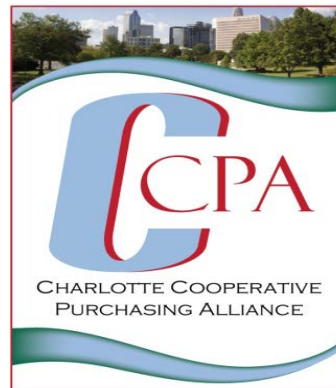


REQUEST FOR PROPOSALS

CISCO PRODUCTS AND SERVICES

RFP # 269-2018-058



**CITY OF CHARLOTTE
NORTH CAROLINA**

AUGUST 21, 2018

REQUEST FOR PROPOSALS
RFP # 269-2018-058
Cisco Products and Services

August 21, 2018

Dear Sir or Madam:

The City of Charlotte, on behalf of itself and other public agencies, is now accepting Proposals for Cisco Products and Services to satisfactorily support the City and other public agencies under this contract. This Request for Proposals (the "RFP") is issued on behalf of the Charlotte Cooperative Purchasing Alliance (CCPA) through a group purchasing clause, which provides that any county, city, special district, local government, school district, private K-12 school, technical or vocational school, higher education institution (including community colleges, colleges and universities, both public and private), state, other government agency or nonprofit organization may purchase Cisco Products and Services through this contract. Therefore, respondents to this RFP must give due consideration to the potential market. 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 **September 4, 2018 at 9:00 a.m.**, at the Charlotte-Mecklenburg Government Center (CMGC), 600 East Fourth Street, Charlotte, North Carolina 28202, 9th Floor Large Conference Room 986 or via WebEx teleconference line at 1-650-479-3207, code: 732 759 311. 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 Tracey Keyes at tkeyes@charlottenc.gov.

All Proposals are due to the Management and Financial Services, Procurement Management Division, 9th Floor, CMGC 600 East Fourth Street, Charlotte, North Carolina 28202, no later than **September 17, 2018 at 2:00 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 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: Tracey Keyes

[Name of Company Submitting Proposal]

Cisco Products and Services

RFP # 269-2018-058

RFP questions must be directed to Tracey Keyes, Management and Financial Services, Procurement Management Division, 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 and RFP file

Checklist for submitting a Proposal:

Step 1-Read the document fully.

Step 2-If you plan on submitting a Proposal then fax **Form 1 in Section 6** to the number 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"

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, MWSBE Utilization**
- Section 6, Form 6, Company Background and Experience**
- Section 6, Form 7, References**
- Section 6, Form 8, Additional Company Response**
- Section 6, Form 9, Environmental Purchasing Responses**
- Section 6, Form 10, CCPA Plan**
- Section 6, Form 11, Certification Regarding Debarment, Suspension and Other Responsibility Matters**
- Section 6, Form 12, Byrd Anti-Lobbying Certification**
- 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 Exhibit A, Section 27.

It is the Company's responsibility to check www.ips.state.nc.us for any addenda or changes to this Project. Search for bid # 269-2018-058 to find if any documents or changes have been posted.

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Section 1

Introduction and General Information

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 Cisco products and services.

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>Administrative Fee:</i>	Refers to a fee paid to the City for all purchases made by Participating Public Agencies per Section x, Form 4.
<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>Charlotte Business Inclusion (CBI):</i>	Refers to the Charlotte Business Inclusion office of the City of Charlotte.
<i>CCPA:</i>	Refers to the Charlotte Cooperative Purchasing Alliance.
<i>Charlotte Combined Statistical Area (CSA):</i>	Refers to the Charlotte-Gastonia-Salisbury Combined Statistical Area consisting of; (a) the North Carolina counties of Anson, Cabarrus, Cleveland, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, Stanly, and Union; and (b) the South Carolina counties of Chester, Lancaster, and York; a criteria used by Charlotte Business INclusion to determine eligibility to participate in the program.
<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 Company for all or part of the Services.
<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.

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<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 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.
<i>Environmentally Preferable Products:</i>	Refers to products that have a lesser or reduced effect on human health and the environment when compared with competing products that serves the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.
<i>Evaluation Committee:</i>	Refers to a City appointed committee that will evaluate Proposals and identify the Company (-ies) best meeting the needs of the City.
<i>Minority Business Enterprise/MBE:</i>	Refers to a business enterprise that: (a) is certified by the State of North Carolina as a Historically Underutilized Business (HUB) within the meaning of N.C. Gen. Stat. § 143-128.4; (b) is at least fifty-one percent (51%) owned by one or more persons who are members of one of the following groups: African American or Black, Hispanic, Asian, Native American or American Indian; and (c) is headquartered in the Charlotte Combined Statistical Area.
<i>MWSBE:</i>	Refers to SBEs, MBEs and WBEs, collectively.
<i>MWSBE Goal:</i>	If an RFP or Contract has separate Subcontracting Goals for MBEs, WBEs, and/or SBEs, the term MWSBE is a shorthand way to refer collectively to all MBE, WBE, and SBE Goals set for the RFP. In some instances, the City may set one combined goal for MBEs, WBEs, and/or SBEs, in which event the term MWSBE Goal refers to that one, combined goal. In the latter instance, calculated as a percentage, the MWSBE Goal represents the total dollars spent with MBEs, WBEs, and SBEs as a portion of the total Proposal amount, including any contingency.
<i>Participating Public Agency:</i>	Refers to a public entity, county, city, special district, local government, school district, private K-12 school, technical or vocational school, higher education institution (including community colleges, colleges and universities, both public and private), other government agency or nonprofit organization.
<i>Project:</i>	Refers to the City's need for a service provider to provide Cisco Products and Services for the City.

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<i>Proposal:</i>	Refers to the proposal submitted by a Company for the Services as outlined in this RFP.
<i>Recyclability:</i>	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.
<i>Recycled Material:</i>	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.
<i>Services:</i>	Refers to the Cisco Products and Services as requested in this RFP.
<i>Small Business Enterprise/SBE:</i>	Refers to a business enterprise that is certified by the City of Charlotte under Part E of the CBI Policy as meeting all of the requirements for SBE certification.
<i>SMARTnet Service:</i>	Refers to extended warranty coverage and operating system updates and support available through Cisco.
<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>Subcontracting Goals:</i>	Refers to the SBE, MBE, WBE, and MWSBE Goals established by the City for an 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>Women Business Enterprise (WBE):</i>	Refers to a business enterprise that: (a) is certified by the State of North Carolina as a Historically Underutilized Business (HUB) within the meaning of N.C. Gen. Stat. § 143-128.4; (b) is at least fifty-one percent (51%) owned by

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one or more persons who are female; and (c) is headquartered in the Charlotte Combined Statistical Area.

Work Product: 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:

- 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;
- 1.4.4. To waive any defect or irregularity in any Proposal received;
- 1.4.5. To reject any or all Proposals;
- 1.4.6. To share the Proposals with City employees and contractors in addition to the Evaluation Committee as deemed necessary by the City;
- 1.4.7. 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;
- 1.4.8. To discuss and negotiate with any Company(-ies) their Proposal terms and conditions, including but not limited to financial terms; and

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1.4.9. 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 at the Procurement Management Division, 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, 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

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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, bid# 269-2018-058. 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.
- 1.6.6. Charlotte Business INclusion Program.
Pursuant to Charlotte City Council's adoption of the Charlotte Business INclusion (CBI) Policy, the CBI program promotes diversity, inclusion, and local business opportunities in the City's contracting and procurement process for Minority, Women, and Small Business Enterprises (MWSBEs) headquartered in the Charlotte Combined Statistical Area (CSA). The CBI Policy is posted at: www.charlottebusinessinclusion.com.

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The City is committed to promoting opportunities for maximum participation of certified MWSBEs on City funded contracts at both the Prime and Subcontract level. For MWSBE participation to count towards a Goal, MWSBEs must meet both the certification and geographic requirements as detailed throughout this solicitation and in the CBI Policy.

The Company is required to submit Section 6, Form 5 attached herein. Failure to submit this form with the Proposal shall render the Proposal non-responsive.

- 1.6.7. 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.
- 1.6.8. 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.
- 1.6.9. 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.
- 1.6.10. 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).
- 1.6.11. 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.
- 1.6.12. Exceptions to the RFP.
Other than exceptions that are stated in compliance with this Section and Section 3.7, 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 Exhibit A. An "exception" is defined as the Company's inability or unwillingness to meet a term,

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condition, specification, or requirement in the manner specified in the RFP including the Sample Contract language included as in Exhibit A. 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.

1.6.13. Fair Trade Certifications.

By submitting a Proposal, the Company certifies that:

- 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.

1.6.14. 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.

1.7 **Charlotte Cooperative Purchasing Alliance.**

CCPA is a cooperative purchasing program established by the City of Charlotte with the specific purpose of reducing procurement costs by leveraging aggregate purchasing volume to receive better pricing.

CCPA serves as a government cooperative purchasing organization for government agencies and all contracts are publicly solicited, awarded, and held by the City of Charlotte, North Carolina. CCPA contracts are available for use and benefit all entities that must comply with state purchasing laws.

The City of Charlotte is referred to in this procurement as "City". The other government entities and nonprofits that may participate in a CCPA Contract are referred to as "Participating Public Agencies," and may include any county, city, special district, local government, school district, private K-12 school, technical or vocational school, higher education institution (including community colleges, colleges and universities, both public and private), other government agency or nonprofit organization that elects to access the CCPA contract.

Except as specifically set forth in the Company's Proposal, the terms and conditions of the Contract entered into with the Company may be extended to other public entities that are or at any time in the future become members of the Charlotte Cooperative Purchasing Alliance ("CCPA"). Except as prohibited in the Proposal, and subject to the City and the Company entering into an administrative agreement that includes a fee payable to the City, Participating Public Agencies will have the

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right to enter into contracts with the Company at the same prices, discounts and other terms as are in the Company's Contract with the City.

If a Participating Public Agency decides to take advantage of this option, the Company may opt to enter into a separate contract with that public entity, and must deal directly with that public entity concerning the placement of orders, issuance of purchase orders, contractual disputes, invoicing and payment. Public entities may add terms and conditions to their proposed contract with the Company to the extent allowed or required by statute, ordinances, regulations or policy. If such proposed additional terms are not acceptable to the Company, the Company may refuse to enter into a contract with such public entity. The City of Charlotte acts only as the entity conducting the initial procurement.

The Company may notify other public entities of the availability of the Contract for use under the CCPA. Other public entities desiring to procure Products and Services under the terms set forth in the City's Contract will need to make their own legal determinations as to whether the use of this Contract is consistent with their laws, regulations, and other policies.

The City of Charlotte shall not be held liable for any costs or damages incurred by any other Participating Public Agency or the Company as a result of any contract or other arrangement entered into between that public entity and the Company.

Any subsequent contract(s) between a Participating Public Agency and an awarded Company shall be construed to be in accordance with and governed by the laws of the State in which the Participating Public Agency exists.

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
August 21, 2018	<i>Issuance of RFP.</i> The City issues this RFP.
August 28, 2018	<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.
August 28, 2018	<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 5:00 p.m.
September 4, 2018	<i>Non-Mandatory Pre-Proposal Conference</i> to be held at the location indicated in Section 2.4 at 9:00 a.m.
September 7, 2018	<i>Submission of Written Questions After the Pre-Proposal Conference.</i> Questions are due by TIME5 p.m.
September 17, 2018	<i>Proposal Submission.</i> Proposals are due by 2:00 p.m. at the Procurement Management Division, CMGC 9 th Floor.
September 17, 2018 – October 31, 2018	<i>Evaluation.</i> The Evaluation Committee will assess each Proposal and conduct evaluation activities with Companies.
November 26, 2018	<i>Contract Award by Council.</i>
December 2018	<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 **August 28, 2018** 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**

Section 2

Procurement Process

regarding this RFP other than those provided in writing by the Procurement Officer.

Tracey Keyes
City of Charlotte
Procurement Management Division
600 East 4th Street, CMGC 9th Floor
Charlotte, NC 28202
RFP # 269-2018-058
Fax: 704-632-8519
E-mail: tkeyes@charlottenc.gov

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 **5:00 p.m. on August 28, 2018**.

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://charlottenc.gov/DoingBusiness/pages/ContractOpportunities.aspx> and www.ips.state.nc.us, referencing solicitation # 269-2018-058. 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 **September 4, 2018 at 9:00 p.m.** The meeting will be held at the Charlotte-Mecklenburg Government Center (CMGC), 600 East Fourth Street, Charlotte, North Carolina 28202, 9th Floor Large Conference Room 986 or via WebEx teleconference line listed below:

[Join Webex meeting](#)

Meeting number (access code): 732 759 311
1-650-479-3207

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 Tracey Keyes 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 shall be submitted to the address listed in Section 2.3 above by **September 17, 2018 on or before but no later than 2:00 p.m.** The original Proposal and the copy of CD or flash drive 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.

Section 2

Procurement Process

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 measures at the Charlotte-Mecklenburg Government Center (CMGC), your 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 the Procurement Management Division 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 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

Section 2

Procurement Process

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 CISCO PRODUCTS AND SERVICES.

3.1. General Scope.

The City is looking to establish contracts for the purpose of establishing master agreements with qualified manufacturers to provide Cisco Data Communications products and services. The specifications contained herein shall be considered minimum requirements and it will be the sole discretion of the City to select the Companies whose proposals meets or exceeds the stated requirements.

This RFP is designed to provide interested Companies with sufficient basic information to submit proposals meeting minimum requirements, but is not intended to limit a proposal's content or exclude any relevant or essential data. Companies shall respond to any or all of the categories listed below:

- Networking Software;
- Network Management and Automation;
- Network Optimization and Acceleration;
- Optical Networking;
- Routers;
- Switches;
- Wireless;
- Mobile vehicle routers;
- Unified Communications;
- Professional Services;
- Data Center Application Services; and
- Maintenance and Support.

Proposals shall be succinct, and concise to allow for efficient evaluation. Blanket marketing material and unnecessary elaborate brochures or representations beyond what is sufficient to present a complete and effective proposal shall not be considered.

This RFP is released to obtain deeper volume price discounts than are obtainable by an individual via the competitive bid system. This discount is based on the collective volume of potential purchases by the City Departments and the numerous Participating Public Agencies that will also leverage these Contracts. Contracts should result in the most attractive discounts available in the marketplace.

3.2. Background.

The City is the 18th largest city in the U.S. by population and the largest in North Carolina. The City's data communications networks serve 21 departments with over 7000 employees, providing services to 800,000 residents across the City of Charlotte and Mecklenburg County. The City operates over 200 sites all connected by an Enterprise class network.

The networks include:

- Datacenters;
- 911/Public Safety dispatch centers;
- Emergency Operation centers;
- Standard office environments;
- Traffic Control networks;
- Light Rail Transportation networks;

- Walter utility plants;
- Aviation facilities;
- Maintenance and industrial sites; and
- Call center environments.

3.3. Certifications and Qualifications.

Companies are required to have a Cisco Gold Level certification and maintain on staff, the minimum of twelve (12) unique Cisco certified employees, including a minimum of two (2) Cisco Certified Internetwork Experts (CCIE). Companies are required to have the following Cisco Certifications:

- Cisco Advanced Enterprise Networks Architecture Specialization;
- Cisco Advanced Security Architecture Specialization; and
- Cisco Advanced Data Center Architecture Specialization.

Companies must provide a letter from Cisco with their proposal, which states they are certified to sell, install, and maintain Cisco products. The letter must also confirm that the Company has Cisco Gold Level Certification.

Companies must be authorized to sell and/or install the following technologies:

- Enterprise Networks;
- Cisco Wireless;
- Collaboration and conferencing;
- Unified Contact Center Enterprise;
- Security;
- Optical Networking;
- Data Center; and
- Internet of Things (IOT)

Companies shall provide a single point of contact as a dedicated account representative for the City. Companies shall acknowledge any reported issues within one business day of receiving notification from the City.

3.4. Optional or Additional Services.

The City may request additional services during the term of the Contract. The Company shall provide formal quotes for offerings, which fall outside the scope of the Contract, such as hosting services.

3.5. Equipment.

All equipment, products and components furnished under this Contract shall be new, meet all requirements of the Specifications, operate in full compliance with these Specifications and must be procured from an authorized Cisco channel source.

3.6. Quantities.

Participating Public Agencies reserve the right to purchase according to actual need and do not guarantee quantities. Multiple orders will be placed on an as needed basis during the term of the Contract.

3.7. Environmental Purchasing Requirements.

The City promotes the practice of Environmentally Preferable Purchasing (EPP) in acquiring products or services. 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 3

Scope of Services

Applicable EPP attributes that may be taken into consideration as environmental criterion include the following:

- Recycled content packaging
- Reduced Packaging
- Energy efficiency
- Life Cycle Management
- 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 in Section 6, Form 9.

3.8. Reporting Requirements.

3.8.1. CCPA Quarterly Reports.

A quarterly usage report must be supplied electronically to Procurement Management no later than the 30th day of January, April, July, and October. Reports must be designed in such a manner that the information captured on the purchase request shall also be reflected in the quarterly report. The report shall clearly identify all items purchased by the City/Participating Public Agency, purchase order number, purchase order date, category name, Product description and part/product number, quantity, list price, percentage discount, unit price, and extended price for all Products and Services purchased under the Contract.

3.8.2. Environmental Reporting.

The Company shall provide quarterly reports on all Products and Services purchased by the City or any other requesting Participating Public Agency on any item with an environmental element as described above.

Section 4

Proposal Content and Format

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. Proposed Solution;
- c. The "Addenda Receipt Confirmation" set forth in Section 6, Form 2;
- d. The "Proposal Submission" set forth in Section 6, Form 3;
- e. The "Pricing Worksheet" set forth in Section 6, Form 4;
- f. The "MWSBE Utilization" form set forth in Section 6, Form 5;
- g. The "Background and Experience" form set forth in Section 6, Form 6;
- h. The "References" set forth in Section 6, Form 7;
- i. The "Additional Company Response" set forth in Section 6, Form 8;
- j. The "Environmental Purchasing Responses" set forth in Section 6, Form 9;
- k. The "CCPA Plan" set forth in Section 6, Form 10;
- l. The "Certification Regarding Debarment, Suspension and other Responsibility Matters" set forth in Section 6, Form 11;
- m. The "Byrd Anti-Lobbying Certification" set forth in Section 6, Form 12
- n. Exceptions to the Remainder of the RFP, including the Sample Contract in Exhibit A.

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 shall 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.

Section 4

Proposal Content and Format

The cover letter shall provide the name, address, telephone and facsimile numbers of the Company along with the name, title, address, email 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. 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."
- 4.1.3. 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 m.
- 4.1.4. Exceptions to the RFP.
Exceptions must be submitted in accordance with Section 1.6.12 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 City 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 Exhibit A ("Sample Terms"). The number 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.

Section 5

Evaluation Criteria

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;
- e. CCPA Plan; and
- f. 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, Forms 6.and 8.

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. MWSBE Subcontractor Utilization.

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

- Be designated as a City certified SBE; and/or
- Be designated as a City registered MBE or WBE

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

Section 5

Evaluation Criteria

5.5. CCPA Plan.

The City is committed to supporting the CCPA and making high quality contract opportunities available to Participating Public Agencies. Companies will be evaluated on the information provided in Section 6, Form 10 regarding their CCPA plan.

5.6. 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 Exhibit A. Regardless of exceptions taken, Companies shall provide pricing based on the requirements and terms set forth in this RFP. Exceptions shall be identified in accordance with Sections 1.6.12 and 4.1.4 of this RFP.

Section 6
Required Forms

REQUIRED FORM 1 - REQUEST FOR PROPOSALS ACKNOWLEDGEMENT

RFP # 269-2018-058

Cisco Products and Services

The Company hereby certifies receipt of the Request for Proposals for the City of Charlotte, North Carolina RFP #269-2018-058, Cisco Products and Services. This form should be completed upon receipt of the City's Request for Proposals and faxed in time for the City to receive it by or before **August 28, 2018**. Failure to submit this form by the designated date shall not preclude the Company from submitting a proposal. Please fax or email the completed Request for Proposals Acknowledgement Form to the attention of:

Tracey Keyes
Procurement Management Division
Fax: 704-632-8519
Email: tkeyes@charlottenc.gov

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: _____ By Phone: _____

_____ **We do not plan to attend the Pre-Proposal Conference but plan on submitting a Proposal**

Reason: _____

_____ **We do not plan on submitting a Proposal**

Reason: _____

Section 6
Required Forms

REQUIRED FORM 2 - ADDENDA RECEIPT CONFIRMATION

RFP # 269-2018-058

Cisco Products and Services

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.

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 # 269-2018-058

Cisco Products and Services

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 Service Provider 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 Service Provider on this Project and to terminate any contract awarded based on such Proposal.
4. As a condition of contracting with the City, the Service Provider agrees to maintain documentation sufficient to demonstrate that it has not discriminated in its solicitation or selection of subcontractors. The Service Provider 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 Service Provider or terminate any contract awarded on such bid.

Section 6 Required Forms

5. As part of its Proposal, the Service Provider shall provide to the City a list of all instances within the past ten years where a complaint was filed or pending against Service Provider in a legal or administrative proceeding alleging that Service Provider 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. 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 re-bid this RFP.
8. 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 Terms as included herein as Exhibits A - D. 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 Terms.

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 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

REQUIRED FORM 4 - PRICING WORKSHEET

RFP # 269-2018-058

Cisco Products and Services

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 an initial term of five (5) years, with the City having an option to renew for two (2) additional consecutive one (1) year terms thereafter.

1. Technology Categories.

Companies shall indicate below their offered discount off their then-current cost on each Category from Section 3.1 they provide and the URL where such current list costs can be found:

Category	%age off List Cost	URL
Networking Software		
Network Management and Automation		
Network Optimization and Acceleration		
Optical Networking		
Routers		
Switches		
Wireless		
Mobile vehicle routers		
Unified Communications		
Professional Services		
Data Center Application Services		
Maintenance and Support		

2. Administrative Fees:

The Company shall pay the City a minimum of one percent (1%) quarterly Administrative Fee of based on of overall CCPA Program spend by the City and Participating Public Agencies during the term of the Contract. The Administrative Fee shall be paid no later than 30 days after both parties mutually agree to the quarterly report outlining the CCPA spend. Companies shall indicate their Administrative Fee below:

_____%

Section 6 Required Forms

3. Pricing Incentives and Rebates:

The Company shall identify any incentive and rebates offered based on volume, dollar amounts, core credits or other criteria below:

Rebate Description	Amount or Percentage

Section 6 Required Forms



REQUIRED FORM 5 – M/W/SBE UTILIZATION

RFP # 269-2018-058

Cisco Products and Services

The City maintains a strong commitment to the inclusion of MWSBEs in the City’s contracting and procurement process when there are viable subcontracting opportunities.

Companies must submit this form with their proposal outlining any supplies and/or services to be provided by each City certified Small Business Enterprise (SBE), and/or City registered Minority Business Enterprise (MBE) and Woman Business Enterprise (WBE) for the Contract. If the Company is a City-registered MWSBE, note that on this form.

The City recommends you exhaust all efforts when identifying potential MWSBEs to participate on this RFP.

Company Name:	
----------------------	--

Please indicate if **your company** is any of the following:

MBE
 WBE
 SBE
 None of the above

If your company has been certified with any of the agencies affiliated with the designations above, indicate which agency, the effective and expiration date of that certification below:

Agency Certifying: _____ Effective Date: _____ Expiration Date: _____

Identify outreach efforts that *were employed* or *will be employed* by the firm to maximize inclusion of MWSBEs to be submitted with the firm’s proposal (attach additional sheets if needed): _____

List below all **MWSBEs** that you intend to subcontract to while performing the Services:

Subcontractor Name	Product or Service	MWSBE Type	City Vendor #	Amount or % Utilization

Representative (signed): _____

Date

Representative Name

Section 6 Required Forms

REQUIRED FORM 6 – COMPANY’S BACKGROUND RESPONSE

RFP # 269-2018-058

Cisco Products and Services

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 Products or Services).	
How many years has your company been in business? How long has your company been selling Cisco Products and Services?	
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.	
Is your company privately held? Publicly traded? Does it have a parent company?	
Provide a management organization chart of your company’s overall organization, including director and officer positions and names and reporting structure	
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.	
Explain how your organization ensures that personnel performing the Services are qualified and proficient.	
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.	

Section 6
Required Forms

REQUIRED FORM 7 – REFERENCES

RFP # 269-2018-058

Cisco Products and Services

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: _____

Primary Contact: _____ Phone: _____

E-mail address: _____ Service Dates: _____

Type of Products and/or Services Provided: _____

Approx. Annual Spend Budget \$ _____ Number of Employees: _____

REFERENCE 2:

Name of Client: _____

Primary Contact: _____ Phone: _____

E-mail address: _____ Service Dates: _____

Type of Products and/or Services Provided: _____

Approx. Annual Spend Budget \$ _____ Number of Employees: _____

REFERENCE 3:

Name of Client: _____

Primary Contact: _____ Phone: _____

E-mail address: _____ Service Dates: _____

Type of Products and/or Services Provided: _____

Approx. Annual Spend Budget \$ _____ Number of Employees: _____

Section 6
Required Forms

REFERENCE 4:

Name of Client: _____

Primary Contact: _____ Phone: _____

E-mail address: _____ Service Dates: _____

Type of Products and/or Services Provided: _____

Approx. Annual Spend Budget \$ _____ Number of Employees: _____

REFERENCE 5:

Name of Client: _____

Primary Contact: _____ Phone: _____

E-mail address: _____ Service Dates: _____

Type of Products and/or Services Provided: _____

Approx. Annual Spend Budget \$ _____ Number of Employees: _____

REQUIRED FORM 8 – ADDITIONAL COMPANY RESPONSE

Companies shall include responses to the additional questions posed below if they provide Cloud-based products or services. Companies should make every effort to limit their total response to all questions provided below to a total page count of 50 pages or less. Font should be no less than 11 point.

Cloud Provider Questionnaire

1. Do you encrypt data at rest or in transit? Is there an encryption offering and if so what level of encryption and what data protection certifications do you currently hold?
2. What encryption algorithms do you use to encrypt data at rest and in transit?
3. How do you manage the encryption keys?
4. What is your current uptime and SLA option? What if SLA is not met?
5. Do you offer periodic reports confirming compliance with security requirements and SLAs?
6. What certifications for data protection have you achieved?
7. How often are backups made? How many copies of my data are stored, where are they stored, and are they encrypted?
8. Who can see or have access to my information? How do you isolate and safeguard my data from other clients?
9. What is your process for responding to a legal hold request?
10. What are your disaster recovery processes?
11. What are your methods for backing up our data? What offerings are available to back up data?
12. Where is your data center and what physical security measures are in place?
13. What country (or countries) is my data stored in - both on your infrastructure and for backups?
14. Can I leverage existing credentials and password policies? Do you offer SAML/SSO capabilities for authentication? What types of multifactor authentication is supported?
15. How do you screen your employees and contractors?
16. What controls do you have in place to prevent unauthorized viewing of customer information?
17. What actions do you do to destroy data after a customer releases it?

Section 6

Required Forms

18. What happens in the event of data corruption?
19. What access do you provide to logs?
20. How is activity in my account monitored and documented? What auditing capabilities are provided: Admin/MGMT, Billing, and System Information? Do you keep a signed audit trail of which users performed what actions when, both through their UI and API?
21. How much control do I retain over my data? How do we extract data if our agreement ends?
22. Can I disable access immediately to my data in the event of a breach?
23. In the event of a security incident or breach, at what point in your response process and under what circumstances will I be notified? What is the timeline for customer notification in the case of a breach?
24. Can you continue to provide protection as my workloads evolve? How scalable is the solution, including disaster recovery?
25. How reliable is your network infrastructure? What certifications do you currently hold for your data centers?
26. Do you alert your customers of important changes like security practices and regulations or data center locations?
27. Will my needs be served by dedicated instances/infrastructure or shared instances/infrastructure?
28. Will my internal and external incident response resources be able to access your infrastructure in the event of an incident? If not, how will you perform the investigation on my behalf?
29. What third party security validation can you provide me with? How often do you have external assessments performed?
30. When was your last penetration test and what were the results?
31. How do you dispose of end-of-life hardware?
32. How do you dispose of failed data storage devices?
33. Do you have a “Try Before You Buy” program?
34. Do you allow tours of your data center?

Section 6 Required Forms

REQUIRED FORM 9 – ENVIRONMENTAL PURCHASING RESPONSES

RFP # 269-2018-058

Cisco Products and Services

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

Question	Response
<p><u>Recyclability.</u> Please include the types of materials included in your product, and if they are considered recyclable in typical municipal recycling streams.</p>	
<p><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.</p>	
<p><u>Reduced Packaging.</u> Please include any efforts made to reduce the packaging of the products included in this proposal.</p>	
<p><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).</p>	
<p><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).</p>	

REQUIRED FORM 10 – CCPA PLAN

RFP # 269-2018-058

Cisco Products and Services

Pursuant to N.C. G.S 160A-461 and 143-129(e)(3), the City of Charlotte Procurement Management Division has established the Charlotte Cooperative Purchasing Alliance (CCPA). The purpose of the CCPA is to allow other public agencies regionally and nationwide to use contracts competitively solicited and awarded by the City. Combining volumes of government agencies achieves the cost effective pricing and reduces the administrative and overhead costs of suppliers and public agencies alike. By providing a comprehensive and competitively solicited Contract through a single RFP process, county, city, special district, local government, school district, private K-12 school, technical or vocational school, higher education institution (including community colleges, colleges and universities, both public and private), state, other government agency and nonprofit organizations can utilize the subsequent contract(s) without the need for further solicitation. Companies should consider the potential volumes when responding to this RFP. Participation by other entities is strictly voluntary and no volumes are guaranteed though Participating Public Agencies are required to register to purchase goods or services through the CCPA.

More information about the CCPA can be found on the CCPA website: www.charlottealliance.org.

The objective of this RFP is to utilize participation among the City, as well as various other Participating Public Agencies, to provide low cost reliable Products and Services. The Company must agree to receive orders from the City and all Participating Public Agencies and to provide all Products and Services ordered to a specified City and Participating Public Agency address.

Companies shall include in detail how they will serve all Participating Public Agencies as it relates to the CCPA. Currently, the CCPA has approximately 370 registered Participating Public Agencies in Arizona, California, District of Columbia, Florida, Georgia, Maryland, Massachusetts, Michigan, Missouri, New York, North Carolina, South Carolina, Tennessee, Texas, Virginia, Washington, and West Virginia.

Please address the following:

1. Describe your company's ability to provide the Services to any Participating Public Agencies in the contiguous forty-eight (48) states and the ability to deliver the Services in Alaska and Hawaii.
2. Address if your company has a national sales force dealer network or distributor with the ability to serve Participating Public Agencies in all fifty (50) states.
3. How will you monitor and report all spend under the Contract to the City for auditing purposes?

The City will post all awarded Contracts on the CCPA website along with the vendor contact information. Please address the following accordingly:

1. Will your company allow the City to utilize your organization's logo on the CCPA website?
2. Will your company be willing to advertise the CCPA logo and website on your organization's website?
3. How do you plan to market the Contract to other Participating Public Agencies?

Section 6
Required Forms

**REQUIRED FORM 11 – CERTIFICATION REGARDING DEBARMENT, SUSPENSION
AND OTHER RESPONSIBILITY MATTERS**

RFP # 269-2018-058
Cisco Products and Services

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 federal 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:**

Signature of Authorized Representative (Prime Contractor)

Print Name:

Title:

Date:

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

Signature of Authorized Representative (Prime Contractor)

Print Name:

Title:

Date:

REQUIRED FORM 12 - BYRD ANTI-LOBBYING CERTIFICATION

RFP # 269-2018-060
Cisco Products and Services

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.

Signature of Representative: _____

Printed Name of Representative: _____

Date: _____

Company Name: _____

Address: _____

City/State/Zip: _____

EXHIBIT A – SAMPLE CITY 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
CISCO PRODUCTS AND SERVICES**

THIS PROFESSIONAL SERVICES CONTRACT (the “Contract”) is made and entered into as of this _____ day of _____ 201_ (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 # 269-2018-058) for Cisco Products and Services dated August 21, 2018. 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 Cisco Products and Services (“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. In interpreting this Contract and resolving any ambiguities, the main body of this Contract will take precedence over the Exhibits, and any inconsistency between the Exhibits will be resolved in the order in which the Exhibits appear below. Each reference to COMPANY NAME in the Exhibits and Appendices shall be deemed to mean the Company.

[TO BE PROVIDED AFTER CONTRACT AWARD]

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

3. **DESCRIPTION OF SERVICES.**
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.

4. **COMPENSATION.**

4.1. **TOTAL FEES AND CHARGES.** The City agrees to pay the Company at the rates indicated in Exhibit A, which shall remain firm for the duration of the Contract.

4.2. **EXPENSES.** The Company shall not be entitled to charge the City for any travel, mileage, meals, materials or other costs or expenses associated with this Contract.

4.3. **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.
- 4.4. **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.
- 4.5. **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.
- 4.6. **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.
- 4.7. **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 Company shall be responsible for keeping a record that accurately states the type of Service performed or Products provided. 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. Acting as the Company's point of contact for all aspects of contract administration, including invoicing for Services, and status reporting;
 - 8.2. Facilitation of review meetings and conferences between the City and the Company's executives when scheduled or requested by the City;
 - 8.3. Communication among and between the City and the Company's staff;
 - 8.4. Promptly responding to the City Project Manager when consulted in writing or by E-mail with respect to Project deviations and necessary documentation;
 - 8.5. 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);
 - 8.6. Ensuring that adequate quality assurance procedures are in place throughout the Contract; and
- 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 day's notice to the Company.
- 10. 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.
- 11. COMPANY PERSONNEL REMOVAL, REPLACEMENT, PROMOTION, ETC.**
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 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.
- 12. 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:

- If the job duties require driving: A motor vehicle records check.
- If the job duties include responsibility for initiating or affecting financial transactions: A credit history check.

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.

- 13. 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).

- 14. 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.

15. 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.

16. REPRESENTATIONS AND WARRANTIES OF COMPANY.

16.1. GENERAL WARRANTIES.

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

16.1.2. 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;

16.1.3. 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;

16.1.4. 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;

16.1.5. 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;

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

16.1.7. 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.

16.2. ADDITIONAL WARRANTIES. The Company further represents and warrants that:

16.2.1. 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;

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

16.2.3. The execution, delivery, and performance of this Contract have been duly authorized by the Company;

16.2.4. 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;

16.2.5. 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

16.2.6. 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).

17. OTHER OBLIGATIONS OF THE COMPANY.

- 17.1. **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.
- 17.2. **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.
- 17.3. **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.
- 17.4. **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.
- 17.5. **E-VERIFY.** 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.
- 17.6. **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.

18. REMEDIES.

- 18.1. **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.
- 18.2. **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.

- 18.3. **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.
- 18.4. **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.
- 18.5. **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.

19. TERM AND TERMINATION OF CONTRACT.

- 19.1. **TERM.** This Contract shall commence on the Effective Date and shall continue in effect for five (5) years with the City having the unilateral right to renew for two (2) consecutive one (1) year terms.
- 19.2. **TERMINATION BY THE CITY.** 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 19.8; and (ii) the Company having provided the City with written documentation reasonably adequate to verify the number of hours of Services rendered by each Company employee through the termination date and the percentage of completion of each task.
- 19.3. **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.
- 19.4. **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.
- 19.5. **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.
- 19.6. **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.
- 19.7. **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.
- 19.8. **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.
- 19.9. **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.

19.10. **OTHER REMEDIES.** The remedies set forth in this Section and **Section 18** 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.

20. 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.

21. 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.

22. CITY OWNERSHIP OF WORK PRODUCT.

22.1. 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.
- 22.2. 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 26 of the Contract.
- 22.3. 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.
- 23. 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 venturers, 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.
- 24. 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: (a) the term "Indemnitees" means the City and each of the City's officers, officials, employees, agents and independent contractors (excluding the Company); and (b) 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 24 shall remain in force despite termination of this Contract (whether by expiration of the term or otherwise).

25. **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.

26. **CONFIDENTIAL INFORMATION.**

26.1. **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:

26.1.1. *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.

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

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

26.1.4. *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.

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

26.1.6. *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.

26.1.7. *Local tax records of the City that contains information about a taxpayer's income or receipts.*

26.1.8. *Any attorney / City privileged information disclosed by either party.*

26.1.9. *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.*

26.1.10. *The name or address of individual homeowners who, based on their income, have received a rehabilitation grant to repair their home.*

26.1.11. *Building plans of city-owned buildings or structures, as well as any detailed security plans.*

26.1.12. *Billing information of customers compiled and maintained in connection with the City providing utility services.*

26.1.13. *Other information that is exempt from disclosure under the North Carolina public records laws.*

Categories stated in Sections 26.1.3 through 26.1.13 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: (a) all provisions in this Contract 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 Contract, the Confidential Information shall include information disclosed or revealed within one (1) year prior to the date of this Contract.

26.2. RESTRICTIONS. The Company shall keep the Confidential Information in the strictest confidence, in the manner set forth below:

26.2.1. It shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information.

26.2.2. 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.

26.2.3. 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.

26.2.4. It shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information of the other.

26.2.5. 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.

26.2.6. 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.

26.2.7. 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.

26.3. EXCEPTIONS. The parties agree that the Company shall have no obligation with respect to any Confidential Information which the Company can establish:

26.3.1. Was already known to the Company prior to being disclosed by the disclosing party;

26.3.2. Was or becomes publicly known through no wrongful act of the Company;

26.3.3. Was rightfully obtained by the Company from a third party without similar restriction and without breach hereof;

26.3.4. Was used or disclosed by the Company with the prior written authorization of the City;

26.3.5. 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;

- 26.3.6. 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.
- 26.4. 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.
- 26.5. 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.

27. INSURANCE.

- 27.1. TYPES OF INSURANCE. 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:
 - 27.1.1. 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.
 - 27.1.2. 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.
 - 27.1.3. Errors and Omissions Liability – Insurance as shall protect the Company and its employees from claims alleging the failure to provide the services required by this Contract. This policy shall be specific to the performance of this Contract and shall provide limits of \$1,000,000 each occurrence/aggregate.
 - 27.1.4. Electronic Errors and Omissions – If the risk typically covered by Electronic Errors and Omissions Insurance are not covered by the Company’s Errors and Omissions Insurance, the Company shall purchase an electronic errors and omissions insurance policy having aggregate limits of \$1,000,000 and occurrence limits of \$750,000 respectively.
 - 27.1.5. Workers’ Compensation and Employers Liability - meeting the statutory requirements of the State of North Carolina, \$500,000 per accident limit, \$500,000

disease per policy limit, \$500,000 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.

27.2. **OTHER INSURANCE REQUIREMENTS.**

27.2.1. 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.

27.2.2. 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.

27.2.3. 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.

27.2.4. 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.

27.2.5. 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.

28. **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 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: (a) 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 (b) 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 AND PRINCIPAL CONTACTS.** 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:

For the Company:

PHONE: _____

FAX: _____

E-MAIL: _____

For the City:

Kay Elmore
City of Charlotte
Procurement Management Division
600 East Fourth Street, CMGC 9th Floor
Charlotte, NC 28202-2850

PHONE: 704-336-2524

FAX: 704-632-8252

kelmore@charlottenc.gov

With Copy To (Company):

PHONE: _____

EMAIL: _____

With Copy To (City):

Cindy White
City of Charlotte
City Attorney's Office
600 East Fourth Street
CMGC 15th Floor
Charlotte, NC 28202

PHONE: 704-336-3012

cwhite@charlottenc.gov

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.

30. MISCELLANEOUS.

- 30.1. **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.
- 30.2. **AMENDMENT.** No amendment or change to this Contract shall be valid unless in writing and signed by both parties to this Contract.
- 30.3. **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.
- 30.4. **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.
- 30.5. **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.
- 30.6. **FORCE MAJEURE.**
- 30.6.1. 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.
- 30.6.2. 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 (a) such Force Majeure Event continues and (b) the Company continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.
- 30.6.3. 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.
- 30.6.4. Strikes, slow-downs, walkouts, lockouts, and individual disputes are not excused under this provision.
- 30.7. **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.

- 30.8. **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.
- 30.9. **APPROVALS.** All approvals or consents required under this Contract must be in writing.
- 30.10. **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.
- 30.11. **SURVIVAL OF PROVISIONS.** The following sections of this Contract shall survive the termination hereof:
- Section 4.3 “Employment Taxes and Employee Benefits”
 - Section 16 “Representations and Warranties of Company”
 - Section 19 “Term and Termination of Contract”
 - Section 22 “City Ownership of Work Product”
 - Section 24 “Indemnification”
 - Section 26 “Confidential Information”
 - Section 27 “Insurance”
 - Section 29 “Notices and Principal Contacts”
 - Section 30 “Miscellaneous”
- 30.12. **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.
- 30.13. **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.
- 30.14. **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.
- 30.15. **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.
- 30.16. **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.
- 30.17. **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.
- 30.18. **TRAVEL UPGRADES.** The City has no obligation to reimburse the Company for any travel or other expenses incurred in connection with this Contract unless this Contract specifically requires reimbursement. If this Contract requires reimbursement by the City: (a) the City will only pay coach/economy rate airline fares, and (b) the Company's invoices shall include sufficient detail of travel expenses to demonstrate that fares were at coach/economy rates. Notwithstanding the foregoing, nothing in this provision shall preclude complimentary upgrades to first class or business class seating, mileage, points, or credits based upgrades, or upgrades paid for by the contractor so long as the City is not charged for or asked to reimburse the upgrade charge or the value of the miles, points, or credits used.
- 30.19. **TAXES.** Except as specifically stated elsewhere in this Contract, the Company shall pay all applicable federal, state and local taxes which may be chargeable against the performance of the Services. 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.
- 30.20. **COUNTERPARTS.** This Contract may be executed in any number of counterparts, all of which taken together shall constitute one single agreement between the parties.
- 30.21. **PRE-AUDIT.** No pre-audit certificate is required under N.C. Gen. Stat. 159-28(a) because this Contract is for an indefinite quantity with no minimum purchase requirement. Notwithstanding anything contained herein to the contrary, this Contract does not require the City to purchase a single product or service, and a decision by the City to not make any purchase hereunder will violate neither this Contract nor any implied duty of good faith and fair dealing. The City has no financial obligation under this Contract absent the City's execution of a valid and binding purchase order or contract addendum containing a pre-audit certificate."

[Signature Page Follows]

Exhibit A – Sample Contract

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:
INSURANCE AND RISK MANAGEMENT**

BY: _____
(signature)

PRINT NAME: _____

TITLE: _____

DATE: _____

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

BY: _____
(signature)

PRINT NAME: _____

TITLE: _____

DATE: _____

[NOTE: WHERE ALL SOFTWARE TO BE PURCHASED IS CLOUD-BASED (INCLUDING SOFTWARE-AS-A-SERVICE), EXHIBIT 3 WILL REPLACE EXHIBITS 1 AND 2 WITH RESPECT TO SOFTWARE PURCHASES (“MAINTENANCE” AND “LICENSE”)]

Sample City Contract Exhibit 1

MAINTENANCE SERVICES

This Exhibit is incorporated into and made a part of the [INSERT EXACT CAPTION OF CONTRACT] (“Contract”) between the City of Charlotte (the “City”) and [INSERT COMPANY NAME] (the “Company”). Unless otherwise defined herein, capitalized terms in this Exhibit shall have the same meanings as are assigned to such terms in the main body of the MASI.

1. **GENERAL DESCRIPTION OF COMPANY RESPONSIBILITIES.**

Beginning on [DATE] and continuing throughout the term of this Contract (and any renewal period thereof), the Company shall provide to the City the services specified in the following provisions of this Contract (all of which are collectively referred to in this Contract as the “Maintenance Services”).
2. **PREVENTION AND CORRECTION OF DEFECTS.**
 - 2.1. **SOFTWARE.** Without limiting any of its other obligations under this Contract, the Company shall correct Defects in the Software, and take such actions as are necessary to ensure that the Software fully conforms to the Specifications and Requirements.
 - 2.2. **HARDWARE.** Without limiting any of its other obligations under this Contract, the Company will correct Defects in the Hardware, and maintain all Hardware in a manner so that: (i) the manufacturer warranty shall remain in full force and effect; (ii) such Hardware shall be qualified for coverage under the manufacturer’s maintenance program, if available; and (iii) so as to ensure that the Hardware operates in conformity with the Specifications and Requirements. During the term of this Contract, the Company shall be responsible for correcting all Defects in the Hardware (whether covered by manufacturer warranty or not). The Company shall supply all parts and labor required to perform its obligations under this Subsection at no charge beyond the Maintenance Fee.
 - 2.3. **HIGHEST INDUSTRY STANDARDS.** All work performed by the Company and/or its subcontractors pursuant to this Contract shall meet the highest industry standards for professional quality and workmanship, and shall be performed by qualified staff using quality products and materials.
 - 2.4. **SOFTWARE NEW RELEASES AND NEW VERSIONS.** The Company shall provide to the City all New Releases and all New Versions to all Software (including Third Party Software) as soon as reasonably possible following their commercial release at no charge beyond the Maintenance Fee..
 - 2.5. **HARDWARE NEW RELEASES AND NEW VERSIONS.** The Company will provide and install at no charge beyond the Maintenance Fee all New Releases and New Versions to Hardware (including engineering changes) which are: (a) necessary to correct Defects or enable the Hardware or any component to function at an optimum level; or (b) required by the manufacturer.
 - 2.6. **COMPLIANCE WITH LAWS.** The Company will promptly develop and provide at no charge beyond the Maintenance Fee all changes and additions to the Software and the Hardware that are required to achieve compliance with local, state or federal laws, regulations, codes and guidelines (including all changes to such laws, regulations, codes and guidelines).
4. **ASSURANCE OF CONTINUED MAINTENANCE AND SUPPORT.**

Without limiting any of the Company’s other obligations under this Contract, the Company shall support the immediately preceding version of a Current Release of the Software for at least twenty four (24) months following issuance of such Current Release of the Software, provided that if a Current Release requires the City to incur significant integration costs or significant costs

Exhibit A – Sample Contract

in replacing hardware or software (including operating system software), then the Company shall support the immediately preceding version for at least forty-eight (48) months following issuance of the Current Release.

Exhibit A – Sample Contract

[NOTE: WHERE ALL SOFTWARE TO BE PURCHASED IS CLOUD-BASED (INCLUDING SOFTWARE-AS-A-SERVICE), EXHIBIT J WILL REPLACE EXHIBITS E AND F (“MAINTENANCE” AND “LICENSE”)]

Sample City Contract Exhibit 2

LICENSE

This Exhibit is incorporated into and made a part of the [INSERT EXACT CAPTION OF CONTRACT] “Contract”) between the City of Charlotte (the “City”) and [INSERT COMPANY NAME] (the “Company”). Unless otherwise defined herein, capitalized terms in this Exhibit shall have the same meanings as are assigned to such terms in the main body of the Contract. For purposes of this Exhibit only, the term “Software” shall not be deemed to include Customizations, given that the Customizations are owned by the City and require no license.

1. GRANT OF LICENSE

- 1.1. *GRANT OF LICENSE.* Subject to the restrictions set forth in **Section 1.2** below, the Company grants to City and the Affiliates a perpetual, nonexclusive, irrevocable, nontransferable, royalty-free license to:
 - (a) Use the Software and the Documentation for all purposes set forth or referenced in the Contract or the City’s RFP or the Company’s Proposal, including but not limited to: (a) the operation and use of the System, (b) internal training and testing, (c) development, (d) disaster recovery, backup, archive and restore testing and implementation purposes and (e) any other purpose related to the above; and
 - (b) Allow direct and remote access to the Software and Documentation by an unlimited number of users and departments of: (a) the City; (b) any Affiliate, (c) any other entity to which the City provides services through use of the Products; and (d) any other person or entity to which the City needs to allow access in order to provide services to any of the above through the Products;
 - (c) Modify, improve, enhance, update, integrate and make derivative works of the Software and the Documentation on its own or through a third party; and
 - (d) Make as many copies of the Software and Documentation as it desires in support of its authorized use of the Software, provided that said copies shall include the Company's or the third party owner’s copyright and other proprietary notices (as the case may be).
- 1.2. *RESTRICTIONS ON USE.* The City shall not use, copy, disclose or distribute the Software except as permitted by this License.
- 1.3. *THIRD PARTY ACCESS.* The City may: (a) allow access to the Software and Documentation by third party contractors to modify, improve, enhance, update, integrate and make derivative works of the Software and the Documentation, and (b) make and provide a copy of the Software and Documentation to third parties to whom the City has outsourced disaster recovery functions, operations of human resources; provided that such third parties execute an agreement containing provisions substantially similar to those set forth in the Confidentiality provision of the Contract.

Exhibit A – Sample Contract

2. DELIVERY, TESTING AND ACCEPTANCE.

- 2.1. *DELIVERY.* The Company shall cause the Software to be delivered, configured and integrated at the times set forth in Exhibit ___. Any breach by the Company under the Contract shall constitute a breach of this License.
- 2.2. *ACCEPTANCE.* The Software shall not be deemed to have been accepted by the City until formal Acceptance by the City, as that term is defined in Exhibit ___.
- 2.3. *ENHANCEMENTS AND UPDATES.* Company shall provide Enhancements and Updates to the City for so long as the Maintenance Services are in effect. Upon delivery to the City, such Enhancements and Updates of the Company Software and Third Party Software shall be deemed incorporated into and made part of the Company Software or the Third Party Software (as the case may be).

[NOTE: WHERE ALL SOFTWARE TO BE PURCHASED IS CLOUD-BASED (INCLUDING SOFTWARE-AS-A-SERVICE), THIS EXHIBIT J WILL REPLACE EXHIBITS E AND F (“MAINTENANCE” AND “LICENSE”)]

Sample City Contract Exhibit 3

City of Charlotte Cloud Technology Requirements

This Exhibit is attached and incorporated into the _____ [INSERT EXACT CAPTION OF CONTRACT] (the “Contract”) between the City of Charlotte and [INSERT COMPANY’S NAME] (“Company”). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract.

1. **CLOUD SERVICES.** This Contract sets forth the terms and conditions under which Company agrees to provide the Cloud Services. Company will complete the following tasks as part of day to day management of these Cloud Services on all environments (dev, test, prod, etc.). For all Cloud Services the Company will be responsible for any third party support required.

1.1. OPERATIONS

- 1.1.1. Company will be fully responsible for all infrastructure and Software implementation and maintenance. The City's responsibilities will be limited to end-user administration of the Cloud Services.
- 1.1.2. Company will provide a Cloud Services configuration that provides average City on site response time of 1 second to any end user inquiry or submission. Maximum response time to any end user inquiry or submission will be 5 seconds. Extended deviations from these performance targets will be treated as priority two or priority one incidents according to language established in the Service Level Agreement section.
- 1.1.3. Communications between Company and any other hosted vendor services will be routed through the City's network rather than directly connecting from vendor to vendor. The City is responsible for network integrations to all third party products.

1.2. BACKUP AND RECOVERY

- 1.2.1. As a part of the Cloud Services, Company is responsible for maintaining a backup of Contract Data, for an orderly and timely recovery of such data in the event that the Cloud Services may be interrupted.
- 1.2.2. Company shall maintain a contemporaneous backup of Contract Data that can be recovered within 2 hours at any point in time.
- 1.2.3. Backup strategy shall ensure that the City will never have any more than 15 minutes of data loss in the event of a required recovery or failover to the disaster recovery installation.
- 1.2.4. Company will acquire City authorization before performing any recovery operation that will result in any Contract Data loss
- 1.2.5. Additionally, Company shall store a backup of Contract Data in a remote facility (physically separate from the production facility) no less than daily, maintaining the security of Contract Data, the security requirements of which are further described herein.

1.3. MAINTENANCE AND UPGRADES

- 1.3.1.**Scope.** Company maintenance and upgrade responsibilities include all Company-delivered customizations, modifications, integrations, and configurations.
- 1.3.2.**Scheduled Maintenance.** Company will conduct regular maintenance and upgrades only during scheduled times. The agreed upon scheduled time for maintenance and upgrades is Saturday nights from 11pm to Sunday mornings 11:00am EST (the “Scheduled Maintenance Window”).
- 1.3.3.**Unscheduled Maintenance.** In the event that Company determines that any unscheduled maintenance is necessary, Company must provide at least 4 hours prior notice to the City before performing the unscheduled maintenance.
- 1.3.4.**Release Upgrades.** Unless the City directs otherwise in writing, Company will upgrade to new releases within 1 year of release. Company will closely coordinate these upgrades with the City, including scheduled time and expected duration. Maintenance activities will be completed within the Scheduled Maintenance Window defined above.

2. LICENSE GRANT

- 2.1. The Company grants the City and its Affiliates a royalty free, non-exclusive, license to use and access the Software through the Cloud Services. [Note: Additional license terms will be inserted that mirror relevant terms from Exhibit F]
- 2.2. Pursuant to this license, the City and its Affiliates may:
- 2.2.1. Use the Software and the Documentation for all purposes set forth or referenced in this Contract or the City’s RFP or the Company’s Proposal, including but not limited to: (a) the operation and use of the Cloud Services, (b) internal training and testing, (c) development, (d) disaster recovery, backup, archive and restore testing and implementation purposes and (e) any other purpose related to the above;
- 2.2.2. Allow direct and remote access to the Software and Documentation by an unlimited number of users and departments of: (a) the City; (b) any Affiliate, (c) any other entity to which the City provides services through use of the Cloud Services; and (d) any other person or entity to which the City needs to allow access in order to provide services to any of the above through the Cloud Services; and
- 2.2.3. integrate the Software and the Documentation using its own resources or through a third party.
- 2.3. **RESTRICTIONS ON USE.** The City shall not use, copy, disclose or distribute the Software except as permitted by this License.
- 2.4. **THIRD PARTY ACCESS.** The City may allow access to the Software and Documentation by third party Contractors to modify, improve, enhance, update, integrate and make derivative works of the Software and the Documentation,; provided that such third parties execute an agreement containing provisions substantially similar to those set forth in the Confidentiality provision of the Contract.
- 2.5. As these Cloud Services are hosted by the Company, licensing of the Software to the City includes licensing and maintenance for any and all necessary components required for the Company to provide the Cloud Services (hardware, Platform Software, etc.)

3. **LICENSE FROM THE CITY.** The City grants Company the non-exclusive, non-transferable, license to copy, store, record, transmit, maintain, display, view, print or otherwise use Contract Data solely to the extent necessary to provide the Cloud Services to the City and its Affiliates.
4. **ON PREMISE THIRD-PARTY SOFTWARE.** The City agrees to use the following software produced by third parties to access the Cloud Services; "browser" software that supports a data security protocol compatible with the protocol used by the Company [, list other software here as applicable]. The Company is responsible for notifying the City of any upgrades, fixes or enhancements to any such third party software required to access services provided by the Company.
5. **MODIFICATION TO OR DISCONTINUATION OF SERVICES.** The City acknowledges that the Company may periodically, with written authorization from the City, need to modify, temporarily or permanently, the Cloud Services (or any part thereof). In the event that Company modifies the Cloud Services in a manner that removes or disables a feature or functionality on which the City materially relies, the Company, at the City's request, shall use commercially reasonable efforts to substantially restore such functionality to the City.

Without limiting any other rights the City has to terminate the Contract, in the event that Company is unable to substantially restore such functionality, the City shall have the right, at its option, to either (i) terminate the Cloud Services and receive a pro-rata refund of the fees paid for use of the Cloud Services which was paid for by the City, but not yet furnished by Company as of the date of such termination, or (ii) terminate the Cloud Services as provided in the preceding subpart (i) and terminate the Contract as provided in Section XX of the Contract. The City also acknowledges that Company reserves the right to discontinue offering the Services. However, because moving to another solution may be a substantial effort for the City, the Company agrees to give the City as much written notice as possible, but not less than 180 days, before discontinuing the Services. []

6. SERVICE LEVEL AGREEMENT

- 6.1. **Availability.** Outside of Scheduled Maintenance, the Company guarantees 99.9% or greater uptime. Availability will be calculated per month, as follows:
$$\frac{(\text{Service Time} - \text{Non-excluded Downtime} - \text{Excluded Downtime})}{(\text{Service Time} - \text{Excluded Downtime})} * 100$$
 - 6.1.1. **"Service Time"** is the total minutes for a given calendar month
 - 6.1.2. **"Excluded Downtime"** is all unavailability caused by (1) scheduled or mutually agreed upon downtime; (2) downtime on non-production systems; (3) failure of City's Internet access or City-managed connectivity components; or (4) equipment or software managed by the City
 - 6.1.3. **"Non-excluded Downtime"** is all downtime that is not Excluded Downtime
- 6.2. **Service Level Reports.** Service Provider will provide monthly Service Level Reports, which will include performance and availability statistics. Company will perform the performance and availability calculations, but will provide the source data to the City on request, in the event that the City would like to validate the results.
- 6.3. Company will monitor all aspects of Cloud Services availability and will notify the City of any outage within 30 minutes of discovery via telephone and email.

Exhibit B – Current City Standards

EXHIBIT B - CURRENT CITY STANDARDS FOR PRODUCTS AND SERVICES

Compatibility and standardization are key concerns in City technology procurements. This is important to optimize interoperability and achieve better overall performance, and to reduce the costs of maintenance, inventory, training and administration. To that end, the City has established certain standards and preferences regarding implementation of new hardware and software. Proposed solutions must adhere to these where noted in the first column of the following table. In the remaining cases, adherence is preferred, but not required. Standards documentation for any technology category can be provided upon request. Version references in the matrix below are as of the time of publication. Vendors are expected to adhere to the current city-supported versions and will need to request those version updates from the City.

Technology Category	Current Architecture Summary	Target Architecture (where different)
Telephony		
Telephony	AT&T POTS analog lines / Cisco / True Image Interactive (TII) IVR (Formerly GetAbby)	Cisco
Call Recording System	Eventide / Verint / Cisco	Eventide / Verint
Mobile Device Services	Apple iPhone 6s or higher excluding iPhone 10/iPad Samsung Android Devices (with approved exception) VMWare AirWatch Managed Devices	Apple iOS version 11.3 or higher
Networking		
Network Cabling	CAT6e/Corning fiber optic	CAT6 Plenum rated Systimax or better
Network Hardware	Cisco Systems Hardware and Software including all portions of their Borderless Networking, Collaboration, Data Center and Virtualization product lines	
Multiple Domains	Any technology the City adopts must work within a multiple domain environment, including the ability to distinguish between users with the same username in multiple domains.	Microsoft 2016 (Summer 2018) Active Directory or higher
Network Communication Protocol (<i>standards apply</i>)	IP, current protocol is IPv4, but new equipment should support IPv6	New technologies should support both IPv4 and IPv6
Wi-Fi	Wi-Fi enabled systems should support 802.11a,b,g, n and ac protocols , AES 256 bit encryption, PEAP and MS-CHAPv2 authentication New Access point equipment should support Cisco CAPWAP architecture, IEEE 802.11i	Wi-Fi enabled systems should support 802.11 a, b, g,n, and ac protocols
Load Balancing	F5	
Data Center		
Server Hardware	HP Proliant series, Dell	HP Proliant Series

Exhibit B – Current City Standards

Technology Category	Current Architecture Summary	Target Architecture (where different)
Server Operating Systems	Windows Server 2008 and above, Red Hat 5 and above	Windows Server 2016, Red Hat 7.3 minimum, preferred last OS version 1+ years in production
Virtual Operating Environments	VMWare, Microsoft App-V, and Hyper-V, Nutanix ver. 5.1.3.2	All servers will be VMWare Hyperconverged on Nutanix, where possible VDI/RDS: Microsoft Hyper-V, Microsoft App-V
Storage	HP, Pillar & EMC Isilon SAN / NAS storage,	HP, NetApp, SolidFire
Backup Software	Symantec Netbackup 7.5, EMC Avamar 6, EMC Data Domain	EMC Avamar 7.5
Backup Hardware	Spectralogic T-50, HP ESL9326	EMC Avamar / Data Domain
Data		
Database Systems	Oracle Database Server 12.1.0.1 and above, MS SQL Server 2012 and above	SQL 2016 Oracle 12.1.0.2 Postgres 9.6x Maria DB 10.2x Encourage open source DBs
ETL/Data Mapping Services/Data Warehousing	SQL Server Integration Services, SQL Server Analysis Services, WhereScape (RED, 3D and Data Vault Express), R, Python	Preferred last version 1+ years in production
Business Intelligence / Data Visualization	Tableau, Excel, Microsoft SQL Reporting Services (SSRS), Esri's Insights	
Reporting Services	Third-party products such as Business Objects / Crystal, COGNOS, Oracle Reports, and Microsoft SQL Server Reporting Services (SSRS) are supported for application-specific reporting. Tableau Enterprise Server and SSRS are the products supported by I&T.	SQL Server Reporting Services Tableau Enterprise Server
Application Servers	.NET Framework, Oracle WebLogic	.NET Framework 4.5.2
Application		
Web Servers	Microsoft Internet Information Services (IIS) v7.x and 8.x	IIS 8.x
Application Languages	MS VB.NET, ASP.NET, MVC, C#.NET, PL/SQL, JSP, Javascript, and Java J2EE are among the City's development toolsets in use.	C#.NET Core, JavaScript, Swift (iOS), Java (Android)
Enterprise Integration Platform	Microsoft BizTalk 2016, Apache Active MQ, .NET Framework	Apache Active MQ 5.14+, .NET Framework 4.5.2

Exhibit B – Current City Standards

Technology Category	Current Architecture Summary	Target Architecture (where different)
Desktop Operating System	Windows 7, Windows 8, Windows 10	Windows 10 Enterprise
Application Client	Client operating systems may include Windows 7 and above. Browser clients should support Microsoft Internet Explorer Version 11 and above. If an actual client installation is required, it must be tested by the City to confirm that it does not conflict with other existing desktop components.	Windows 10 Enterprise. Browser-based implementation is preferred, and where applies, with both mobile friendly and responsive design delivery capability across all devices
Portal Services	Microsoft Office SharePoint Services	SharePoint 2013
Geospatial Platform	The City's Geospatial Platform is based on ESRI's ArcGIS technology. All spatial databases should be compatible with the City's implementation of the ESRI Geodatabase. Web-based GIS tools, components or extended custom functionality should use ArcGIS Server. Google Maps API used for Virtual Charlotte, Emerald Web. AutoCAD is also used by a number of departments.	ESRI ArcGIS 10.5.1 Google Maps for Android/iOS
E-mail Services	The City uses Microsoft Exchange 2016 on-premise with the Microsoft Outlook e-mail client.	Exchange Server
Business Productivity	MS Office 2010	MS Office 365 – local install
Scanning software	Kofax 10, OnBase scanning module	OnBase scanning module
Cloud Storage & Sharing	Various shadow IT tools like Dropbox, box Drive and OneDrive	Microsoft OneDrive
Data Protection		
Security	Security Access to the Software must be restricted by assigning user credentials to authorized users. Enterprise authentication services are provided by Active Directory. All data should be encrypted during transmission and data defined as restricted in the City's Restricted Data Policy should be encrypted at rest.	SAML authentication via ADFS
Endpoint Security	SentinelOne Agent, Windows Firewall, Cisco IronPort (Edge protection for in-bound email)	

Exhibit C – Master Intergovernmental Cooperative Purchasing Agreement

EXHIBIT C - MASTER INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT

This Charlotte Cooperative Purchasing Alliance (CCPA) Master Intergovernmental Cooperative Purchasing Agreement will allow a Participating Public Agency to purchase commodities and/or services from any and all CCPA Contracts, under the same terms, conditions and prices as stated in each contract competitively solicited and awarded by the City of Charlotte, North Carolina (“Contracting Agent”) on behalf of itself and all other public agencies. It is hereby agreed to by CCPA and the Participating Public Agency (Participants) that:

1. CCPA has followed procurement procedures for products and/or services offered by this Agreement in accordance with CCPAs governing procurement statutes and regulations.
2. The cooperative use of bids obtained by a party to this agreement shall be in accordance with the terms and conditions of the bid, except as modification of those terms and conditions is otherwise allowed or required by applicable law.
3. It is the sole responsibility of each Participating Public Agency to follow their state procurement statutes as it pertains to cooperative purchasing, and the rules and regulations that govern each Participant’s procurement practices.
4. CCPA cooperative purchasing contracts are available to Participating Public Agencies “as is,” and CCPA is under no obligation to revise the terms, conditions, scope, price, and/or other conditions of the contract for the benefit of the Participants.
5. It is the sole responsibility of the Participating Public Agency to accept delivery of products and/or services, and the Participants hereby agree to make timely payments to each Company for products and/or services received pursuant to this Agreement. Any dispute which may arise between the Participating Public Agency and the Company are to be resolved between the Participating Public Agency and the Company.
6. The City of Charlotte shall not be held liable for any costs, damages, expenses, fees, or liabilities incurred by any other Participating Public Agency as a result of any contract or other arrangement entered into between that Participant and the Company.
7. The procuring party shall not use this agreement as a method for obtaining additional concessions or reduced prices for similar products or services.
8. This Agreement incorporates all Contracts, covenants and understandings between CCPA and the Participating Public Agency. No prior Agreement or understanding, verbal or otherwise, by the parties or their agents, shall be valid or enforceable unless embodied in this Agreement. This Agreement shall not be altered, changed, or amended except by written revision or addendum executed by both parties.
9. This agreement is non-exclusive and shall not in any way preclude Participating Public Agencies from entering into similar agreements and/or arrangements with other Cooperative Purchasing Programs, or from acquiring similar goods and services from other sources.
10. This agreement shall take effect after the Participating Public Agency submits the competed electronic CCPA registration and shall remain in effect until termination by a party giving 30 days written notice to the other party.

Exhibit D – Federal Contracting Requirements

EXHIBIT D.1 – FTA FEDERAL CONTRACTING REQUIREMENTS

This Exhibit is incorporated into the Services Contract between the City of Charlotte and _____ (the “Contract”). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract. All references to the “Contractor” or the “Company” shall be deemed to mean the Contractor.

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 may be 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 Federal Transit Administration (“FTA”) Master Agreement, as amended (the “Master Agreement”), including any certifications and contractual provisions required by any Federal statutes or regulations referenced therein to be included in this Contract, are deemed incorporated into this Contract by reference and shall be incorporated into any subagreement or 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.

ENERGY CONSERVATION

The Contractor agrees to comply with the 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.*

CLEAN WATER

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.

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.

CLEAN AIR

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.

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.

Exhibit D – Federal Contracting Requirements

LOBBYING

31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it has not and will not use federally appropriated funds 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 City.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] 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 any 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 any 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). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including 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 imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995).

Exhibit D – Federal Contracting Requirements

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.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

ACCESS TO RECORDS AND REPORTS

Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three 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 Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

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 Contract

Exhibit D – Federal Contracting Requirements

between the City 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. Notwithstanding, contractor shall be entitled to an adjustment in the maximum contract value and/or time on account of compliance with any such changes.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

The City and the 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 City, the Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

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.

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.

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.

TERMINATION.

TERMINATION WITHOUT CAUSE. The City may terminate this Agreement at any time without cause by giving thirty (30) days written notice to the Company.

TERMINATION FOR DEFAULT BY EITHER PARTY. By giving written notice to the other party, either party may terminate this Agreement upon the occurrence of one or more of the following events:

The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Agreement, provided that, unless otherwise stated in this Agreement, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such

Exhibit D – Federal Contracting Requirements

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

The other party attempts to assign, terminate or cancel this Agreement contrary to the terms hereof; or

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 this Agreement 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 pursuant to this Section shall identify and state the party's intent to terminate this Agreement if the default is not cured within the specified period.

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

The Company makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Agreement, Company's Proposal, or any covenant, agreement, obligation, term or condition contained in this Agreement; or

The Company takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Agreement, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Agreement, or failure to provide the proof of insurance as required by this Agreement.

CANCELLATION OF ORDERS AND SUBCONTRACTS. In the event this Agreement 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 Agreement and promptly cancel all existing orders and subcontracts, which are chargeable to this Agreement. 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 Agreement to the date of termination.

NO EFFECT ON TAXES, FEES, CHARGES, OR REPORTS. Any termination of the Agreement 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.

OBLIGATIONS UPON EXPIRATION OR TERMINATION. Upon expiration or termination of this Agreement, the Company shall promptly (a) return to the City all computer programs, files, documentation, data, media, related material and any other recording devices, information, or compact discs that are owned by the City; (b) deliver to the City all Work Product; (c) allow the City or a new vendor access to the systems, software, infrastructure, or processes of the Company that are necessary to migrate the Services to a new vendor; and (d) refund to the City all pre-paid sums for Products or Services that have been cancelled and will not be delivered.

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 Agreement, the Company agrees that it

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will not terminate this Agreement or suspend or limit the delivery of Products or 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.

AUTHORITY TO TERMINATE. The City Manager or their designee is authorized to terminate this Agreement on behalf of the City.

AUDIT. During the term of the Agreement and for a period of one (1) year after termination or expiration of this Agreement for any reason, the City shall have the right to audit, either itself or through a third party, all books and records (including but not limited to the technical records) and facilities of the Company necessary to evaluate Company's compliance with the terms and conditions of the Agreement 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 \$5,000 but for the audit, then the Company shall be required to reimburse the City for the cost of the audit.

REMEDIES.

LIQUIDATED DAMAGES. The City and the Company acknowledge and agree that the City may incur costs if the Company fails to meet the delivery times set forth in the ITB for the Products and Services. The parties further acknowledge and agree that: (a) the City may be damaged by such failures, including loss of goodwill and administrative costs; but that (b) the costs that the City might reasonably be anticipated to accrue as a result of such failures are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the Company agrees to pay liquidated damages at the rates set forth in the ITB. The parties agree that the liquidated damages set forth in the ITB shall be the City's exclusive remedy for loss of goodwill and administrative costs, attributable to a failure by the Company to meet such delivery times, but shall not be the remedy for the cost to cover or other direct damages.

RIGHT TO COVER. If the Company fails to meet any completion date or resolution time set forth in this Agreement (including the Exhibits), and it fails to cure such default within one (1) business day after receiving written notice from the City of such failure, the City may take any of the following actions with or without terminating this Agreement, and in addition to and without limiting any other remedies it may have:

Employ such means as it may reasonably 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 Agreement; and

Deduct any and all reasonable 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 reasonable cost of obtaining or performing the services exceed the amount due the Company, collect the difference from the Company.

RIGHT TO WITHHOLD PAYMENT. If the Company materially breaches any provision of this Agreement, the City shall have a right to withhold all payments due to the Company with respect to the services that are the subject of such breach until such breach has been fully cured.

SPECIFIC PERFORMANCE AND INJUNCTIVE RELIEF. The Company agrees that due to the potential impact on public health, monetary damages may not be an adequate remedy for the Company's failure to provide the Services required by this Agreement, and monetary damages may not be the equivalent of the performance of such obligation. Accordingly, the Company hereby agrees

Exhibit D – Federal Contracting Requirements

that the City may seek 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 seeking injunctive relief (including a temporary restraining order) to assure performance in the event the Company breaches the Agreement in any material respect.

SETOFF. Each party shall be entitled to setoff and deduct from any amounts owed to the other party pursuant to this Agreement all damages and expenses incurred as a result of the other party's breach of this Agreement, following any applicable cure periods, and provided such party has given notice of its intention to apply a setoff prior to making the payment deduction, together with documentary evidence demonstrating that such party has actually incurred the damages and/or expenses being setoff.

OTHER REMEDIES. Except as specifically set forth in the main body of this Agreement, the remedies set forth above shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that it, nor its principals (as defined at 49 CFR 29.995) or affiliates (as defined at 49 CFR 29.905) is excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction in which it enters. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the City. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

PRIVACY ACT

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552(a). The Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Exhibit D – Federal Contracting Requirements

CIVIL RIGHTS REQUIREMENTS

The following requirements apply to the underlying contract:

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.

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

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.

Age - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 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.

Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, 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.

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.

Exhibit D –Federal Contracting Requirements

PATENT AND RIGHTS IN DATA

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

Rights in Data - The following requirements apply to each contract involving experimental, developmental or research work:

The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)(i) and (2)(b)(ii) of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

Any subject data developed under that contract, whether or not a copyright has been obtained; and

Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agree to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to

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adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

Nothing contained in this clause regarding rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

Data developed by the Purchaser or Contractor and financed entirely without the use of Federal assistance that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (*i.e.*, a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:

General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

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Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

DISADVANTAGED BUSINESS ENTERPRISES

This contract is subject to the requirements of 49 C.F.R., Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The goal for participation of Disadvantaged Business Enterprises (DBE) is ten percent (10 %). The agency's overall goal for participation is 0 %.

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 C.F.R., 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 City deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 C.F.R. 26.13(b)).

{If a separate contract goal has been established, use the following} Bidders are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 C.F.R. 26.55. Award of this contract is conditioned upon the submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]:**

The names and addresses of DBE firms that will participate in this contract;

A description of the work each DBE will perform;

The dollar amount of the participation of each DBE firm participating;

Written documentation of the bidder commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;

Written confirmation from the DBE that it is participating in the contract as provided in the prime Contractor's commitment; and

If the contract goal is not met, evidence of good faith efforts to do so.

Bidders must present the information required above **[as a matter of responsiveness] [with proposals] [prior to contract award]** (see 49 C.F.R. 26.53 (3)).

Exhibit D – Federal Contracting Requirements

{If no separate contract goal has been established, use the following} The successful bidder will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than thirty (30) days after the Contractor's receipt of payment for that work from the City. In addition, **[the Contractor may not hold retainage from its subcontractors] [is required to return any retainage payments to those subcontractors within thirty (30) days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within thirty (30) days after incremental acceptance of the subcontractor's work by the City and Contractor's receipt of the partial retainage payment related to the subcontractor's work.]**

The contractor must promptly notify the City whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the City.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. 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.

DRUG AND ALCOHOL TESTING

To the extent Contractor or any of its subcontractors or their employees perform a safety-sensitive function under the Project, Contractor shall comply with and assure compliance by all subcontractors, if any, and their employees with 49 U.S.C. § 5331, and FTA Regulations entitled "Prevention of Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 653 and "Prevention of Alcohol Misuse in Transit Operations," 49 C.F.R. Part 654.

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 C.F.R., Ch.1, Pt.31, and any implementing guidelines or regulations issued by the said Administration.

Exhibit D – Federal Contracting Requirements

EXHIBIT D.2 – AVIATION FEDERAL REQUIREMENTS

This Exhibit is incorporated into the Services Contract between the City of Charlotte and _____ (the “Contract”). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract. All references to the “Contractor” or the “Company” shall be deemed to mean the Contractor

1. GENERAL CIVIL RIGHTS PROVISIONS

The Company agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the companies from the solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases the provision obligates the party or any transferee for the longer of the following periods:

- (a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property.

2. CIVIL RIGHTS – TITLE VI ASSURANCES

Compliance with Nondiscrimination Requirements

During the performance of this contract, the Company, for itself, its assignees, and successors in interest (hereinafter referred to as the “Company”) agrees as follows:

1. **Compliance with Regulations:** The Company (hereinafter includes consultants) will comply with the **Title VI List of Pertinent Nondiscrimination Statutes and Authorities**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The Company, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Company will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Company for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each

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potential subcontractor or supplier will be notified by the Company of the Company’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports:** The Company will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Company is in the exclusive possession of another who fails or refuses to furnish the information, the Company will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Company’s noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Company under the contract until the Company complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Company will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Company will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Company becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Company may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Company may request the United States to enter into the litigation to protect the interests of the United States.

Title VI List of Pertinent Nondiscrimination Authorities

During the performance of this contract, the Company, for itself, its assignees, and successors in interest (hereinafter referred to as the “Company”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and

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Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

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EXHIBIT D3 - FEDERAL CONTRACT TERMS AND CONDITIONS

This Exhibit is attached and incorporated into the _____ [INSERT EXACT CAPTION OF CONTRACT] (the “Contract”) between the City of Charlotte and [INSERT COMPANY’S NAME] (“Company”). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract. In the event of a conflict between this Exhibit and the terms of the main body of the Contract or any other exhibit or appendix, the terms of this Exhibit shall govern.

1. **Debarment and Suspension.** The Company represents and warrants that, as of the Effective Date of the Contract, neither the Company nor any subcontractor or subconsultant performing work under this Contract (at any tier) is included on the federally debarred bidder’s list listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” If at any point during the Contract term the Company or any subcontractor or subconsultant performing work at any tier is included on the federally debarred bidder’s list, the Company shall notify the City immediately.
2. **Record Retention.** The Company certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. The Company further certifies that vendor will retain all records as required by 2 CFR § 200.333 for a period of three years after it receives City notice that the City has submitted final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.
3. **Procurement of Recovered Materials.** The Company represents and warrants that in its performance under the Contract, the Company shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
4. **Clean Air Act and Federal Water Pollution Control Act.** Company agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA)
5. **Energy Efficiency.** The Company certifies that the Company will be in compliance 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 (Pub. L. 94-163, 89 Stat. 871).
6. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Company certifies that:
 - a. No federal appropriated funds have been paid or will be paid, by or on behalf of the Company, 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.

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- b. 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 Company 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).
 - c. The Company shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
7. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** If the Contract is in excess of \$100,000 and involves the employment of mechanics or laborers, the Company must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, the Company is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or purchases of transportation or transmission of intelligence.
8. **Right to Inventions.** If the federal award is a "funding agreement" under 37 CFR 401.2 and the City wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment of performance or experimental, developmental or research work thereunder, the City must comply with 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
9. **Remedies.**
- a. **RIGHT TO COVER.**
If the Company fails to meet any completion date or resolution time set forth in this Contract (including the Exhibits), 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.
 - b. **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.
 - c. **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

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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 the Contract.

d. **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.

e. **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.

10. Termination for Convenience and for Cause.

a. **TERMINATION FOR CONVENIENCE.**

The City may terminate the 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, Company shall submit a statement to the City showing in detail the Services performed under this Contract through the date of termination. The forgoing payment obligation is contingent upon 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.

b. **TERMINATION FOR DEFAULT BY EITHER PARTY.**

By giving written notice to the other party, either party may terminate the 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 the Contract, provided that, unless otherwise stated in the 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 the 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 the Contract and shall state the party's intent to terminate the Contract if the default is not cured within the specified period.