parties.

#### **10. Disadvantaged Business Enterprises**

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The agency's overall goal for DBE participation is **11.7%**. A separate contract goal of **8.8%** has been established for this procurement.

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Contract. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Purchaser deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

**11. Federal Acquisition Regulation (F.A.R.) Compliance** - Any adjustment to the Contractor's compensation under the Contract shall include only costs and other compensation that are allowable, allocable and reasonable as provided elsewhere herein, or otherwise by law, and that are allowable, allocable and reasonable under the Contract Cost Principles of the Federal Acquisition Regulations (F.A.R.) System, 48 CFR, Ch.1, Pt.31, and any implementing guidelines or regulations issued by the said Administration.

**12. Lobbying** - The Contractor agrees to comply with the provisions of Title 31, U.S.C. 1352, the Byrd Anti-Lobbying Amendment, as in force or as it may hereafter be amended. The Contractor and all subcontractor tiers shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds

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to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant, or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the Purchaser. The Contractor shall make such disclosure on any disclosure form that may be provided by the Purchaser.

The Contractor further agrees to secure like undertakings from all subcontractor tiers whose subcontracts are expected to be of a value of one hundred thousand dollars (\$100,000.00) or more.

#### **13. Contract Work Hours and Safety Standards Act**

- (1) *Overtime requirements* - No Contractor or subcontractor contracting for any part of the work under this Contract which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
- (2) *Violation; liability for unpaid wages; liquidated damages* - In the event of any violation of the clause set forth in paragraph (1) of this section, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in the paragraph (1) of this section, in the sum of ten dollars (\$10.00) for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) *Withholding for unpaid wages and liquidated damages* - The Purchaser shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in the paragraph (2) of this section.
- (4) *Subcontracts* - The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in the paragraphs (1) through (4) of this section.

In addition to the clauses contained in Paragraphs (1) through (4) herein, the Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the

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Contractor or subcontractor shall make the records required under this section available for inspection, copying, or transcription by authorized representatives of the Purchaser, the FTA, or the Department of Labor, insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the City and the Department of Labor, and the Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.

**14. DHS Seal, Logo, Flags -** The Contractor shall not use the Department of Homeland Security (“DHS”) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

**15. Recycled Products -** The Contractor agrees to comply with all the requirements of the Resource Conservation and Recovery Act (RCRA) §6002, as amended and now cited as 42 U.S.C. 6962, including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

This requirement extends to all third-party contractors and their contracts at every tier.

#### **16. Safe Operation of Motor Vehicles**

**Seat Belt Use:** The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company- rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or the Purchaser.

**Distracted Driving:** The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

**17. Fly America -** The Contractor understands and agrees that the Federal Government will not participate in the costs of international air transportation of any individuals involved in or property acquired for the work under this Contract unless that air transportation is provided by U.S.-flag air carriers to the extent such service is available, in compliance with §5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. §40118, and U.S. GSA regulations, “Use of U.S. Flag Air Carriers,” 41 C.F.R. §§ 301-10.131 through 301-10.143.

This requirement extends to all third-party contractors and their contracts at every tier and this clause shall be included in all such subcontracts.

**18. Federal Applicability -** The work to be performed under this Contract will be financed in whole or in part with Federal funding. As such, Federal laws, regulations, policies, and related administrative practices apply to this Contract. The most recent of such Federal requirements, including any amendments made after the execution of this Contract, shall govern this Contract, unless the Federal Government determines otherwise. This Exhibit identifies the Federal requirements that are applicable to this Contract. The Contractor is responsible for complying with all applicable provisions.

To the extent applicable, the Federal requirements contained in the most recent version of the FTA Master Contract, including any certifications and contractual provisions required by any Federal statutes or regulations referenced therein to be included in this Contract, and all contractual provisions required by DOT as set forth in [FTA Circular 4220.1F or federal law](#), are deemed incorporated into this Contract by

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reference and shall be incorporated into any subcontract executed by the Contractor pursuant to its obligations under this Contract. The Contractor and its subcontractors, if any, hereby represent and covenant that they have complied and shall comply in the future with the applicable provisions of the Master Contract then in effect and with all applicable Federal, State and local laws, regulations, and rules and local policies and procedures, as amended from time to time, relating to the work to be performed under this Contract. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City requests, which would cause the City to be in violation of the FTA terms and conditions.

The Contractor, \_\_\_\_\_, acknowledges that they have read, understands, and agrees with the Federal Transit Authority (“FTA”) required contracting clauses listed as Exhibit B, Section 9, Pages 63 through 68.

\_\_\_\_\_. Signature of Contractor's Authorized Official  
\_\_\_\_\_. Name and Title of Contractor's Authorized Official  
\_\_\_\_\_. Date



**Appendix A**  
**January 2020 - Average Weekday Ridership by Route**

<b>Route Name</b>	<b>Route Number</b>	<b>Route Type</b>	<b>CATS Facility Connections</b>	<b>April Weekday Ridership</b>	<b>Avg. Daily Boardings' Weekdays</b>
Mt. Holly Road	1	Local	Charlotte Transit Center (CTC)	20,566	979
Ashley/Scaleybark Crosstown	2	Local	Scaleybark Station	12,621	601
The Plaza	3	Local	Albemarle Park and Ride 36 <sup>th</sup> Station	30,357	1,446
Belmont	4	Local	Sugar Creek Station	10,227	487
Sprinter to Airport	5	Local (limited Stops)	Charlotte Transit Center	26,951	1,283
Kings Drive	6	Local	Charlotte Transit Center	18,645	888
Beatties Ford Road	7	Local	Rosa Park/CTC	48,925	2,330
Tuckaseegee Road	8	Local	Charlotte Transit Center	23,323	1,111
Central Avenue	9	Local	Eastland, CTC/Albemarle Park and Ride	76,165	3,627
West Boulevard	10	Local	East/West Station	26,508	1,262
North Tryon	11	Local	Charlotte Transit Center	27,981	1,332
South Boulevard	12	Local	LYNX I-485, Sharon Rd West, Tyvola and Scaleybark Stations	13,418	639
Nevin Road	13	Local	Charlotte Transit Center	7,789	371
Providence Road	14	Local	Charlotte Transit Center	15,630	744
Randolph Road	15	Local	Charlotte Transit Center	24,604	1,172
South Tryon	16	Local	Charlotte Transit Center	40,912	1,948
Commonwealth Avenue	17	Local	Matthews Independence Point Park and Ride	20,944	997
Paw Creek/Rosa Parks Crosstown	18	Local	Rosa Park/CTC	5,818	277
Park Road	19	Local	SouthPark/CTC	25,655	1,222



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Sharon Road	20	Local	Charlotte Transit Center	5,767	275
Statesville Ave	21	Local	Charlotte Transit Center	27,095	1,290
Graham Street	22	Local	JW Clay Station	19,196	914
Shamrock Drive	23	Local	Charlotte Transit Center	17,848	850
Nations Ford Road	24	Local	Arrowood Station	8,741	416
Oaklawn Avenue	26	Local	Rosa Parks/CTC	8,977	427
Monroe Road	27	Local	Matthews Independence Point Park and Ride	35,172	1,675
Fairview Road	28	Local	SouthPark/CTC Scaleybark Station	3,603	172
UNCC/JW Clay	29	Local	JW Clay Station	9,898	471
Woodlawn/Scaleybark	30	Local	SouthPark/CTC Scaleybark Station	7,145	340
Freedom Drive	34	Local	Charlotte Transit Center	22,777	1,085
Wilkinson-Amazon	35	Local	Charlotte Transit Center	2,111	101
Eastway	39	Local	Old Concord Station	16,503	786
Lawyers Road Express	40	Express	Albemarle Road Park and Ride	2,864	136
Steele Creek Express	41	Express	Charlotte Transit Center	1,368	65
Carowinds	42	Local	I-485 Station	769	37
Ballantyne	43	Local	Sharon Road West Station	5,381	256
Harrisburg Road Express	46	Express	Albemarle Road Park and Ride	1,990	95
Huntersville Greenhouse Express	47	Express	JW Clay Station	237	11
Northcross Express	48	Express	Northcross Park, Cornelius Park and Ride Lots	10,870	518
URP/CIC	50	Local	University City Station	1,446	69
Pineville-Matthews Road	51	Local	Matthews Independence Point Park and Ride	2,746	131
Idlewild Road Express	52	Express	Charlotte Transit Center	1,963	93

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Northlake Express	53	Express	Charlotte Transit Center	7,043	335
University Research Park	54	Local	Mallard Creek Park and Ride, University City Station	5,519	263
Westinghouse	55	Local	Sharon Road West Station	9,386	447
Arrowood	56	Local	Arrowood Station	13,418	639
Archdale/South Park	57	Local	Archdale Station SouthPark/CTC	5,975	285
Pineville	58	Local	I-485 Station	5,533	263
North Meck Connector	59	Local	JW Clay Station	2,702	129
Tyvola Road	60	Local	Tyvola Station	9,047	431
Arboretum Express	61	Express	Charlotte Transit Center	5,306	253
Rea Road Express	62	Express	Charlotte Transit Center	3,336	159
Independence Blvd Express	64	Express	Matthews Independence Point Park and Ride	4,470	213
Matthews Express	65	Express	Matthews Independence Point Park and Ride	3,715	177
Union County Express	74	Express	Matthews Independence Point Park and Ride	2,652	126
North Mecklenburg Express	77	Express	Huntersville Gateway, Northcross/Cornelius Park and Ride Lots	13,543	645
Rock Hill Express	82	Express	Charlotte Transit Center	3,340	159
Gastonia Express	85	Express	Charlotte Transit Center	3,819	182
CityLYNX Connector	87	Local	Charlotte Transit Center	12,724	606
Mountain Island Express	88	Express	Charlotte Transit Center	1,812	86
Village Rider-Cornelius	97	Local - Town Shuttle	Huntersville Gateway, Northcross/Cornelius Park and Ride Lots	1,705	81
Village Rider-McCoy Road	98	Local - Town Shuttle	Huntersville Gateway Park and Ride	1,110	53
Village Rider-Huntersville	99	Local - Town Shuttle	Huntersville Gateway Park and Ride	2,727	130

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Hidden Valley	211	Local – Neighborhood Shuttle	Tom Hunter Station	16,035	764
E. Harris Blvd-Idlewild Rd	221	Local – Neighborhood Shuttle	Eastland/CTC	6,883	328
Pence Road	222	Local – Neighborhood Shuttle	Eastland CTC	4,793	228
Goodwill/Amay James	235	Local – Neighborhood Shuttle	N/A	3,537	168

## January 2020 - Average Weekday LYNX Ridership

STATION NAME	Average Boardings
3rd/ Convention Center Station	3,430
7th St Station	1,322
9th Street Station	544
25th St Station	205
36th St Station	930
Archdale Station	751
Arrowood Station	944
Bland Station	720
Carson Station	506
CTC Station	4,717
East/ West Station	1,101
I-485 Station	2,398
JW Clay Blvd Station	1,474
McCullough Station	410
New Bern Station	1,032
Old Concord Road Station	739
Parkwood Station	472
Scaleybark Station	1,159
Sharon Rd West Station	845
Stonewall Station	1,318
Sugar Creek Station	736
Tom Hunter Station	513

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Tyvola Station	992
UNC Charlotte Station	1,169
University City Blvd Station	776
Woodlawn Station	747
<b>Total</b>	<b>29,948</b>