

**REQUEST FOR PROPOSALS**  
**TRANSIT MANAGEMENT SERVICES**

**RFP # 269-2023-1363**



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

**APRIL 18, 2023**

**REQUEST FOR PROPOSALS**  
**RFP # 269-2023-1363**  
**Transit Management Services**

APRIL 18, 2023

Dear Sir or Madam:

The City of Charlotte, North Carolina, is now accepting Proposals for Transit Management Services. 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 solicitation process or required Services will be held on **May 16, 2023 at 2:00 p.m. EST**. Please have a copy of the RFP available for reviewing during the Pre-Proposal Conference. This meeting will be conducted via Microsoft Teams only. Please email Todd Holcomb at [todd.holcomb@charlottenc.gov](mailto:todd.holcomb@charlottenc.gov) if you plan to attend for a link to the meeting. All interested Companies should return a completed Request For Proposals Acknowledgement Form (see Section 6, Form 1) by the date stated in Section 2.1 of this RFP.

An electronic copy of the RFP in Microsoft Word format may be obtained from the City's Contracting Opportunities Site ([Contract Opportunities \(charlottenc.gov\)](http://Contract Opportunities (charlottenc.gov))) by searching for the RFP Title or Number.

All Proposals are due to City of Charlotte Department of General Services, City Procurement, 3rd Floor, CMGC 600 East Fourth Street, Charlotte, North Carolina 28202, by JUNE 20, 2023 at 2:00 p.m. EST.

One (1) electronic copy of the Proposal on a 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: Todd Holcomb**  
**[Name of Company Submitting Proposal]**  
**Transit Management Services**  
**RFP # 269-2023-1363**

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

Sincerely,

Marcy Mars  
Acting Deputy Chief Procurement Officer

cc: RFP Project Team  
RFP file

## Checklist for Submitting a Proposal

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

**Step 2.** If you plan on submitting a Proposal in response to this Request for Proposals (RFP), email **Required Form 1 contained in RFP Attachment B (Request for Proposals Acknowledgement)** to the number or email address listed on the sheet.

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

**Proposal Submittals** – Please provide the specified number for each format:

- ☐ 1 electronic file on a flash drive
- ☐ 1 hardcopy marked “Original”

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

- ☐ Table of Contents
- ☐ **Required Form 2** – Addenda Receipt Confirmation per RFP Section 4.1.1 (RFP Attachment B).
- ☐ **Required Form 3** – Proposal Submission Form (RFP Attachment B)
- ☐ Cover Letter, RFP Section 4.1.1.
- ☐ Qualifications of the Proposing Firm, RFP Section 4.1.2.
- ☐ Qualifications of Proposed Staff, RFP Section 4.1.3.
- ☐ Approach to Service Provision, RFP Section 4.1.4.
- ☐ Mandatory and Optional Submittal Items, RFP Section 4.1.4.1.
- ☐ Exceptions to the RFP, RFP Sections 1.6.12. and 4.1.5.
- ☐ **Required Form 4** – Proposed Pricing Worksheet (RFP Attachment B)
- ☐ **Required Form 5** – References (RFP Attachment B)
- ☐ **Required Form 6** – M/W/SBE Utilization (RFP Attachment B)
- ☐ **Required Form 8** – Certification Regarding Debarment, Suspension, and Other Responsibility Matters (RFP Attachment B)
- ☐ **Required Form 9** – Byrd Anti-Lobbying Certification (RFP Attachment B)
- ☐ **Required Form 10** – Financial Capacity Certification and Guaranty (RFP Attachment B)

**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 lists the City as an additional insured and provides

appropriate policy endorsements that meets or exceeds the requirements set forth in Attachment A – Sample Contract.

**It is the Company's responsibility to check [www.ips.state.nc.us](http://www.ips.state.nc.us) or the City's [Contract Opportunities Site](#) for any addenda issued for this Project. Search for bid # 269-2023-1363 to determine if any changes have been posted.**

## Table of Contents

Checklist for Submitting a Proposal .....	3
<b>1. INTRODUCTION AND GENERAL INFORMATION .....</b>	<b>6</b>
1.1. Objective .....	6
1.2. Definitions .....	6
1.3. Accuracy of RFP and Related Documents .....	9
1.4. City's Rights and Options .....	9
1.5. Expense of Submittal Preparation .....	10
1.6. Proposal Conditions .....	10
<b>2. PROCUREMENT PROCESS .....</b>	<b>14</b>
2.1. Schedule and Process .....	14
2.2. Intent to Propose .....	14
2.3. Interpretations and Addenda .....	14
2.4. Pre-Proposal Conference .....	15
2.5. Submission of Proposals .....	15
2.6. Correction of Errors .....	16
2.7. Evaluation of Submitted Proposals .....	16
2.8. Contract Award by Council .....	16
2.9. Vendor Inclusion .....	16
<b>3. SCOPE OF TRANSIT MANAGEMENT SERVICES .....</b>	<b>16</b>
<b>4. PROPOSAL CONTENT AND FORMAT .....</b>	<b>76</b>
4.1. Proposal Content .....	76
<b>5. PROPOSAL EVALUATION CRITERIA AND PROCESS .....</b>	<b>82</b>
5.1. Proposal Evaluation Criteria .....	82
5.2. Proposal Evaluation Process .....	82
<b>ATTACHMENT A – SAMPLE CONTRACT .....</b>	<b>84</b>
<b>ATTACHMENT B – REQUIRED FORMS .....</b>	<b>131</b>
REQUIRED FORM 1 – REQUEST FOR PROPOSALS ACKNOWLEDGEMENT .....	132
REQUIRED FORM 2 – ADDENDA RECEIPT CONFIRMATION .....	133
REQUIRED FORM 3 – PROPOSAL SUBMISSION FORM .....	134
REQUIRED FORM 4 – PROPOSED PRICING WORKSHEET .....	136
REQUIRED FORM 5 – REFERENCES .....	138
REQUIRED FORM 6 – M/W/SBE UTILIZATION .....	139
REQUIRED FORM 9 – BYRD ANTI-LOBBYING CERTIFICATION .....	142
REQUIRED FORM 10 – FINANCIAL CAPACTIY CERTIFICATION AND GUARANTY .....	143

## 1. INTRODUCTION AND GENERAL INFORMATION

### 1.1. Objective

The Charlotte Area Transit System (CATS), a department of the City of Charlotte (City), is seeking a qualified Contractor to provide professional transit management services for the Bus Operations Division (BOD).

CATS strives to align performance indicators of service quality with the Agency's priorities of providing safe, convenient, reliable, courteous, cost effective, efficient, and clean transportation.

The selected Contractor will:

- Bring added value in maximizing ridership, regional accessibility and the Customer's experience;
- Improve service quality and increase the operational efficiency of the system;
- Use best industry trends and practices for operating a rider-centric transit system; and
- Consistently meet or exceed key performance indicators.

CATS is in alignment with the City of Charlotte and its commitment to becoming a global leader in environmental sustainability with a goal to become a low carbon city by 2050 and bringing down the city-wide greenhouse gas emissions to below 2 tons CO<sub>2</sub>e per person annually. A major component to achieving these goals is the reduction in the amount of gas emissions emitted by public transit. CATS is exploring the conversion of the diesel fleet to compressed natural gas.

### 1.2. Definitions

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

Term	Definition
<b>Acceptance:</b>	Refers to receipt and approval by the City of a Deliverable or Service in accordance with the acceptance process and criteria in the Contract.
<b>Affiliates:</b>	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.
<b>Biodegradable:</b>	Refers to the ability of an item to be decomposed by bacteria or other living organisms.
<b>CATS:</b>	Refers to the Charlotte Area Transit System. CATS is a department of the City of Charlotte.
<b>Charlotte Business INclusion (CBI):</b>	Refers to the Charlotte Business INclusion office of the City of Charlotte.
<b>Charlotte Business INclusion Policy (CBI Policy):</b>	Refers to the policy adopted by City Council, which seeks to enhance competition in contracting and procurement opportunities for MWSBEs located in the Charlotte Combined Statistical Area.
<b>Charlotte Combined Statistical Area:</b>	Refers to the area consisting of the North Carolina counties of Anson, Cabarrus, Cleveland, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, Stanly, and Union, and the South Carolina counties of Chester, Lancaster, and York; a criterion used by Charlotte Business INclusion to determine eligibility to participate in the program.
<b>City:</b>	Refers to the City of Charlotte, North Carolina.

## Section 1

### Introduction and General Information

Term	Definition
<b>City Project Manager:</b>	Refers to a specified City employee representing the City's best interests in this Project.
<b>Company:</b>	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.
<b>Company Project Manager:</b>	Refers to a specified Company employee representing the best interests of the Company for this Project.
<b>Contract:</b>	Refers to a written agreement executed by the City and the Company for all or part of the Services.
<b>Deliverables:</b>	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.
<b>Department:</b>	Refers to a department within the City of Charlotte.
<b>Documentation:</b>	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.
<b>Environmentally Preferable Products:</b>	Refers to products that have a lesser or reduced effect on human health and the environment when compared with competing products that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.
<b>Evaluation Committee:</b>	Refers to a City-appointed committee that will evaluate Proposals and identify the Company(-ies) best meeting the needs of the City.
<b>Milestones:</b>	Refers to an identified deadline for the completion of specific Services and/or the Acceptance of identified Deliverables, as specified in this RFP.
<b>Minority-owned Business Enterprise (MBE):</b>	Refers to a business enterprise that: (i) 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; (ii) is at least fifty-one percent (51%) owned by one (1) or more persons who are members of one of the following groups: African American or Black, Hispanic, Asian, Native American or American Indian; and (iii) has significant business presence in the Charlotte Combined Statistical Area.
<b>MWSBE:</b>	Refers to SBEs, MBEs, and WBEs, collectively.
<b>MWSBE Goal:</b>	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 (1) combined goal for MBEs, WBEs, and/or SBEs, in which event the term MWSBE Goal refers to that one (1) 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.
<b>Post-Consumer Recycled Material:</b>	Refers to material and by-products which have served their intended end-use by a consumer and have been recovered or diverted from solid waste. It does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

## Section 1

### Introduction and General Information

Term	Definition
<b><i>Project:</i></b>	Refers to the City's need for a company to provide Transit Management Services for the City.
<b><i>Project Plan:</i></b>	Refers to the detailed plan for delivery of the Services as described in Section 3, in the form accepted in writing by the City in accordance with the terms of this RFP and resultant Contract.
<b><i>Proposal</i></b>	Refers to the proposal submitted by a Company for the Services as outlined in this RFP.
<b><i>Recyclability:</i></b>	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.
<b><i>Recycled Material:</i></b>	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.
<b><i>Service Provider:</i></b>	Synonymous with Company.
<b><i>Small Business Enterprise (SBE):</i></b>	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.
<b><i>Specifications and Requirements:</i></b>	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.
<b><i>Special Transportation Services (STS):</i></b>	Refers to the Special Transportation Services (STS), a division of CATS that provides paratransit services for the disabled.
<b><i>Subcontracting Goal:</i></b>	Refers to a SBE, MBE, WBE, and/or MWSBE Goal established by the City for an RFP and resulting Contract.
<b><i>Trade Secrets:</i></b>	Information of the City or any of its suppliers, contractors or licensors that: (i) derives value from being secret; and (ii) 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.
<b><i>Woman-owned Business Enterprise (WBE):</i></b>	Refers to a business enterprise that: (i) 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; (ii) is at least fifty-one percent (51%) owned by one or more persons who are female; and (iii) has significant business presence in the Charlotte Combined Statistical Area.
<b><i>Work Product:</i></b>	Refers to the Deliverables and all other programs, algorithms, reports, information, designs, plans and other items developed by the Company



Term	Definition
	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 Company to supplement or clarify its Proposal or provide additional information relating to its Proposal;
- 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 and consultants 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
- 1.4.9.** To terminate discussions and negotiations with any Company at any time and for any reason.
- 1.4.10.** To award a contract without engaging in discussions or negotiations.

### 1.5. Expense of Submittal Preparation

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

### 1.6. Proposal Conditions

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

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

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

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

##### Definition.

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

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

If any Proposal contains Trade Secrets or PII, such Trade Secrets and PII must specifically and clearly be identified in accordance with this Section 1.6.2 by clearly separating them from the rest of the Proposal. For hard copy documents, it must be submitted in a separate, 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 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, along with the relevant citation(s) in state law that may preclude disclosure such confidential information.

##### 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 outside consultants or other third parties who serve on the Evaluation Committee or who are engaged by the City to assist in the evaluation process.

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

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

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

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

The City may disqualify any 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 the City's refusal to disclose any material that the Company has designated as a Trade Secret or PII. This includes an obligation on the part of the Company to defend any litigation brought by a party that has requested Proposals or other information that the Company has marked Trade Secret or PII.

**1.6.3. *Amendments to RFP.***

If the City amends this RFP, addenda will be posted to the IPS website at [www.ips.state.nc.us](http://www.ips.state.nc.us) and the City's [Contract Opportunities Site](#). Companies are required to acknowledge receipt of each addendum on the Addenda Receipt Confirmation Form (Attachment B, Form 2) that must be included with submitted Proposals.

**1.6.4. *Proposal Terms Firm and Irreversible.***

The signed Proposal shall be considered a firm offer on the part of the Company, subject to good faith negotiation of price and other terms with top-rated Proposer(s) as specified herein. All Proposal elements (including all statements, claims, declarations, prices, and specifications) shall be considered firm and irrevocable unless and until contract negotiations commence or if such elements are specifically waived in writing by the City. Accepted and/or negotiated pricing under any resultant contract shall remain firm and fixed for the full Contract period unless changes are negotiated in good faith and agreed to in writing by the contracting parties.

**1.6.5. *Proposal Binding for 180 Days.***

By submitting a Proposal, Companies guarantee that Proposal elements shall remain firm for a one-hundred-eighty (180) calendar day period from the proposal due date.

**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-owned, Woman-owned, and Small Business Enterprises (MWSBEs) with a

significant business presence in the Charlotte Combined Statistical Area. The CBI Policy is posted at [www.charlottebusinessinclusion.com](http://www.charlottebusinessinclusion.com).

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 Subcontracting Goal, MWSBEs must meet both the certification and geographic requirements as detailed throughout this solicitation and in the CBI Policy.

The Subcontracting Goal for this Project has been set at 0% and may be met with MWSBE(s). The Company is required to submit Attachment , Form 6 attached herein. Failure to submit this form with the Proposal may 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 request to change or withdraw a previously submitted Proposal at any time prior to the Proposal due date and time. Only formal written requests addressed/identified in the same manner as the Proposal and received by the City prior to the Proposal due date and time will be considered for modification or withdrawal. The request must be contained in a sealed envelope that is clearly marked as follows:

**Modification(s) to Request for Proposals Submission**  
**Attention: Todd Holcomb**  
**[Name of Company Submitting Proposal]**  
**Transit Management Services**  
**RFP # 269-2023-1363**

## Section 1

### Introduction and General Information

---

No oral modifications will be allowed. If the Company complies with this Section, after the Proposal due date and time, the Proposal and proposed modification(s) will be reviewed, and action taken to allow or reject the modification(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, or otherwise influence 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 4.1.5, each Proposal shall be deemed to agree to comply with all terms, conditions, specifications, and requirements of this RFP including the Sample Contract included in RFP Attachment B. An “exception” is defined as the Company’s inability or unwillingness to meet a term, condition, specification, or requirement in the manner specified in the RFP including the Sample Contract language included in Attachment B. All exceptions taken must be identified and explained in writing in submitted Proposals and must specifically reference the relevant section(s) of this RFP and Sample Contract. If the Company recommends 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.

## 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 estimated 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
April 18, 2023	<i>Issuance of RFP.</i> The City issues this RFP.
May 5, 2023	<i>Request for Proposals Acknowledgement.</i> Companies that intend to submit a Proposal should submit the RFP Acknowledgement Form via email by 5:00 p.m. EST to the contact person listed in Section 2.3.
May 12, 2023	<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 questions must be submitted pursuant to the instructions in Section 2.3 by 5:00 p.m. EST
May 16, 2023	<i>Non-Mandatory Pre-Proposal Conference</i> to be held virtually via Microsoft Teams at 2:00 p.m. EST
May 19, 2023	<i>Submission of Written Questions After the Pre-Proposal Conference.</i> Questions are due by 5:00 p.m. EST
May 26, 2023	<i>Final responses to Service Providers Questions</i> – Posted as addendum
June 20, 2023	<i>Proposal Submission.</i> Proposals are due by 2:00 p.m. EST at City Procurement, CMGC 3 <sup>rd</sup> Floor.
June 21 – July 5, 2023	<i>Evaluation.</i> The Evaluation Committee will assess each Proposal and conduct evaluation activities associated with submitted proposals.
July 7, 2023	<i>Shortlist Notification.</i> The City will notify those Service Providers chosen to continue into the next round of evaluation.
July 17- July 21	<i>Service Provider Final Presentations.</i> Shortlisted Service Providers will be invited to present their proposed solution and transition plans to the City’s Evaluation Committee.
July 24 - 28	<i>Best and Final Offers (BAFO) Period.</i> The Evaluation Committee will allow Service Providers to submit any allowable, final Proposal improvements.
TBD	<i>Notice of Intent to Award to apparent successful Service Provider.</i>
August 2023	<i>Contract Award by Council.</i> Council approval.

### 2.2. Intent to Propose

Please acknowledge receipt of this RFP via email by **May 5, 2023** using the Request for Proposals Acknowledgement Form included in Attachment B (Form 1). Complete the form in its entirety advising the City of your firm’s intention to submit or not submit a Proposal. Email a copy of the completed and signed form to the email address shown in Section 2.3 below. The City strongly encourages Companies to submit this form prior to the Pre-Proposal conference but Companies will 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 the Procurement Officer a question at the Pre-Proposal Conference (that may require a written submittal based on complexity and/or for addendum purposes).

Companies must refrain from contacting any City staff other than the Procurement Officer prior to the award of a contract. **The City is not bound by any statements, representations or**

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

Todd Holcomb  
City of Charlotte  
City Procurement  
600 East 4<sup>th</sup> Street, CMGC 3<sup>rd</sup> Floor  
Charlotte, NC 28202  
RFP # 269-2023-1363  
E-mail : [Todd.Holcomb@charlottenc.gov](mailto:Todd.Holcomb@charlottenc.gov)

When submitting questions, please reference the RFP page number, Section number, and Specification (topic) using the following format:

Company Name:			
Page #	Section #	Specification	Company Questions

In order for questions to be addressed at the Pre-Proposal Conference, they must be submitted by **3:00 p.m. on May 12, 2023**.

After the Pre-Proposal Conference, questions must be submitted in writing by the deadline stated in Section 2.1. In the case of questions not submitted by the deadline, the Procurement Officer will, based on the availability of time to research and communicate an answer, decide whether an answer can be given before the Proposal deadline. When responding to Company questions or issuing addenda to the RFP, the City will post the answer or information to the Internet at <http://www.ips.state.nc.us> and the [City's Contract Opportunities Site](#), referencing solicitation # 269-2023-1363. Companies are required to acknowledge their receipt of each addendum 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 **May 16, 2023 at 2:00 p.m.** EST. The meeting will be held virtually via Microsoft Teams. For a link to this meeting please request from Todd Holcomb at [Todd.Holcomb@charlottenc.gov](mailto:Todd.Holcomb@charlottenc.gov).

While attendance at the Pre-Proposal Conference is not mandatory, all interested Companies are encouraged to attend.

2.5. Submission of Proposals

Proposals must be in the format specified in Section 4 of this RFP. One (1) electronic copy on a 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 **June 20, 2023 on or before but no later than 2:00 p.m.** The digital version of the Proposal shall be complete and unabridged, and shall not refer to the signed and sealed original for any references, clarifications, or additional information.

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

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

Proposals may be delivered in the following ways to the address in Section 2.3:

Via mail (USPS, UPS, FedEx, DHL, etc.);

Drop off at the locked Bid Drop Box in the CMGC Lobby (600 East 4<sup>th</sup> Street – 1<sup>st</sup> Floor, Charlotte, NC 28202) during normal business hours.

Delivered in person (Vendor must coordinate onsite delivery ahead of time by contacting Todd Holcomb at [Todd.Holcomb@charlottenc.gov](mailto:Todd.Holcomb@charlottenc.gov)).



## 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 of Submitted Proposals

An Evaluation Committee comprised of City representatives will evaluate responsive proposals in accordance with Section 5 of this RFP (Evaluation Criteria and Process).

## 2.8. Contract Award by Council

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

## 2.9. Vendor Inclusion

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

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

<http://charlottenc.gov/vendors>

# 3. SCOPE OF TRANSIT MANAGEMENT SERVICES

The Charlotte Area Transit System (CATS), a department of the City, is seeking a partner to operate and maintain its Bus Operations and Maintenance Services. The selected Company (Service Provider) will be expected to provide all personnel necessary to perform the required services. The ideal partner will be service-oriented and aggressively focused on ensuring the best possible experience for CATS' customers through collaboration, cooperation, and data-driven continuous improvement processes.

## 3.1. SCOPE DEFINITIONS

**Accident:** An event that involves any of the following: a fatality; bodily injury in which that person receives immediate medical attention away from the scene of the accident; or at least one of the vehicles involved in the accident had to be towed from the scene.

**Action Plan:** A written action plan submitted by the Service Provider within a reasonable period which is set forth in a request by CATS to address deficiencies or shortcomings in performance under the contract within mutually agreed upon timeframes.

**Agency Safety Plan (ASP):** See Public Transportation Agency Safety Plan (PTASP).

**All-Hazards Approach:** An ideology and approach used by planners to conduct integrated planning and build capability for safety, security, and emergency management, and to optimize and continuously improve the use of resources and the management of risks from hazards, threats, vulnerabilities, and adverse events or incidents.

**Americans with Disabilities Act of 1990 (ADA):** The Americans with Disabilities Act of 1990, as may be amended.

**Agency Safety Plan (ASP):** See Public Transportation Agency Safety Plan (PTASP).



**All-Hazards Approach:** An ideology and approach used by planners to conduct integrated planning and build capability for safety, security, and emergency management, and to optimize and continuously improve the use of resources and the management of risks from hazards, threats, vulnerabilities, and adverse events or incidents.

**Body Damage:** Any accident damage for any Bus Operations Division or rail car vehicle , and/or a ding, dent, scrape, bend, scratch, tear, and/or break in the exterior body panels that is easily visible from 3 feet away, including: broken or cracked glass; missing exterior pieces and/or trim that have been hit and knocked loose, or off; and painted bumpers that have been deformed at one time to have the paint cracked and creased.

**Business Day:** Monday through Friday between the hours of 8 a.m. to 5 p.m., excluding CATS recognized holidays.

**Bus Operations Division (BOD):** Operations and Maintenance Oversight: The division of CATS that is responsible for the overall operations and administration of transportation services offered within the CATS bus, paratransit and vanpool service portfolio.

**Bus Services:** Bus services are commonly multiple stop routes operating within neighborhoods and may include service directly to Park & Rides and Transit Facilities.

**Charlotte Area Transit System:** (Used interchangeably with “CATS”) the enterprise department of the City of Charlotte that provides public transit services including local and express bus service, light-rail, streetcar, paratransit and vanpool, within Mecklenburg County.

**Collective Bargaining Agreement (CBA):** The contractual agreement between an employer and a labor union that governs wages, hours, and working conditions for employees and which can be enforced against both the employer and the union for failure to comply with its terms.

**Computer Aided-Dispatch (CAD):** System that connects vehicles to dispatching software. It automatically collects vital data used by dispatchers such as bus GPS locations to manage schedule adherence, breakdowns, and emergencies. It also integrates with other systems to pass information to in-vehicle equipment, passenger information systems, and mobile applications.

**Collision:** the motor vehicle striking or being struck by another vehicle, person, or object.

**Contract or Contract Documents:** The writings and drawings embodying the legally binding obligations between the Service Provider and CATS for completion of the work under the Contract.

**Contractor:** The individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, contracting with CATS for the performance of Services or work under the Contract, commonly referred to in this document as the “Service Provider.”

**Corrective Action Plan (CAP):** A plan developed by a Rail Transit Agency (RTA) that describes the actions the RTA will take to minimize, control, correct, or eliminate risks and hazards, and the schedule for taking those actions. Either a State Safety Oversight Agency (SSOA) or the Federal Transit Administration (FTA) may require an RTA to develop and carry out a Corrective Action Plan.

**Customer:** Synonymous with the defined term “Passenger”.

**Directly responsible for safety oversight:** Public transportation agency personnel whose primary job function includes the development, implementation, review, and enforcement of the agency’s safety plan, and/or the State Safety Oversight Agency (SSOA) requirements for the rail fixed guideway public transportation system, pursuant to 49 CFR parts 659 or 674.

**Driver:** See definition of Operator.

**EPA:** Environmental Protection Agency.

**Exception:** Relief from a specific reporting or other contract requirement or PDC based on either a threshold value or documentation of good cause. Service Provider may request an exception from any contractual requirement. Exception requests must be provided in writing, include specific facts and details documenting the reason for the request and require written approval of CATS.

**Fare:** Payment required from each passenger for a ride on any mode of transportation provided by CATS.

**FTA:** Federal Transit Administration.

**General Manager:** The individual designated by the Service Provider to manage the services daily and who represents the Service Provider in contract administration and is authorized to make legally binding decisions of behalf of the Service Provider.

**Hazard:** Any real or potential condition that can cause: injury, illness, or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of the Transit Agency (TA); or damage to the environment.

**Hazard Management Log:** An information management tool for tracking identified hazards, rating the hazards, any mitigations, and how the hazard is resolved. Unacceptable and Undesirable Hazardous Conditions must be captured in the Risk Register.

**Incident:** An event that involves any of the following: a non-serious personal injury; one or more injuries requiring medical transport; damage to facilities, equipment, rolling stock, or infrastructure which disrupts the operations of a transit agency.

**Key Personnel:** In addition to the General Manager, personnel who perform work in accordance with the job functions as outlined in this Scope of Work.

**Major Repair:** Repairs to major vehicle systems or components, including engine rebuilding, transmission rebuilding, differential/rear axle rebuilding, and major body repair. Often referred to as heavy repair.

**National Public Transportation Safety Plan:** The plan to improve the safety of all public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53.

**National Transit Database (NTD):** A centralized transit database and primary source of information and statistics on the transit systems of the United States that is maintained by the FTA.

**Non-Preventable Accident:** A collision in which the Vehicle Operator did everything reasonably possible to avoid the collision.

**OEM:** Original Equipment Manufacturer.

**Offeror:** An entity that submits a Proposal

**Operations:** The day-to-day service delivery, including fixed route bus service, vehicle maintenance, fleet cleaning and fueling and all other functions and services required to deliver Services identified in the contract.

**Operators:** The personnel scheduled to operate the vehicles in the delivery of Bus service. Also referred to as Drivers or Vehicle Operators.

**OSHA:** Occupational Safety and Health Administration.

**Passenger:** Any person being transported. Used interchangeably with “Rider” and “Customer” in this document.

**Performance Deficiency Credit (PDC):** A fixed dollar amount for the Service Provider’s failure to perform a specific obligation under this Contract which amount shall be reflected as a credit against amounts owing by the Service Provider under the Contract

**Preventive Maintenance Inspection (PMI):** The PMI is a scheduled event of condition-based inspection and maintenance of vehicle systems, components, and functions against established criteria. The PMI Repairs are those repairs generated from the list of defects from the Inspection. All repairs are to be completed prior to the vehicle being returned to service. All work is to be completed in accordance with the standards identified in the Scope of Services and OEM thresholds/intervals. Once a vehicle begins its PMI, it is to remain out of service until all repairs are complete.

**Preventable Accident/Collision:** A collision in which the Vehicle Operator failed to do everything that reasonably could have been done to avoid it.

**Program Analyst:** The CATS technical representative who has been designated as having the responsibility for assessing the Service Provider's technical performance and progress, inspecting, and periodically reporting on such performance and progress during the stated period of performance, and certifying as to the acceptability of the Service Provider's work in its entirety or any portion thereof, as required by the Contract.

**Project:** The implementation of the requirements of the Contract.

**Property Damage:** The estimated dollar value of all property that is damaged in a Reportable Incident. This includes CATS-owned property and other vehicles and property involved in the incidents that are not owned by CATS.

**Proposal:** An Offeror's response to this RFP.

**Public Transportation:** As defined in the Federal Transit Act, "transportation by a conveyance that provides regular and continuing general or special transportation to the public.

**Public Transportation Agency Safety Plan (PTASP or ASP):** The documented comprehensive agency safety plan for a transit agency that is required by 49 U.S.C. 5329(d) and 49 CFR Part 673.

**Public Transportation Safety Certification Training Program (PTSCTP):** minimum training requirements for Federal and State personnel and contractors who conduct safety audits and examinations of transit systems and for transit agency personnel and contractors who are directly responsible for safety oversight to enhance the technical proficiency.

**Rider:** See definition of Passenger.

**Risk Register:** An information management tool used to document Safety Risk Management and Safety Assurance activities. It records the hazards identified by the transit agency, the potential consequences associated with those hazards, initial safety risk ratings, new mitigations implemented to eliminate or minimize the risk associated with the hazard, revised safety risk rating, and mitigation monitoring measures and activities to ensure the implementation and effectiveness of mitigations.

**Safety Management System (SMS):** A systematic approach to managing safety, including the necessary organizational structures, accountabilities, policies, and procedures. SMS defines the activities by which safety management is undertaken by an organization to achieve acceptable levels of safety. SMS also defines the method of identifying hazards and controlling risks in a work and operational environment and continuously monitors these methods for effectiveness.

**Safety Risk Management:** A process within a Transit Agency Safety Plan for identifying hazards and analyzing, assessing, and mitigating safety risk.

**Scope of Services:** This document, which is a written description of services to be performed or the technical requirements to be fulfilled under the Contract. Commonly referred to as Scope of Services throughout this document.

**Security Incident:** An occurrence of a bomb threat, bombing, arson, hijacking, sabotage, cyber security event, assault, robbery, rape, burglary, suicide, attempted suicide, larceny, theft, vandalism, homicide, fare evasion, trespassing, nonviolent civil disturbance, or CBR (chemical/biological/radiological) or nuclear release.

**Service Provider:** The individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, contracting with CATS for the performance of Services or work under the Contract, also referred to in this document as the "Contractor."

**Services:** The services to be performed by the Service Provider as described in the Scope of Services, including, but not limited to, bus maintenance and operations.

**Staffing and Personnel Plan:** The plan submitted as part of a Proposal that outlines an Offeror's staff needed to fulfill the requirements of the Contract, including vehicle operators, vehicle maintenance technicians, electronics technicians, supervisory, and administrative personnel.

**System Reliability:** The mean distance between major mechanical failures by mode. The System Reliability measure expresses the relationship between safety and asset condition. The rate of vehicle failures in service, defined as mean distance between major mechanical failures, is measured as revenue miles operated divided by the number of major mechanical failures. This is

a measure of how well a fleet of transit vehicles is maintained and operated. The Federal Transit Administration (FTA) recognizes the diversity of the transit industry and that agencies have varied equipment types with varied rates of performance. This measure allows agencies to develop safety performance targets that are specific to their own fleet type, age, operating characteristics, and mode of operation.

**Transit Safety and Security Program (TSSP):** This certificate program recognizes the rail and bus transportation safety and security professionals who have successfully completed the required course work and core competencies to earn a TSSP Certificate of Completion.

**Toxics Release Inventory (TRI):** Inventory list maintained by the EPA, which tracks the management of certain toxic chemicals that may pose a threat to human health and the environment. U.S. facilities in different industry sectors must report annually how much of each chemical is released to the environment and/or managed through recycling, energy recovery and treatment.

**Unacceptable Hazardous Condition:** A hazardous condition determined to be an unacceptable risk according to an established evaluation matrix which evaluates the severity and probability of the risk.

**Vehicle:** A transportation vehicle operated pursuant to this Contract. Also referred to in this Scope of Services as a transit vehicle, public transportation vehicles, and transportation vehicle.

**Vehicle Operator:** Synonymous with Driver and Operator.

**Warranty Work:** Repairs to vehicle systems or components performed during the vehicle or equipment warranty period.

## 3.2. General Scope of Service

CATS is seeking a partner to operate and maintain its Fixed Route Bus and Maintenance Services. Service Provider will provide all personnel necessary to perform the Services and all other goods and ancillary services needed to deliver the Services. The ideal partner will be service-oriented and aggressively focused on ensuring the best possible experience for our customers through collaboration and data-driven continuous improvement processes.

Contractor shall , own, and operate a subsidiary corporation, to employ personnel subject to any existing Collective Bargaining Agreement. Such subsidiary corporation shall continue with uninterrupted operations regardless of any change in Contractor at either an expiration of the agreement or an earlier termination of the agreement.

**3.2.1. Collaboration and Cooperation.** CATS is consistently refining the service delivery process to ensure the highest quality of service is provided in the most efficient and cost-effective manner and that the Service is meeting the needs and expectations of passengers. Given the nature of this project and the importance of this service to the community, CATS is seeking Offerors that will bring significant transit expertise and a positive, collaborative attitude to CATS bus operations. The Project may undergo revisions and modifications to operating and administrative requirements as it is implemented and developed. CATS is seeking Offerors that will work cooperatively with CATS on these changes. The Service Provider shall make recommendations to CATS' management about operational or process changes as they become apparent. The Service Provider is expected to work with CATS in the ongoing development of policies and procedures related to safety as identified in the CATS Agency Safety Plan (ASP), operating methods, procedures, and protocols for all to follow. The Service Provider shall be open to change, development, and maintain flexibility to achieve an integrated, smoothly operating transportation service. It will be unacceptable for the Service Provider to react to suggestions for change or modification of its procedures with resistance. Service Provider should view this Project as a team effort and strive for decisions which result in a mutually beneficial outcome for CATS and the Service Provider and are in the best interests of the Service and Passengers.

**3.2.2 Passengers.** Passengers are the core of CATS' service; therefore, customer service is of paramount importance. The Service Provider shall transport Passengers within a safe, comfortable, clean, and secure environment during all phases of their trips. The Service Provider shall endeavor to provide a systematic approach necessary to provide safe, reliable, customer service with compassion and understanding, and provide the support services in maintenance, operations, and administration to meet Passenger needs. The Service Provider shall ensure that its employees respond to Passenger inquiries and requests in a positive, prompt, and appropriate manner.

## 3.3 Overview of Service

**3.3.1. Purpose and Expectations.** The Service Provider shall provide safe, reliable, and dependable public transportation services to customers in Mecklenburg County and surrounding areas. The service includes high quality, responsive fixed route bus service and the ongoing routine repair and preventive maintenance of the revenue equipment. Any materials, services, programs, projects, or other efforts necessary to provide high quality service are the responsibility of the Service Provider, unless explicitly stated otherwise.

CATS is flexible with respect to certain elements of the Service. Specific requirements and preferences for the Service delivery method have been identified in this document. Through this solicitation, CATS is seeking proposals that offer innovative approaches to enhancing service quality, the customer experience and efficiency of service delivery.

In addition to offering innovative approaches to enhancing service quality, the Offeror is strongly encouraged to propose ways to identify and improve efficiencies in service delivery, proven methods to better the overall customer experience and determine the most beneficial use of CATS vehicles in revenue service.

**3.3.2. Key Responsibilities and Services.** The key responsibilities of the selected Service Provider include management and operation of bus service, revenue vehicle including ongoing routine and preventative maintenance, street supervision, and all management and administration needed to support these efforts and provide a high-quality Service while ensuring safe operations as identified in the CATS ASP. As identified throughout this RFP and Scope of Services, proposers will submit required organizational and operational plans for efficient and effective transit management that will be incorporated into the evaluation process.

Service Provider will provide all personnel necessary to perform the Service and all other goods and ancillary services needed to deliver the Service.

Service Provider must obtain and keep current all required licenses, permits and certifications to operate CATS Services and comply with all local, state and federal laws and administrative regulations throughout the term of the Contract.

### **3.4 FACILITIES, EQUIPMENT AND ASSETS**

**3.4.1. Meeting Space.** Service Provider will have access to shared meeting space (conference rooms, etc.) within CATS facilities on a reservation basis.

**3.4.2. Furniture.** Basic office furniture will be provided by CATS and may be in a used condition. The Service Provider is responsible for the replacement of this basic furniture as needed. The furniture will remain CATS' property after contract termination.

**3.4.3 Utilities.** CATS will provide water, sewer, trash and electrical utilities.

#### **3.4.4 Office Equipment, Services and Technology.**

During the term of this Contract, the Service Provider shall maintain all equipment including vehicles and facilities assigned by CATS for the purpose of providing the Services. Upon delivery of CATS property to the Service Provider, the Service Provider assumes the risk and responsibility for its loss or damage except for reasonable wear and tear or to the extent the property is consumed. Upon completion of this Contract, the Service Provider shall follow CATS' instructions related to the disposition of CATS furnished property and assets not consumed in performing this Contract or previously returned to CATS.

In the event the Service Provider negligently causes damage, negligently or otherwise, to CATS' equipment (computers, copy machines, etc.), the Service Provider shall, at its own expense, promptly repair or restore the equipment to the same level of functionality the equipment possessed prior to the Service Provider's action or replace the equipment

**Copiers and Printing.** The Service Provider shall be responsible for reimbursing the City for the costs of City-provided printers, copiers, fax, scanning, or other related business or finishing services necessary to operate daily business.

**Desktop Computers.** Service Provider is responsible for all non-networked desktop computers in Service Provider's assigned office areas. Any technology infrastructure or computer hardware or software that the Service Provider needs and is not explicitly described as being provided by CATS is the sole responsibility of the Service Provider. Service Provider shall comply with industry-standard information security best practices, including, but not limited to, system hardening, use of antivirus software, operating system patching, firewalls, and other security controls.

**Equipment.** Service Provider shall provide any equipment required for the provision of the Service that is not explicitly described as being provided by CATS.

**Office Infrastructure and Computer Networks.** CATS will provide network infrastructure for office work at the Facilities, including the existing wiring for computer and telephone systems. Any modification and addition of any infrastructure must be approved in advance by CATS.

**Internet/Wi-Fi.** Service Provider shall be required to cover, on a reimbursement basis, the cost of City-provided internet services. Service Providers may be responsible for providing

their own facility Wi-Fi service or mobile hot spots, if requested by CATS. The Service Provider shall seek permission from CATS prior to installing such equipment at the Facility to ensure there are no conflicts with existing CATS systems.

**Cable TV.** CATS will provide a basic cable television service in operator and maintenance breakrooms in addition to basic cable in select conference room spaces to be used for emergency-related events.

**Phones.** CATS will provide a telephone system for the Service Provider's use at the Facilities. Service Provider shall be responsible for domestic long distance (within the continental United States) service. Service Provider will be required to utilize a third party or calling card for international long-distance calls. Additional phones may be provided in CATS's discretion upon written request.

All equipment including, but not limited to telephone lines, shall be used exclusively for providing the Service and for communication with Customers. Communications related to resolution of customer call reports and accident/incident follow up shall be documented and retained for a period not less than 45 business days from the date of the call.

### **3.4.5 Administrative Technology.**

CATS makes use of document storage and team collaboration tools. The Service Provider may be granted access to use such tools for the purpose of providing Service.

**3.4.5.1. Email.** The Service Provider shall be responsible for providing its employees with company-issued individual user email accounts for daily use. Service Provider's employees must only use their company-issued email accounts in connection with the performance of all services and work performed under the Agreement.

### **3.4.6 Computer Aided Dispatch and Vehicle Location Systems**

**System Use** – Service Provider is required to use the CATS-provided computer-aided dispatch system (CAD) and vehicle location systems to optimize service performance in accordance with procedures established by CATS.

**3.4.7 Exclusive Use.** The CATS Bus Facilities, Equipment and Assets are intended for the exclusive use by the Service Provider in providing the Services under the terms of this Contract. Service Provider shall not enter into an agreement with any other party for use of any facility, equipment, vehicle and/or personnel dedicated to this Service without the prior written approval of CATS.

**3.4.8 CATS' Advertising Sales Program.** The City of Charlotte/CATS retains all rights to exterior and interior third-party advertisement on all vehicle(s). Solicitations are not allowed at any time without CATS written approval. CATS has sole responsibility for the generation of revenue by advertising on the exterior and interior of CATS vehicles. The Service Provider will be required to place all advertising signs and literature provided to the Service Provider by CATS and to remove the advertising on removal dates specified by CATS.

**3.4.9 Charter & School Bus Requirements.** The Service Provider agrees to comply with 49 U.S.C. 5323 9d and 49 CFR Part 604, which provide that recipients and sub-recipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental" i.e., it must not interfere with or detract from the provisions of mass transportation.

## **3.5 Service and Operations**

**3.5.1 Service Delivery.** Service Provider shall provide Services in a safe, clean, courteous, professional, dependable manner and in accordance with trip schedules and other schedules provided by CATS.

**3.5.2 Contract Hours, Service Estimates, Revenue Vehicle Hours, and Vehicles.** The range of service hours identified below includes an anticipated number for service. Increases or decreases to the service hours may be periodically required during the contract term to meet demand.



Estimated Annual Revenue Vehicle Hours

FY 2023	FY 2024	FY 2025
675,000	742,000	816,750

Number / Type of Vehicles to be Assigned to and Maintained by Service Provider

Vehicle	FY 2023	FY 2024	FY 2025	FY 2026
Suburban Express	52	52	52	52
Commuter	37	37	37	37
40 Foot Local	185	185	185	185
30 Foot Shuttle	40	40	40	40
24 Foot Chevrolet Cutaway	1	NA	NA	NA
24 Foot Ford Cutaway	84	85	85	85
Total	399	399	399	399

Current Bus List attached.



Current Bus List.pdf

3.5.3 Hours and Days of Service.

- 3.5.3.1 Hours. CATS buses operate between the hours of 4:30 am and 2:30 am., daily.
- 3.5.3.2 Holidays. On New Year’s Day, Independence Day, Memorial Day, Labor Day, Thanksgiving Day, and Christmas Day, CATS buses typically operate on a Saturday or Sunday schedule. On Martin Luther King’s Birthday, and the day after Thanksgiving, CATS buses typically operate on a Saturday schedule.
- 3.5.3.3 Special Event Service. The Service Provider shall perform special services as requested by CATS. These services include but are not limited to seasonal routes, and special events assigned by CATS.

3.5.4 Service Operations Plan, Routes and Schedule Planning.

While CATS is ultimately responsible for determining the schedule and service hours, CATS and Service Provider will meet to determine appropriate schedules for providing routes and schedule information to meet Service Provider’s obligations. Service Provider is expected to be engaged in these meetings, working with CATS to identify opportunities for improvement and offering suggestions and alternatives. Service Provider shall advise CATS of matters of importance and make service adjustment recommendations; however, final authorization concerning Service parameters rest with CATS.

(Detailed information identifying the existing scheduled Bus Service and routes is available at [www.charlottenc.gov/cats/bus/routes](http://www.charlottenc.gov/cats/bus/routes).)

CATS will provide the headway, service frequency, vehicle assignment (block) and operator shift (runs) to the Service Provider during the performance of this Contract. The Service Provider shall be responsible for operating service in accordance with the schedules provided and for managing all scheduled Service subject to CATS’ operating standards for service performance.



A compilation of the existing routes and schedules to be operated initially under this contract is outlined in the table below. Routes and schedules are subject to change in order to meet demand, address service needs, or to comply with regulations, and as specified in subsections 3.5.5 and 3.5.6.

Route	Route Name	Frequency		
		Weekday	Saturday	Sunday
1	Mt. Holly Rd	30	30	60
2	Ashley Rd	30	30	60
3	The Plaza	30	30	30
4	Belmont	30	30	30
5	Sprinter Airport	30	30	30
6	Kings Dr	30	45	60
7	Beatties Ford	20	20	20
8	Tuckaseegee	30	30	45
9	Central	15	15	20
10	West Blvd	30	30	30
11	North Tryon	30	30	30
12	South Blvd	45	45	40
13	Nevin Road	30	30	60
14	Providence Rd	30	30	60
15	Randolph Rd	30	30	30
16	S. Tryon	30	30	30
17	Independence Blvd	30	30	60
18	Paw Creek	45	45	45
19	Park Rd	30	30	30
20	Sharon Rd	60	60	-
21	Statesville Ave	30	30	60
22	Graham	30	30	60
23	Shamrock	30	30	60
24	Nations Ford Rd	45	45	45
26	Oaklawn Ave	45	45	60
27	Monroe	30	30	45
28	Fairview Rd	40	40	-
29	JW Clay/UNCC	30	30	30
30	Woodlawn/Scaleybark	35	35	-
34	Freedom Drive	30	30	45
39	Eastway	40	40	40
43	Ballantyne	60	60	-
51	Pineville-Matthews	45	45	-

Route	Route Name	Frequency		
		Weekday	Saturday	Sunday
54	URP/CIC	40	40	-
55	Westinghouse	40	40	40
56	Arrowood	30	30	30
57	Archdale	60	60	-
58	Pineville	30	30	30
59	N. Meck, Connector	60	60	-
60	Tyvola	30	30	30
97	VR - Cornelius	60	60	60
98	VR - McCoy Rd	60	60	60
99	VR - Town Center	60	60	60
211	Hidden Valley	20	20	40
221	Idlewild	30	30	60
222	Pence Rd	60	60	60
235	Goodwill	40	40	-
35	Wilkinson-Amazon	Peak Only	-	-
42	Carowinds	Peak Only	-	-
50	URP/CIC	Peak Only	-	-
290	Davidson Shuttle	Peak Only	-	-
40x	Lawyers Road Express	Peak Only	-	-
41x	Steele Creek Express	Peak Only	-	-
46x	Harrisburg Road Express	Peak Only	-	-
47x	Huntersville Greenhouse Express	Peak Only	-	-
48x	Northcross Express	Peak Only	-	-
52x	Idlewild Road Express	Peak Only	-	-
53x	Northlake Express	Peak Only	-	-
61x	Arboretum Express	Peak Only	-	-
62x	Rea Road Express	Peak Only	-	-
63x	Huntersville Express	Peak Only	-	-
64x	Independence Blvd Express	Peak Only	-	-
65x	Matthews Express	Peak Only	-	-
74x	Union County Express	Peak Only	-	-
77x	North Mecklenburg Express	Peak Only	-	-
82x	Rock Hill Express	Peak Only	-	-
85x	Gastonia Express	Peak Only	-	-
88x	Mountain Island Express	Peak Only	-	-

**3.5.5 Adjustments to Service.** Increases, decreases, transfers, or other adjustments to the level of Services may occur throughout the term of this Contract. Modifications to Services include but may not be limited to modified holiday schedules; extending, deleting or adding routes, or parts of routes; and expanding or decreasing scheduled service hours. Notice of changes will be provided to the Service Provider as necessary to meet obligations for the selection of work.

Adjustments to Service levels during the contract term may require scope and fee discussions to ensure cost impacts, up or down, are mutually agreeable and reasonable.

**Special Event Service** – The Service Provider shall perform special services as requested by CATS. These services include but are not limited to seasonal routes, and special events assigned by CATS.

### **3.5.6 Service Changes, Contingency Plans and Emergencies.**

Route and schedule changes may result from the need to implement new Service, add or delete from the given schedule or to re-deploy service to other areas based on demand or increase in service productivity. Changes may also be necessitated due to emergencies or vehicle or equipment failures.

The Service Provider shall ensure that field supervisory personnel are deployed at strategic locations whenever emergencies or other non-recurring events affecting normal service take place.

**3.5.6.1 Minor Route and/or Schedule Change.** A Minor Route and/or Schedule Change is defined as a change that constitutes less than 2% of the scheduled revenue hours, and includes examples such as special event service, bus-bridge service, added trips, and adjusted running times. While CATS will, in most cases, provide at least one calendar (1) weeks' notice, as little as 24 hours' notice may be given to respond to minor adjustments. Minor adjustments, depending on the time frame allowed, may be made verbally and then confirmed by a written memo. Route and service modifications necessitated by detours and/or recurring events (e.g., street closure) are also the responsibility of the Service Provider but must be approved by CATS.

**3.5.6.2 Major Route and/or Schedule Changes.** Major route changes are those that exceed two percent (2%) of scheduled revenue hours for minor route changes. Except for emergencies, CATS will make every effort to implement major service changes on a fixed predictable schedule in coordination with the Service Provider's periodic bus operator work run bids. In most cases, CATS will give the Service Provider six (6) weeks to respond to major changes requiring more drivers or major adjustments to work shifts. **As little as thirty minutes notice may be given to respond to interruptions in rail service due to an emergency.**

**3.5.6.3 Route and Service Modifications Caused by Non-Recurring Events (e.g., freeway accidents, weather, etc.).** These are the responsibility of the Service Provider. In case of an emergency, the Service Provider shall respond to modifications to the Service immediately. When such non-recurring event will make other coordinated assignments of the vehicle more than 15 minutes late, the Service Provider shall dispatch supplemental vehicle(s) to ensure such trip(s) are minimally impacted by the event.

**3.5.6.4 Contingency Plan.** The Service Provider will take necessary action to prevent or minimize inconvenience experienced by passengers and strive to ensure their safety and comfort. In the event of a service disruption or delay that would prevent a driver from making all scheduled pick-ups or completing the trip on time,

the Service Provider will respond accordingly with a contingency plan. It should align with CATS Emergency Preparedness and Continuity Plan (EPCP).



CATS Emergency  
Preparedness and C

The Offeror is strongly encouraged to propose proven methods to mitigate disruptions.

Service disruptions or delays could include any of the following: an accident, mechanical failure, severe traffic back-up, detour or road closing, a driver’s failure to either report on-time or perform the run to which he was assigned, or improper training. Contingencies might include:

- “Bumping up” driver trips assignments and/or dispatching replacement vehicles to cover late or “missed” trips to alleviate potential overcrowding which would otherwise result on trips scheduled to follow a missed trip.
- Dispatching replacement vehicles from a staging area to reduce the time that passengers would otherwise spend waiting for the next trip.
- In the event of a disabled vehicle, a contingency may involve diverting other buses to pick-up transferring passengers.

**3.5.6.5 State, Regional or City-Wide Emergencies.** Upon declaration of any emergency by the Governor of North Carolina and/or local/county official, the Service Provider may be responsible for various transportation-related activities, including the development of emergency travel routes and the coordination with other agencies supplying common carrier services. In the event of a declared emergency, the Service Provider shall deploy vehicles in a manner described by the CATS General Manager Bus Operations Division or designee as part of an Emergency Operations Transportation Services Plan that supports the CATS Emergency Preparedness and Continuity Plan (EPCP).

**3.5.6.6 Vehicle Breakdown.** The Service Provider shall dispatch a spare vehicle in the event of a vehicle breakdown. The maximum response time from the moment a trouble call is received until a substitute vehicle arrives shall not exceed 30 minutes. Additional criteria regarding reliability of response may be established during the contract term based on actual performance.

**3.5.7 Management of Operations.** The Service Provider shall effectively coordinate, manage, and supervise all activities related to the fixed route Service. Typical activities include, but are not limited to:

Providing effective management and oversight of all aspects of the operations to meet the service expectations described throughout this Request for Proposals.

Establishing employment policies that are equally applied, implementing a performance appraisal system that provides regular feedback, performance monitoring, and opportunities for employee development, engages employees in efforts to improve service, and rewards performance.

Establishing a passenger complaint resolution policy that is consistent with CATS policy.

Collaborating with CATS’ staff members to reinforce driver’s training and testing requirements.

Developing performance measures and monitoring and reporting on achievement.

Implementing employee training and development programs.

Developing an understanding of the CATS Quality Manual & Safety and Security policies, procedures, and plans including, but not limited to, the CATS’ Agency Safety Plan (ASP) and System Security Plan (SSP); communicating these plans to supervisory and line personnel; and ensure the Service is managed in compliance with these policies and plans.

Establish appropriate records maintenance & management policy that meets all relevant Federal, State & City’s requirements. Maintain all records per these policies.

Establish document control & revision policy that meets or exceeds CATS' requirements

Developing methods to measure and maximize service efficiency, effectiveness and reliability.

Providing vehicle maintenance and promote a reliability centered maintenance (RMC) culture.

Collecting and analyzing data/statistics, and reporting.

Implementing all Federally required programs including, but not limited to FTA Drug and Alcohol Testing, ADA Compliance, OSHA, and FLSA Standards.

Providing required insurance.

Safeguarding the integrity and security of the fare collection system.

Ensuring that operations are performed within the established approved annual operating and capital budget for bus operations and maintenance.

## 3.6 Organization and Personnel

**3.6.1 Organization.** An Offeror shall submit an organizational chart to CATS with its Proposal. The organizational chart proposed by the Service Provider shall include lines of authority, responsibility, and communication for all positions the Offeror deems necessary to provide quality service. This information shall be incorporated into the Staffing and Personnel Plan and the Mobilization Plan. The Service Provider shall provide CATS with an updated organizational chart annually, and as changes are made to it.

### 3.6.2 Workforce Requirements, Staffing and Personnel Plan

A. The Service Provider shall be responsible for determining the direct staffing levels and salaries required to provide and deliver the Services. Staffing levels by the Service Provider shall be adequate to reflect service levels throughout the Contract term. Unless the Scope of Services is modified by CATS, changes to staffing levels deemed necessary by the Service Provider to meet the Contract requirements and provide high quality service shall be implemented at no cost to CATS.

B. The Service Provider shall ensure that sufficient staff are hired, trained and retained to meet this Contract's service requirement and remain in compliance with applicable CATS policies and procedures, and all local, State and Federal laws throughout the term of the Contract. The Staffing and Personnel Plan shall include an explanation of how the Service Provider will comply with the provisions of the Urban Mass Transportation Act.

C. As of the Contract start date, the Service Provider shall have hired and trained all necessary vehicle operators, vehicle maintenance technicians, facility and building maintenance personnel, the Vehicle Electrical systems, supervisory, and administrative personnel as identified in its staffing and personnel plan (Staffing and Personnel Plan). CATS will maintain technology electronics.

D. The Staffing and Personnel Plan shall be submitted with an Offerors' Proposal. This Plan should identify all position titles and number of employees to be utilized by Service Provider in the performance of this Contract, including positions within the corporate structure that will support Key Personnel and on-site employees, identify the organization and reporting structure, and provide job descriptions for each position and the names and resumes for Key Personnel to be assigned to the Project if awarded.

E. CATS will not become a signatory party to any transit employee agreement between Service Provider and organized labor units.

F. Whenever the Service Provider has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Service Provider shall immediately give notice thereof, including all relevant information with respect thereto, to CATS.

**3.6.2.1 Employee Compensation, Performance and Retention.** The Staffing and Personnel Plan must include Service Provider’s current salary schedule by position; as well as information on employee benefits/incentives, professional development and employee retention, and performance management.

**3.6.3 Criminal History, Driving History and Motor Vehicle Requirements.** The requirements for all personnel including Vehicle Operators are in the “Operations Personnel” Section 3.7.

**3.6.4 Staff Conduct.**

A. The Service Provider staff (includes all employees and subcontractors) are expected to conduct themselves in a fair, impartial and professional manner. Service Provider staff must be polite and courteous in their speech and manner including exercising patience and self-control and refrain from belligerent behavior and/or profanity even when others do not. When confronted with a disruptive or unruly passenger or emergency situation, staff and subcontractors must follow the Safety and Security policies, and procedures required by CATS. Correction of any such inappropriate behavior and language shall be the responsibility of the Service Provider.

B. In the event Service Provider receives a written or verbal report alleging an employee or subcontractor was discourteous, belligerent, profane or in any way intimidating, either physically or verbally, the Service Provider shall, within twenty-four (24) hours, submit a written report to CATS outlining the complete details of the incident. The report shall include the nature of the incident, time, date and location, and name, address and telephone number of the person alleging the violation. The report shall also include the name and title of the employee and what disciplinary action, if any, was or may be taken.

**3.6.5 Identification.** All Service Provider staff performing Services under this Contract shall always wear clean, neat uniforms approved by CATS and provided by the Service Provider and a CATS-issued photo identification badge while on duty, in accordance with CATS S&S11 Access Control Policy.



CATS SS11 Access  
Control Policy.pdf

When in an area that requires access using an identification badge, the individual must display the badge at all times at or above the waist on the outermost garment. The badge should be clearly visible and front facing to display the Service Providers photo, name and department. These areas include CATS facilities and vehicles. Any Service Provider who misplaces a badge must report and turn it in once it is found to the Office of Safety & Security. A new badge will be issued when the Service Provider signs paperwork agreeing that the replacement fee will come out of their next check. The Service Provider is charged for the badge directly from their next paycheck after the paperwork is signed. Temporary badges should not be issued to the Service Provider unless it is after normal business hours for the Office of Safety and Security. The temporary badge should be turned in at the end of the shift and the Service Provider will need to come get a new badge the next business day.

**3.6.6 Removal, Reassignment, and Notification to CATS.** Upon the request of CATS, the Service Provider shall promptly remove from service to CATS any employee who CATS considers unsuitable for such work as demonstrated by an act of discourtesy, rudeness, or use of profanity, inappropriate conduct or conduct that is unbecoming or reflects poorly on the City or CATS, or any other act deemed unacceptable by CATS.

**3.6.7 Staff Feedback.** The Service Provider shall establish mechanisms for receiving and responding to feedback from all its staff, responses provided in a timely manner or within ten business days. Such processes must include a system for documenting the content and timelines for both the feedback and response. Documentation should be kept in such a way that feedback may be analyzed by topic, employee, respondent, and, when applicable, route, vehicle, and location data. Such documentation will be shared with CATS on the tenth day of each calendar month.

**3.6.8. Labor and Personnel-In General.** The Contractor shall:

- A. have sufficient Bus Operators, dispatchers, mechanics, training and supervisory personnel, and other staff necessary to meet the requirements of the Contract. Unless otherwise described or enumerated in the Technical Provisions, the Contractor shall have the sole right to determine staffing levels, job descriptions, and work duties of all personnel.
- B. be solely responsible for the satisfactory work performance of all its employees and subcontractors.
- C. shall hold the City harmless from any liability, damages, claims, costs, and expenses of any nature arising from alleged violations of personnel practices.
- D. directly employ, as employees of the Contractor, all Key Personnel, non-union administration, and administrative support staff.
- E. regularly update and provide to the CATS Project Manager its organizational chart and contact information for Key Personnel, including notification of which Key Personnel shall be on duty during hours of operation.

**3.6.9. Collective Bargaining Agreement.**

- A. Effective on the Start of Service Date, the Contractor will not take any action which violates an existing Collective Bargaining Agreement covering personnel employed in CATS Bus Operations and Maintenance Services.
- B. Pursuant to North Carolina law, the City shall have no role or responsibility with respect to negotiation, renegotiation, or enforcement of the Collective Bargaining Agreement.
- C. If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice, including all relevant information, to the CATS Project Manager.
- D. The Contractor shall be responsible for compliance with the terms of the 13(c) agreement insofar as they may apply. The Contractor shall have financial liability for any claims or obligations related to 49 U.S.C. §5333(b) (formerly Section 13(c) of the Federal Transit Act) that are created by acts or omissions of the Contractor that are not directed by the City. In addition, the Contractor shall cooperate with the City (including the provision of payroll records and other information) in the resolution or defense of any 13(c) claims or disputes, and in the implementation of any Section 13(c) remedies.
- E. The Contractor shall not assist or encourage any employee to file or otherwise pursue a claim against the City or take any action which is contrary to the interests of the City under Section 49 U.S.C. §5333(b) or the Section 13(c) arrangements or agreements, relating to the termination of Services under this Contract or in any future transition from the Contractor to another service provider, or any other action or event relating to the Contract.
- F. If the Contractor fails to comply with this obligation, the Contractor shall be financially liable for all costs incurred by the City (including attorneys' fees) associated with any Section 13(c) claims or delays in the receipt of federal grants.

**3.6.10. Wages and Benefits.**

- A. Key Personnel, administrative and support Employees of the Contractor, and TMOC Employees shall not be considered employees of the City of Charlotte and the Contractor's employees shall not be entitled to participate in any wage and benefit package provided by the City to its employees.
- B. Except as provided for herein, the Contractor shall be solely responsible for establishment and payment of wages and benefits for its employees and shall cause the withholdings to be made as required in the performance of the Contract.

- C. The Contractor shall comply with the requirements of employee liability, worker's compensation, unemployment insurance, social security, and any other current and future legal requirements.

### 3.6.11 Key Personnel & Administrative Organizational Structure.

Key Personnel include the General Manager, Department Heads, Superintendents and administrative support staff.

**Qualifications of Key Personnel.** Offeror shall demonstrate that the Key Personnel meet the minimum qualifications described below.

1. **General Manager.** The General Manager shall possess ten (10) years of recent progressively responsible experience in the transportation or logistics sector (unless waived by CATS), in their field of expertise managing a transit operation of similar size, scope and complexity. The ideal Offeror will: have worked in the transit sector with a range of supervisory roles in operations, maintenance, and/or business and administration; demonstrate excellence in customer service and employee relations; and demonstrate a management approach that is growth-oriented and forward-looking. Key On-site Personnel should live within the CATS service area, with any exceptions evaluated for potential service impacts and approved in advance by CATS.
2. **Department Heads and Superintendents.** The Department Heads and Superintendents shall possess eight (8) years of progressively responsible experience in their area of expertise or in the transportation or logistics sector. The ideal candidate will have worked in the transit sector with a range of supervisory roles in their field of expertise; demonstrate excellence in budget development and management; and demonstrate a management approach that is growth-oriented and forward-looking.

**Administrative Support Staff.** shall have relevant work experience or an equivalent combination of education and relevant experience that provides the necessary knowledge, skills and abilities to successfully perform the essential job duties. The ideal candidate will have worked in the transit sector with a range of administrative roles; demonstrate excellence and quality in performance; and demonstrate a collaborative approach that is growth-oriented and forward-looking.

A. All Key Personnel shall meet the qualifications and experience requirements in the Request for Proposals, be assigned full time to the performance of this Contract OMF.

B. In addition to Key-On-site personnel, training and certain administrative activities may be provided by regional, national or international Service Provider personnel. These centralized functions shall be clearly identified in the Proposal. For each supervisory or management position dedicated to the Project and responsible for a centralized function identified in the Proposal, the Offeror should include a job description.

C. Key Personnel are essential to the performance of these Services. Prior to substituting other personnel for any of the individuals specified, the Service Provider shall notify CATS reasonably in advance and shall submit justification in sufficient detail to permit evaluation of the impact on the Services. No such substitutions shall be made by the Service Provider without first securing CATS' approval.

D. CATS must approve the General Manager assigned to this Contract, as well as other Key Personnel. Key Personnel include General Manager and the most senior person in charge of the following functional areas: Service Operations, and Vehicle Maintenance. The Service Provider shall propose the General Manager and Key Personnel with their Proposal. The Service Provider Staffing and Personnel Plan shall describe the selection process, job summary, required qualifications and timeline for selecting Key Personnel. All Key Personnel shall be in place at least thirty (30) business days prior to the start date.



E. Key Personnel assigned to this Project will not be replaced without 90-day advance written notice to CATS, unless the departing employee does not provide Service Provider with notice, or the employee is removed for cause.

F. The Service Provider shall ensure that its Key Personnel, including the General Manager, are sufficiently experienced, qualified, and skilled to provide the service requirements established in this Contract at a high level of professionalism throughout the life of this Contract. In the event the Service Provider intends to replace the named General Manager, or other Key Personnel, CATS shall be afforded notice and the opportunity to provide input regarding any proposed replacement. As such, the Service Provider shall submit to CATS the resume and qualifications of a suitable replacement within thirty (30) days after notification of the General Manager or Key Personnel's resignation or termination. The Service Provider agrees to consider CATS' input regarding any proposed Key Personnel replacements and will provide CATS the opportunity to interview candidates at CATS' discretion. The Service Provider's failure to provide a suitable General Manager, or Key Personnel, who is qualified and capable of satisfactorily providing the services required pursuant to this Contract can result in termination of the Contract as specified in section 10 of the sample contract attached to this RFP.

G. In all aspects of managing the Services, the Service Provider shall ensure that Key Personnel exhibit a customer service focus, continuous commitment to improving the delivery of service, and foster an environment of accountability and shared responsibility for high-quality service delivery. The Service Provider shall ensure that the Key Personnel exemplify a positive attitude and a team approach, fostering good communication with all parties involved with the delivery of Service.

H. The Service Provider shall maintain the Key Personnel identified in its Staffing and Personnel Plan throughout the Contract term. Key Personnel changes during the Contract term shall require a letter with an explanation and replacement schedule/plan. All the Service Provider's Key Personnel work hours shall be 100 percent (100%) dedicated to providing services for CATS under this Contract, unless otherwise approved in writing by CATS.

I. CATS operations span the entire seven-day week. The working hours of Key Personnel are expected to include weekends, as needed. CATS will have the authority to direct the removal of any Key Personnel from service to CATS if it is determined that such individual is not performing the work in a proper or skillful manner or that such removal is otherwise in the best interests of CATS.

J. The requirements of this Section shall not be construed to (1) restrict Service Provider authority to determine that more than the minimum number of employees identified are needed to perform the work; (2) impose a mandatory staffing level throughout the Contract term; (3) limit the Service Provider's ability to manage the number of positions and size of workforce it determines to be necessary to perform the work, consistent with its Staffing and Personnel Plan, as vacancies occur or as services are adjusted during the Contract term; or (4) restrict the Service Provider's ability to dismiss employees for cause during the Contract term.

K. Any change in the General Manager position that occurs within twenty-four (24) months of the Contract start date shall require the Service Provider to pay CATS a Performance Deficiency Credit (PDC) of fifteen thousand dollars (\$15,000), per position, per change, unless waived by CATS. Any change in other Key Personnel positions that occurs within twenty-four (24) months of the Contract start date shall require the Service Provider to pay CATS a PDC of ten thousand dollars (\$10,000), per position, per change, unless waived by CATS.

M. In the temporary absence of one (1) day or longer of the General Manager or other Key Personnel, the Service Provider shall ensure that other designated supervisory personnel are sufficiently cross trained to temporarily assume assigned responsibility for proper operation of the service as set forth in this Contract or provide mutually agreed upon personnel from the parent company. The Service Provider shall notify CATS whenever the General Manager or Key Personnel are temporarily unavailable and identify the staff member who will be serving as backup. The Service Provider shall ensure that the General

Manager or the designated supervisory personnel shall be available during all hours of service to make decisions and provide coordination as necessary. Extended absences (2 weeks or longer) of General Manager or Key Personnel may require rebates, to be mutually agreed upon between CATS and Service Provider in addition to mutually agreed upon personnel from the parent company.

N. No Key Personnel position shall be left vacant for more than forty-five Days unless otherwise approved by the CATS Project Manager. The City reserves the right to interview and approve Key Personnel not identified in the Contractor's Proposal. A vacancy must be temporarily filled by a qualified individual on an interim basis while a more extensive search for a replacement is conducted. Failure to provide a satisfactory replacement for a Key Personnel position within sixty (45) Days shall result in a deduction of the prorated amount of the salary and benefits of the individual during the full period of the vacancy from monthly payments to the Contractor.

O. To ensure the continuity of consistent high service standards over the life of this Contract, the Service Provider shall retain qualified and experienced key personnel to perform services pursuant to the Contract requirements. The Service Provider shall make every reasonable effort to retain the services of the Key Personnel it names in its Proposal to provide services pursuant to this Contract for a minimum of two (2) years from the Contract start date.

P. The Service Provider shall determine the appropriate assignment of management staff to successfully implement the scope of this Contract. The General Manager shall be the Service Provider's representative for the administration of the Contract and the supervision of work. In all matters relating to the performance of the work and payment thereto, and in all situations involving actual recommended or proposed changes, CATS shall accept commitments and instructions of the Service Provider only from the General Manager or a duly authorized representative of the General Manager as designated in writing.

#### **3.6.12 Retention of Non-Union Personnel**

- A. Notwithstanding the Contractor's Section 13(c) obligations described in Attachment A, Sample Contract, the Contractor shall retain all Non-Union Personnel as of the Setting Date for at least thirty (30 days) from the Start of Service unless Key Personnel elects to resign or retire or must be terminated for cause. The salary and benefits of the Non-Union Personnel shall be equal to or greater than the salary paid by TMOC. If the Contractor determines to terminate any Non- Union Personnel, the Contractor shall be responsible for all post-employment benefits to which he or she would otherwise be entitled as of the Setting Date.
- B. If the Contractor determines to not retain a non-union employee after the thirty (30) day retention period, the Contractor shall make commercially reasonable efforts to place the personnel in a similar position for which they are qualified within the operations, Contractor's corporate organization, affiliate, or subcontractor. The Contractor shall be responsible for other post-employment benefits to which the employee would otherwise be entitled as of the Setting Date.
- C. Administrative staff shall be employees of the Contractor's corporate organization. The salary and benefits of the administrative staff shall be equal to or greater than the salary paid by TMOC. Contractor will actively manage all staff and aspects of the organization to insure the highest level of safety, productivity, and fiscal management possible.

#### **3.6.13 Designation of Points of Contact.**

- A. The primary point of contact for the Service Provider is the CATS General Manager of the Bus Operations Division, or designee. Should the CATS General Manager of Bus Operations Division not be available, the secondary point of contact is the CATS Chief Operating Officer. Changes to the CATS primary point of contract will be provided, in writing, to the Service Provider's General Manager. Except for requests for Contract modification, which should be directed to CATS' Procurement Contract Administrator, all other requests and day-to-day contacts related to operations and oversight should be made to the CATS General Manager of Bus the Operations Division.

B. The primary point of contact for CATS is the Service Provider's General Manager. The General Manager must be accessible in person to CATS at a minimum during regular business hours (Monday through Friday, 8:00 AM to 5:00 PM) and electronically (telephone, cellular telephone with text capability), 24 hours per day, 7 days per week. The General Manager must notify the CATS General Manager of the Bus Operations Division, or designee, whenever he/she will be absent and provide the name, title, and contact information of the person who will act in the General Manager's capacity during the absence.

#### **3.6.14 Key Personnel Responsibilities and Coordination.**

A. The General Manager will provide on-site, day-to-day supervision and management of the delivery of Service and manage the administrative functions related to the Contract administration. The principal function of the General Manager will be to oversee employees of Service Provider, including Key Personnel overseeing, at a minimum, the most senior person in charge of Service Operations, Vehicle Maintenance, and monitor all activities associated with the Service delivery. Safety Responsibilities shall mirror the Agency Safety Plan, Section 1.5 Safety Responsibilities Task Matrix, Table 1.

B. The General Manager will be responsible to CATS for the safe and reliable provision of all Services referenced herein, provide training and staff development in coordination with CATS Transit Training Department, schedule personnel, monitor performance and fare collection, prepare reports as required in the Contract, and address any issues that arise while providing Service including responding to emergencies.

C. The General Manager will work cooperatively with CATS to assure service quality, provide operational data and reports, respond to comments from Passengers and public, and respond to specific requests for other assistance as needed.

D. The General Manager shall, as required by CATS, coordinate closely with affected municipal, county, state, and private representatives on all service matters that affect the daily operation of the CATS fixed route bus services, such as road closures or inclement weather as they may affect the operation of CATS Service.

E. Designated CATS staff and the General Manager and Key Personnel shall meet at least one (1) time every other week. Upon mutual agreement, these meetings may be scheduled more or less frequently as needed.

F. At CATS request, any requested member of the Service Provider's Key Personnel must attend a meeting of CATS governing boards and or advisory committees. These meetings may include the regular Operations Committee meeting of the MTC, Advisory Committee meetings, and other meetings (whether regularly scheduled or special) and events to provide information concerning the transit system, including Charlotte City Council meetings.

G. Passengers are the core of CATS' service, and to gauge customer perceptions and identify opportunities for improvement, passengers are surveyed by CATS regularly. Service Provider's Vehicle Operators will be expected to assist in distributing and collecting these surveys. The General Manager and Key Personnel shall ensure the cooperation of all personnel in facilitating survey work, including the distribution and collection of survey questionnaires and any related tasks.

### **3.7 Operations Personnel**

**3.7.1 Vehicle Operators.** CATS recognizes that the success of its transportation program, service delivery and overall customer experience is built upon the strength of its Vehicle Operators. The expectation is that the Service Provider shall field qualified, highly skilled and well-trained Vehicle Operators with a primary focus on Safety and excellent customer service.

Vehicle Operators shall meet the following pre-employment requirements:

- Possess a valid State of North Carolina Driver's License appropriate for the class of vehicle to be operated.

- Vehicle Operators must have maintained a valid driver's license for five (5) years.
- Demonstrate English language competency (reading, writing and speaking). CATS encourages bilingual (English/Spanish) hiring practices.
- Have good oral and written communication skills as demonstrated in the pre-employment vetting.
- Demonstrate sensitivity to Passengers' needs to include ADA needs specific to public transportation and possess the ability to handle complaints and problems as required.
- Demonstrate the physical agility to perform the requirements of this position by passing a pre-employment physical or human performance evaluation (HPE).

**3.7.2 Transportation Supervisors.** The Service Provider's Transportation Supervisors are the first line of response for all operational issues including emergencies. It is vital to the success of the Service Provider to have adequate staff available to perform all the duties required of this position. Service Provider shall provide continuous daily street supervision of contracted service including the monitoring of schedule adherence, on-street operation, and on-route compliance. Original equipment will be purchased and provided to Service Provider by CATS I&T. Damaged or lost equipment shall be replaced by CATS I&T and the cost shall be reimbursed by Service Provider. This supervision will include conducting ride checks (on-board) to ensure operator adherence to procedures (e.g., fare collection, ADA compliance, and passenger relations) and includes responding to investigation of major incidents and all accidents within thirty (30) minutes of being notified. Independent checks by CATS personnel may be conducted without notice during the contract term to assess daily supervision.

A Transportation Supervisor shall respond to an emergency involving a different Service Provider or CATS property at the request of CATS.

Transportation Supervisors shall be required to provide ad hoc support to CATS, including, but not limited to, attending public meetings, assisting with public outreach activities, etc., at the discretion of CATS.

Transportation Supervisors are required to wear CATS approved uniforms that clearly identify the Service Provider and employee name and maintain proper uniform appearance.

**3.7.3 Vehicle Maintenance Technicians (Mechanics) and Supervisors.** The Service Provider shall be responsible for staffing and directing the vehicle maintenance function to assure that there is a sufficient supply of safe, reliable, and clean vehicles for service every day.

#### **3.7.4 Suitability of Operations Personnel.**

A. The Service Provider's provision of qualified, capable, and experienced personnel is essential to the performance under the Contract. The Service Provider shall ensure that its employees are qualified, capable, and suitable to fulfil the requirements of this Contract. The Service Provider shall provide all pertinent employee records regarding driving records, training, qualifications, incidents/accidents, passenger complaints and related matters to CATS as soon as possible upon request.

B. Service Provider shall meet Department of Transportation (DOT) requirements when requesting employment history information from any former employer, including the requirements of the DOT Code of Federal Regulations Title 49: Transportation, Part 40 – Procedures for Transportation Workplace Drug and Alcohol Testing Program as may be amended and states that an employer shall maintain a copy of the written request for information sent to the former employer including the signature of the potential employee authorizing the release of this information to Service Provider.

C. All employees shall have successfully completed a background check and any other necessary federal and state requirements.

### **3.8 Employee Training and Development**

**3.8.1 General Requirements.** All Contractor and TMOC employees shall receive applicable CATS facilitated training such as the completion of trip and vehicle reports, operation of the vehicle

communication systems, the safe operation of all vehicles in the CATS fleet, and training in sensitivity to passenger needs and basic understanding of Safety Management System (ASP) and the CATS ASP. All employees shall also be required to receive an orientation on CATS' services as well as regular, or ongoing, training that develops skills and increases understanding of people to include people with varying disabilities and of varying ages, regardless of ethnic/national origin, color, race, religion, sex, gender or orientation.

**3.8.2. Statistical Counts and Counting Devices.** CATS buses are equipped with automated passenger counters. However, there may be instances when the Service Provider will be required to provide bus operating personnel to make manual and automated counts on their buses of operating statistics that CATS deems necessary. Such statistics may be passenger counts by fare category; notations of boarding and alighting locations; or changes in trip manifest information. These counts may be by observation and recorded manually, using manually operated counting devices or with automated fareboxes whichever applies. CATS will provide training to the supervisory and/or instructional personnel designated by the Service Provider. The Service Provider shall provide this training to all affected vehicle operators, mechanics and other personnel that use or repair the equipment. Such statistical data, whether manually or electronically collected and/or recorded, shall be made available to CATS daily and/or as otherwise specified in electronic format. Such information shall be formatted as specified by CATS.

### 3.8.3 CATS Customer Service Training.

The Service Provider will work with the appropriate CATS office to provide vehicle operation training. To encourage quality customer service and improve employee retention, the Service Provider shall make all employees available for an initial orientation session, which will be provided by CATS Training and Instruction staff. This session shall last four (4) hours. In addition, all employees must be made available for customer service training programs implemented to address chronic complaints, retrain operators, and to provide overall refresher training to operators as needed or required by CATS.

**3.8.4 Ongoing Training.** Service Provider shall support ongoing, routine, training programs that address safety and performance improvement. CATS offers a variety of applicable operational and job-specific training.

- New hire



Bus New Hire  
Training Modules.pdf

- Retraining



Bus Retraining  
Process.pdf

- Recertification (biennial)



Bus Operations  
Recertification Training

In the event the Service Provider elects to provide new training initiatives, the Service Provider shall seek CATS content approval to ensure the training meets or exceeds CATS' training standards. Information detailing the course of instruction, length of training program and how the training will be conducted shall be submitted to and approved by the CATS Office of Training and Instruction.

**3.8.5. Employee Development.** In addition to the required training outlined above, the Service Provider is strongly encouraged to invest in employees through employee training and organizational development. Information related to employee training and development programs and initiatives may be included with this Proposal. Offeror is strongly encouraged to propose proven methods and training beyond CATS *ongoing training* to better the overall employee experience and determine the most beneficial way to create ladders of opportunity and encourage upskilling of existing personnel.

**3.8.6 Contractor Minimum Training Requirements.** All Contractor training materials/modules must be submitted to CATS for approval prior to implementation.

No less than 14 Days prior to the Start of Service Date, the Contractor shall submit an Employee Training Plan to the CATS Training Manager for review and comment. At a minimum, the Employee Training Plan shall include the following:

- Safety training necessary to meet local, state, and federal requirements, and the requirements of the Fleet Maintenance Plan in effect as of the Setting Date.
- Staff charged with maintenance and servicing of hybrid and/or electric vehicles shall receive maintenance and safety training, including arc-flash training, NFPA 70E or OSHA training per 29 CFR 1910, and related OEM servicing and maintenance training for high voltage systems.
- Meet the OEM training requirements for oil and fluid sampling analysis, and other special disciplines or functions required to maintain Revenue Vehicles.
- All maintenance personnel must receive vehicle specific training annually. This training may include Contractor or vendor-provided refresher/update training on various aspects of Revenue Vehicles.
- Train supervisory personnel to assist with identification and appropriate handling of employee/subcontractor drug and alcohol problems.
- The Contractor shall maintain current documentation of all completed training in the employee's personnel file.

### 3.9 Substance Abuse Testing

**3.9.1** The Service Provider must implement a written Drug and Alcohol Testing Policy and Program that meets FTA Regulations found at 49 CFR Parts 653 and 654. The Service Provider must include its written Policy/Program with its submittal. This includes having written policies describing which employees are subject to testing, what types of testing will occur, which behavior is prohibited and the consequences of violating the policy. The following types of tests must be included in the Service Provider's program:

- Pre-Employment;
- Post-Accident;
- Random;
- Reasonable suspicion;
- Return to Duty;
- Follow-Up; and
- Retesting (alcohol only).

**3.9.2** The Service Provider's Drug and Alcohol Testing Program must be project specific to the CATS project. Corporate-wide policies that have been found to comply with FTA regulations may be used as long as they are first modified to be specific to the CATS project. This includes identifying specific contact people, testing centers, and resources. The Service Provider's Policy shall not contradict any requirements of the CATS Drug and Alcohol Policy for safety sensitive employees or the City of Charlotte's FTA Drug and Alcohol Testing Policy.



Drug\_Free\_Workpla  
ce\_Policy-2018.pdf

**3.9.3 Reporting.** The Service Provider must also maintain a variety of records to document compliance with the FTA's Drug and Alcohol testing requirements. Procedures need to be in place detailing which records need to be kept, their duration, and when individual employee records may be released. The Service Provider must make use of the most recently approved U.S. DOT Drug Testing Custody and Control and the U.S. DOT Breath Alcohol Testing (OMB No. 2105-0529) forms.

**3.9.4 MIS Report Submission.** No later than January 31 of each calendar year, the Service Provider shall submit a properly completed FTA Management Information System annual report summarizing the drug test results from the CATS project from the previous calendar year. This form, FTA-OH-26-0001-94-1, is available upon request. The Service Provider must fill out separate MIS Report forms for each subcontractor as well.



**3.9.5 Proper Licensing.** The Service Provider must secure the services of a Department of Health and Human Resources certified Testing Laboratory, using an Evidential Breath Testing device approved by the National Highway Traffic Safety Administration (NHTSA). The Service Provider's Medical Review Officer (MRO), Blood-Alcohol Technician (BAT), and Substance Abuse Professional (SAP) must all be properly certified and licensed according to 49 CFR Parts 653 and 654. Prior to the beginning of this Contract, the successful Service Provider shall submit copies of all required licenses and certifications for these individuals, labs, and devices to CATS. At any time should any of the individuals or firms listed above be changed, the Service Provider shall immediately notify CATS. The Service Provider must complete regular audits of the testing laboratory and immediately report any failures to comply with FTA testing protocols.

All Service Provider employees shall have access to the names of the Testing Laboratory, Medical Review Officer (MRO), Blood-Alcohol Technician (BAT), and Substance Abuse Professional (SAP).

### 3.10 Vehicle Operator Expectations and Conduct

#### 3.10.1 Vehicle Operator Expectations.

- A. Vehicle Operators are required to have a working knowledge of Routes and their work assignments.
- B. Deviations from the schedule, including unscheduled breaks or operating ahead of schedule, are not permitted unless the Vehicle Operator receives authorization from law enforcement, a supervisor or other authorized person in charge, which may be another service provider engaged by CATS to manage or provide other supplementary transportation service or CATS personnel. If unavoidably delayed, the Vehicle Operator shall report the cause of the delay.
- C. Vehicle Operators shall stop at all marked CATS bus stops where potential Customers are present.
- D. Vehicle Operators shall comply with CATS fare collection procedures.
- E. When performing duties on the roadway or in public parking facilities, Vehicle Operators shall wear ANSI Class 2 or 3 (or similar) reflective safety vests.
- F. Vehicle Operators shall set out safety cones or triangles as needed when the vehicle obstructs traffic, will be parked for an extended period, and emergencies.
- G. Vehicle Operators shall be polite and courteous in their speech and manner including exercising patience and self-control even when others do not.
- H. Vehicle Operators shall wear a seatbelt while operating CATS vehicles.

**3.10.2 Personal Appearance and Grooming Standards.** The Service Provider shall ensure its Vehicle Operators conform to professional appearance standards when reporting for duty and while on duty, including while participating in training assignments. When providing service under this Contract, Vehicle Operators shall present a neat and clean appearance and wear only the CATS authorized uniforms provided by Service Provider that bear the name of the Service Provider and employee, and all clothing shall fit well, be clean, wrinkle-free and in good repair.

#### 3.10.3 Prohibited Conduct.

- A. Service Provider shall immediately remove any Vehicle Operator from service found to have committed unsafe or inappropriate acts while providing service under this Contract. The Service Provider shall notify CATS if a Vehicle Operator is removed from service for this reason and submit a written report within 24 hours.
- B. CATS will require the Service Provider to immediately remove any Vehicle Operator from CATS' service pending an investigation for any of the following, which does not represent an exhaustive list:
  - Committing unsafe, inappropriate, or criminal acts while providing service.
  - Failure to follow CATS policies and procedures.
  - Failure to carry a valid Vehicle Operator's license while providing service.
  - Cell phone use while operating CATS vehicle, including texting and use of wireless headphones or devices.

- Revocation, suspension, or non-renewal of a valid North Carolina Driver's License.
- Use of any tobacco product in a CATS' vehicle or on CATS property.
- Failure to follow safety rules and regulations.
- Failure to follow security policies, guidelines, and procedures.
- Arrests for any reason.
- Notification of an active warrant from any law enforcement or judicial agency.
- Failure to meet Vehicle Operator employment requirements
- Failure to display employee ID/security badge visibly while on CATS property.
- Failure to comply with DOT hours of service.

### 3.11 Information Access and Reporting Requirements

**3.11.1** Service Provider agrees to provide CATS' access to any books, documents, papers, and records which are directly pertinent to this Contract and the provision of Service for the purposes of making audits, examinations, excerpts and/or transcriptions. The Service Provider shall permit authorized representatives of CATS to examine all data and records related to the project upon request by CATS or according to the scheduled reporting periods. All project records prepared by the Service Provider shall be owned by CATS and made available to CATS as requested or pursuant to the reporting schedule identified herein. All the records need to be maintained per City/CATS and State/Federal records retention requirements.

**3.11.2** CATS may elect to authorize representatives of other project funding partners to inspect, audit, and analyze the records of the Service Provider related to this Contract and Service.

**3.11.3** The Service Provider shall maintain all project records in the format required by CATS. The Service Provider agrees to provide CATS' access to any books, documents, papers, and records of the Service Provider which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and/or transcriptions. The Service Provider shall permit authorized representatives of CATS to examine all data and records related to the project upon request by CATS or according to the scheduled reporting periods. All project records prepared by the Service Provider shall be owned by and made available to CATS.

**3.11.4** All records related to this Contract and the Service provided shall be maintained by the Service Provider within the CATS service area and available to CATS for three (3) years following final payment and termination of the Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Service Provider agrees to maintain all records until CATS, the FTA Administrator, or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto. In addition to hard copies, records will be made available in an electronic format as may be specified.

**3.11.5 Financial Records.** The Service Provider shall be required to maintain all project records as requested by CATS in approved formats and shall establish and maintain within a separate account all project expenditures and any other relevant financial records or documents. The Service Provider must conform to the FTA Uniform System of Accounts.

**3.11.6 Invoices.** The Service Provider shall submit monthly invoices to CATS within five (5) calendar days of the following month for services and payroll rendered during the reporting period. The invoices shall include signature approval by the Service Provider General Manager and Director of Finance.

**3.11.7 Management Information Systems.** The Service Provider will have access to, and shall be responsible for entering relevant information into, the CATS Applications and Technology Systems as required. These systems will serve as databases for both CATS and the Service Provider to monitor and evaluate the productivity of the service.

**3.11.8 Communications Systems.** Key management personnel shall, at a minimum, be able to access electronic mail (e-mail) and have the capability of transmitting and receiving electronic files to and from CATS.



**3.11.9 Reporting.** The following gives an indication of the general types of reports and submittal dates required. Since some overlap exists between required data elements, the Service Provider should exercise economy wherever possible by maintaining a single database from which various report data is extracted. Examples of sample reports may be included with submitted proposals.

**A. Daily Operations Report.** Daily reports shall be provided on the following Business Day by 2:00 p.m. The daily report will include the previous day's performance data, unless there is a documented change as communicated by CATS. The data content in the daily report will include:

- Number of Missed Pull Outs
- Number of Late Pull Outs
- Number of early Pull Outs
- On Time Performance
- Recovered Service
- Total Lost Time

The daily reports listed in the previous section shall be aggregated on a weekly, monthly, and quarterly basis and in a report provided to CATS.

- Weekly report due by 3:00 p.m. each Monday on a template approved by CATS.
- Quarterly report due by 5:00 p.m. on the 16th of the month. Quarterly Reports should document analysis of data trends and establish whether Monthly Action Plans have been successful on a template approved by CATS.

**B. Monthly Reports.** The Service Provider shall submit the following monthly reports due no later than the tenth (10th) calendar day of the following month.

- National Transit Database (NTD) monthly report detailing the prior month and year to date data collected for the NTD report.
- Number of down vehicles by day including the number of days each vehicle has been down.
- Monthly summary of PMIs and mileage intervals.
- Number of PMI overdue and amount of mileage overdue.
- Number of Vehicle Accidents
- Number of Passenger Accidents
- Number of Wheelchair Pass Bys
- Total Complaints
- Total Service Interruptions by Category (Accident, Mechanical, Service, Other)
- Number of PMs Closed (On time and Late)
- Total Three-peat Road Calls (Vehicle # and Issue)

By the fifth (5th) calendar day of the month, the Service Provider shall submit a written update of current employees, by number and by position (i.e., Vehicle Operators, Mechanics, Radio and Run Dispatchers, Transportation Supervisors, etc.) certified by the General Manager to be qualified to perform work under this Contract. It shall specifically list all new employees, their positions and all terminations, promotions, and job transfers.

**C. Performance Reports.** The Service Provider shall from time-to-time as requested by CATS, prepare, and deliver bus service performance reports and other data in addition to or as a substitute for the data required to be reported as part of the MIS submissions.

**D. Vehicle Records.** The Service Provider shall maintain a complete vehicle history of every revenue vehicle provided within this program. The fleet maintenance system shall be automated and be part of the Service Provider's electronic MIS report. The Service Provider shall maintain an individual file for each revenue vehicle, to include by date of action, all preventive and repair maintenance functions including warranty work, inspections, parts usage, unscheduled maintenance, fuel and fluid usage, labor expended on each vehicle, and any other pertinent maintenance data. Paper and electronic versions of these files shall be organized by vehicle number. The Service Provider is responsible for keeping the vehicle file current throughout the term of the Contract and shall make

available complete copies of all vehicle files to CATS at the end of the Contract. CATS or its agent shall have immediate access to all vehicle maintenance records during planned or unannounced visits or inspections of the Service Provider's facility or the CATS facility for the duration of the Contract.

**E. Vehicle Defect Reports.** The Service Provider shall maintain records regarding any vehicle defect that occurs. Vehicle defect cards shall be made available to drivers and staff on all vehicles operated under this contract. A vehicle defect report shall be completed daily on each vehicle prior to service and after service and filed chronologically by vehicle number. The vehicle defect reports shall be kept on file for the duration of the Contract term and copies of all defect reports shall be made available to CATS by request and upon completion of the Contract. The Service Provider shall submit a summarized vehicle maintenance report to CATS by the fifth (5<sup>th</sup>) of each month. The report shall be in a form mutually agreed to by both parties.

**F. Accident / Incident Report.** The Service Provider shall be required to notify CATS regarding any and all disruptions in service provision due to an accident or major incident. Notification must be made both by telephone within fifteen (15) minutes and in writing within two (2) hours, in compliance with CATS' Policy S&S03 related to *Vehicle Incident/Accident Investigation Form*.



Vehicle Incident  
Accident Investigati

The Service Provider shall notify CATS of any of the following accident/incidents at a minimum:

- Collisions between a CATS' vehicle and another vehicle, person or object;
- Single vehicle accidents or incidents;
- Passenger accidents, including falls while passengers are entering, occupying or exiting the vehicle;
- Disturbances, fainting, sickness, deaths or assaults;
- Accidents the driver witnesses;
- Vandalism to the vehicle while in service and/or out of service;
- Passenger complaints of injury or property damage or other circumstances that are likely to result in the filing of claims against the Service Provider or the CATS;
- Any passenger, driver, supervisor, or service complaint that arises from an accident. If the accident/incident involves injuries or extensive property damage, CATS shall be notified immediately (regardless of hour or day);
- Accidents or incidents that occur at the operating and maintenance facility; and
- Security/criminal events/incidents.



Reporting of  
Significant Security I

- Any other incident/event that CATS requires notification

Note: Certain Accidents/Incidents trigger NTD reporting requirements; the Service Provider must work with CATS to meet these requirements.

**G. Disaster Recovery Plan.** The Service Provider will be required to provide CATS with a copy of its written disaster recovery plan(s) for any applications/systems hosted/owned by Service Provider to be used in the event of a fire or any other disaster. This disaster recovery plan should include off-site storage or backup information and supplement the CATS' Emergency Preparedness and Continuity Plan (EPCP).

**H. Other Reports.** In addition to the abovementioned formal reports, the Service Provider shall keep up-to-date and accurate records of the following (at a minimum):

- Driver pre-trip inspection logs;
- Daily dispatcher report;
- Daily driver logs by run;
- Daily road call reports;
- Farebox information by driver run by day;
- Records for bus operating personnel as required to meet USDOT Commercial Driver Regulations; and
- Other information mutually deemed to be appropriate.

This information need not be submitted to CATS on a regular basis, unless otherwise required to address Service Provider performance or for conformance with changes in service delivery. However, such records shall be made available to CATS by the Service Provider at the request of CATS.

**I. Passenger Complaints.**

**1. Complaints Received By The Service Provider.** CATS customer service center receives and documents most telephone, written, e-mail, or walk-up customer complaints. However, Service Provider employees may receive such kinds of complaints from time to time and will always be the principal recipient of customer inquiries/complaints on the buses. All Service Provider employees shall document operational problems or passenger complaints using a form to be provided by CATS. Comments shall be transmitted to CATS' CALL CENTER daily via e-mail.

**2. Complaints Received By CATS.** In the typical case, CATS will receive and document passenger comments/complaints, log them into its customer complaint database and forward copies to the Service Provider for investigation and response either via e-mail or fax. The Service Provider is required to maintain a computerized tracking mechanism to follow these forwarded complaints through the investigation process and follow-up to CATS. Within three (3) working days of receiving a documented complaint. The Service Provider will document a response to the comment noting any personnel actions such as counseling, discipline or retraining. After CATS acts upon such complaints, CATS will provide the Service Provider with summary information from its complaint database for the Service Provider's use. CATS places great importance upon the timely and thorough resolution of passenger complaints. The Service Provider shall attach the same significance to each passenger complaint.

**3. Contractor Expectations and Responses**

1. Ensure that all CATS customers are treated with dignity, respect, civility, and professionalism by the Contractor's employees and subcontractors.
2. Cooperate and comply with reasonable requests by CATS to distribute notices, schedules, or other promotional materials to passengers in connection with the Services.
3. Review, investigate, and respond to all customer and public inquiries, complaints, requests, and commendations within five (5) Business Days of receipt.
4. Upon request, attend public meetings convened by the City, elected officials, community organizations, or others as requested by the CATS Project Manager.
5. Issue service alerts to customers using, but not limited to CAD/AVL system.

6. Ensure that all Customer Service Representatives are knowledgeable of all aspects of the CATS service including routes, locations of stops, fares, connecting services, and special programs; ensure that all Customer Service Representatives have general knowledge of aspects of other area mobility options.

**4. Complaints Inquiries.** Contractor shall thoroughly review, investigate, and respond to all complaints and inquiries within five (5) Business Days. Contractor shall provide a monthly log of complaints and inquiries to the CATS Project Manager along with a description of the action(s) taken to resolve the complaint or inquiry, as appropriate.

1. Complaints regarding service planning or other matters outside the purview of this Contract shall be referred to the CATS Project Manager for review, investigation, and response.

**J. Right of Audit.** Service Provider agrees that CATS, the Comptroller General of the United States, and the Secretary of Transportation, or any of their duly authorized representatives, shall, for the purpose of audit and examination, be permitted to inspect all Work, materials, payrolls, and other data and records, and to audit the books, records, and accounts relating to the performance of Work under this Agreement, including but not limited to all contracts, leases, vouchers, checks, invoices, receipts and other documents prepared or executed in connection with the services provided under this Agreement, unless otherwise protected or restricted by local, state, or federal regulations.

CATS may also authorize representatives of other project funding partners to inspect and audit the records of the Service Provider relating to the performance of Work under this Agreement. Further, the Service Provider agrees to maintain all required records for at least three (3) years after the later of: (1) final payment to the Service Provider under this Agreement; or (2) the resolution of any litigation, disputes, or related actions arising under this Agreement. The Service Provider will cooperate and support internal CATS audits as described in the CATS ASP.

### **3.11.10 National Transit Database (NTD) Reporting.**

Service Provider shall be responsible for the collection of FTA National Transit Database (NTD) data and other pertinent ridership information. The Service Provider shall prepare and submit monthly, quarterly and annual NTD reports to CATS to include but not limited to the following:

**A. Quarterly Reports.** Within thirty (30) days of the previous quarter, the Service Provider shall complete and electronically submit to the CATS' Finance Department the following NTD reporting forms. One of each form for all of the CATS Services: Form 301 – *Operating Expense (Summary and by Mode)*

- Form 402 - *Revenue Maintenance and Energy Form*
- Backup documentation justifying the data shown on this page regarding "Service Supplied (lines 05-12)" and "Service Consumed (lines 24-25)" shall be supplied. This includes all passenger mile sampling data, summary, and tabulation. Passenger Mile sampling techniques shall be approved by CATS.
- Form 408 – *Revenue Vehicle Inventory (Unless new vehicles, only mileage data need updating).*

**B. NTD Safety and Security Reports.** The Service Provider must notify CATS of any safety and/or security incident or accident that results in a passenger, pedestrian, cyclist, or automobile passenger being transported to a medical facility within fifteen (15) minutes of a bus supervisor arriving on scene. In addition, the Service Provider shall, within two (2) hours after the on-scene arrival of a bus supervisor or management provide a preliminary/supervisors report a in writing to CATS the following minimum information:

1. When and where did the accident/incident occur?
2. How many vehicles and people were involved, what is their condition?
3. How many passengers were on the bus?

4. Were any of the passengers hurt?
5. Were any passengers transported to a medical facility?
6. What is the condition of the driver?
7. What is the condition of the bus?
8. Did the accident require post-accident drug and alcohol testing and was the policy adhered to?

The NTD Safety and Security Report does not substitute for any other reporting requirements.

**C. Monthly Reports.** The Service Provider must submit to CATS on the 10<sup>th</sup> of each month, along with the invoice, the previous months' NTD and Ridership Reports as required by the FTA, and the summary data required for the monthly Agency Safety Plan (ASP) Safety Report.

**D. Annual Reports.** The Service Provider shall assist CATS staff in compilation and submission of annual reports, due to FTA in October following the end of CATS' fiscal year on June 30<sup>th</sup> of each year. Backup documentation from the Service Provider shall be provided immediately upon request and CATS insists on ensuring its accuracy.

### 3.11.11 Service Data and Performance Monitoring Tools.

**A.** Service will be monitored and measured using CAD/AVL Scheduling systems provided by CATS. The following requirements and associated PDC's have been established to ensure accurate data are available to CATS and CATS customers.

**B.** Service Provider must enter all service-related data into the Scheduling/AVL system (e.g., service loss, service delay, accident and incident and security information, maintenance failures, customer incidents, etc.

**C.** All vehicles which leave the yard must be logged in to the AVL system.

**D.** All vehicles must remain logged in while off site and while in service. Through the course of a transit day vehicles must be logged off a specific Block and another vehicle logged on in its place. Such log offs and logons must be managed to reduce the amount of time in which no data is being associated with that service. Failure to have a Block logged in for a period exceeding 10 minutes will result in a fine per the Liquidated Damages Clause.

**E.** When a bus is running more than 5 minutes behind schedule, bus operators must provide a canned data message explaining the reason for the delay. If the route/block is cancelled due to manpower or mechanical failure, the Bus Operations Control Center (BOCC) shall submit missed trip information into CATS mobile app platform.

**F.** To ensure that services operate in a timely manner, the Service Provider is expected to ensure that all Blocks start service on time. A queue bus may be used in place of the regularly scheduled bus to enter service at the first scheduled time point on time (no more than 5 minutes late). Service provider Radio Dispatch shall manage a Block estimated to arrive late in a manner that reduces service impact and determine the time point to direct late Block to, based on the following Block's estimated arrival. Failure to enter service at the first scheduled time point on time (no more than 10 minutes late) will result in a fine per the Liquidated Damages Clause. All service not operated (e.g., lost time) must be properly and accurately documented in the Scheduling/AVL system.

**G.** Service Provider is encouraged to utilize queue buses as a mechanism to avoid delays and reduce lost time.

**H.** Service Provider is required to explain all periods of "off route" status for any vehicle by creating an Incident Report

**I.** Failure to document an incident properly and accurately, including but not limited to failure to accurately reflect change-out buses, lost time, or service delays, will result in a fine per the Liquidated Damages Clause. The PDC will not apply until after the seventh day of the incident, which represents the time allowed to accurately reconcile and finalize incident entries.

J. Note: All PDCs required by CATS must be self-assessed by Service Provider and reflected as credited amounts on monthly invoices.

**3.11.12 Remedial Action Plan.** Within thirty (30) business days of the issuance of the Warning Notice, the Service Provider shall submit a report (“Remedial Action Plan”) which provides a rationale behind the occurrence of the relevant failure, defect, or non-compliance; and provides detailed steps the Service Provider will take to mitigate, rectify, or protect against such circumstances. The Remedial Action Plan shall specify in reasonable detail the additional measures to be taken by the Service Provider in response to the matters which led to the Warning Notice being sent. The Service Provider shall bear its own costs and expenses and shall bear all reasonable costs, charges and expenses of CATS properly incurred because of failures giving rise to the Warning Notice. Examples of Remedial Action Plan may be included with submitted proposals.

## 3.12 Maintenance Scope of Work

**3.12.1 General Requirements.** The Service Provider shall be responsible for maintaining vehicles in the highest state of repair and conforming to the maintenance requirements listed below.

A. provide all labor, repairs, new diagnostic equipment, new software and software updates, and all other new components, new services, new tools, and new equipment (including diagnostic equipment) which may be required to fulfill its maintenance responsibilities.

**3.12.2. Vehicle Condition.** The Service Provider shall maintain all vehicles and vehicle equipment in proper repair and condition satisfactory to CATS. The Service Provider shall maintain all equipment in conformance with the manufacturer’s warranty requirements throughout the life of the Contract. The Service Provider must ensure that all vehicle manufacturer warranty work is accomplished to guarantee CATS compliance with necessary warranty requirements. The Service Provider shall use CATS asset and maintenance management system to manage and document all vehicle maintenance ancillary records. Lack of maintaining CATS vehicle information in the maintenance management system may result in the assessment of liquidated damages. If the Service Provider receives an unsatisfactory rating regarding these standards, the Service Provider shall notify CATS immediately and state what is being done to correct the deficiency.

Vehicle Servicing shall occur at the intervals listed in the table below unless otherwise specified by CATS.

		Not less than			
	Immediately upon Discovery	Daily	30 Days	90 Days	Seasonally
Fueling		x			
Probing/empty cashbox		x			
Engine oil, coolant level in all reservoirs, windshield wiper fluid, hydraulic or power steering fluid, brake fluid, and transmission fluid check/add.		X			
Tire/wheel Inspection		x			
Lights, Flashers, and Wipers Check		x			
Interior sweeping		x			
Remove graffiti	x				
Exterior wash		x			
Wipe down of Operator compartment		x			
Free of noxious odors from cleaning, pest control or other products		x			
Repair upholstery damage	x				
Remove bodily fluids	x				
Clean and treat rubber or vinyl exterior components with preservative					x
Hand scrub wheel wells, flaps, engine compartment doors, exterior doors, handles, and latches, and any exterior seams or joints.			x		
Hand-clean all windows, destination signs, mirrors, and window tracks			x		
Cleaning of ceilings, sidewalls (all), escape hatches, mirrors, front and rear doors, luggage/storage compartments where present, all railings, movable seat tracks, and interior light lenses. chrome/stainless			x		
Clean all air conditioning vents			x		
Clean flooring areas with soap and water to include Operator’s area, passenger area, wheel housing, steps and ramps/wheelchair lifts. Remove substances that have adhered surfaces			x		

Clean and sanitize all seat cushions and backs, by brushing and vacuuming. Removal of all gum and/or local spots and stains shall be required			x		
Pressure wash engine and undercarriage			x		
Steam clean all passenger and Operators seats; rear seating area lifted and cleaned underneath and around it.				x	

**3.12.3 Climate Control.** Interior climate control systems must always be operational and in good working order.

**3.12.4 Electrical Work.** All electrical work must be in accordance with the bus manufacturer's specifications and standards. Branching of wires, direct wiring or circumventing safety systems by by-passing circuit protection devices are prohibited.

**3.12.5 Wheelchair Accessibility.** The Service Provider shall maintain all wheelchair lifts, wheelchair ramps and wheelchair equipment in operating condition. The Service Provider shall be required to maintain all belts and retractors to OEM operating condition specifications, to include cleaning or replacement of any or all the wheelchair equipment when they become frayed or damaged. Failure to maintain accessibility equipment in operating condition may result in assessment of liquidated damages.

**3.12.6 Defect Card.** The Service Provider shall complete a CATS vehicle defect card, electronic or paper, on a daily or each time the vehicle is used in revenue service. The cards are used to assist the Service Provider in reporting defects or problems to the maintenance department that may have occurred during the operating service period. The Service Provider shall ensure that each card, including the pre-pullout and post-service copies, is chronologically by vehicle number throughout the term of the Contract.

**3.12.7. Fuel and Fluids.** Fuel, oils, transmission fluids, and anti-freeze etc. consumption records shall be maintained daily for each bus. Records shall also list fuel consumption in miles per gallon and fluid use in miles per quart. Records shall be filed by bus number and date. At a minimum, the Service Provider shall meet Original Equipment Manufacturer (OEM) approved standards for fuels, oils, grease, etc. The Service Provider shall maintain and document Fuels/Fluid Inventory Control and Reconciliation methods for purposes of good management practices.

A. Contractor shall maintain accurate mileage and fuel dispensed records for each vehicle fueled and shall include those items in the permanent vehicle record daily.

B. CATS shall provide for all diesel and unleaded fuel for Revenue and Service and Support Vehicles. The primary fueling facilities are 3145 S. Tryon and 901 N. Davidson. In emergency circumstances, the Contractor shall contact CATS Project Manager for approved locations.



- C. CATS shall monitor diesel fuel storage tank reports including diesel fuel levels, interstitial leaks, water intrusion, etc. The Contractor shall notify the CATS Project Manager of any concerns.

**3.12.8 Oil Analysis.** The Service Provider shall be required to have an oil analysis program developed for review and approval by CATS Project Manager. The plan shall monitor engine oil and transmission fluid condition throughout the term of the Contract. Samples shall be taken according to the PMI program schedule and shall include:

- A. Sampling of oils, fluids, and coolants at the PMI interval by an independent ISO 17025:2017 certified facility or with the approval of the CATS Project Manager by the Contractor's similarly trained personnel.
- B. All sample results and reports shall be accessible to CATS. All sample results that come back as abnormal or critical shall follow the recommendation of the oil analysis laboratory as it pertains to abnormal/critical sample results.
- C. Oil and fluid sample analysis reports shall include the number of samples taken, the number of discrepancies noted, and the corrective action taken for each discrepancy identified.

**3.12.9. Tires.** Service Provider shall operate with Service Provider-owned or leased tires for all buses assigned to this Contract. Provider shall run out or buy out the remaining tire miles which will be mounted on the buses. All tires shall be routinely service by the Service Provider or lessee to ensure proper inflation and serviceability. Tires shall be replaced when the tread depth requires replacement pursuant to the Federal Motor Carrier Safety Administration Regulations.

**3.12.10. Communications.** The Service Provider shall properly maintain functioning radio systems on all revenue vehicles to include on-board cellular modem and Motorola equipment. No revenue vehicle shall be operated in revenue Service without a properly functioning radio.

**3.12.11. Variations and OEM.** No variation or vehicle system modifications will be allowed without written authorization from CATS after following the Change Control Process as defined in the CATS ASP. Only original equipment manufacturer (OEM) parts or parts that meet or exceed the OEM specifications shall be used. As a result of the required vehicle repairs, the Service

Provider shall ensure that all reassembly tasks are performed in such a manner that the vehicle remains in the OEM configuration as it was received, and no additional hazards were introduced. This includes, but is not limited to, the wiring configuration and clamping and body assembly.

**3.12.12. Vehicle Records.** Service Provider shall be responsible for keeping permanent vehicle file current, by vehicle number, documenting all vehicle maintenance to include warranty repairs, Preventative Maintenance (PM) scheduled inspection, parts usage, fuel and oil usage, schedule and unscheduled maintenance and labor expended on each vehicle through the term of the Contract. Copies of all work orders must become a permanent part of the vehicle maintenance file. The Service Provider shall keep active hard copy files of at least six (6) months of documentation on-site in an easily accessible location.

**3.12.13 Warranty Management.** The Service Provider shall perform bus warranty work as authorized by CATS and the bus manufacturer. The Service Provider will be provided with all warranty information and forms applicable to CATS fleet. All warranty work shall be documented electronically in the CATS fleet management system.

A. The Contractor shall manage a complete and comprehensive Warranty Recovery Program for all Revenue Vehicles, components, and on-board technologies. Management and maintenance personnel and/or subcontractors shall have knowledge of all necessary warranty reimbursement procedures to ensure the City recovers all funds for which it is eligible. The Contractor may be liable for failure to comply with warranty requirements.

B. On a monthly basis, the Contractor shall provide a Warranty Recovery Program Report to the CATS Project Manager which indicates all warranty claims submitted and their disposition and the cost and cash or in-kind recovery of warranty claims, including labor costs.

**3.12.14 Administration of Warranty.** The Service Provider shall be responsible for the administration of all new vehicle warranties associated with CATS's fleet to include documenting vehicle files and processing claims through Warranty. The Service Provider shall be responsible and ensure all warranties and repairs as authorized are completed. The Service Provider shall complete all claim forms with all appropriate paperwork including copies of work orders and parts issues within fifteen (15) days of the completion of work. All warranty files shall be subject to audit by CATS at any time during the term of this contract. All warranty work shall be documented electronically in the CATS fleet management system.

**3.12.15 Applicable Codes and Regulations.** All vehicles utilized for Service shall be safe for operation on public streets and freeways and meet all bus Federal and State Motor Vehicle Safety Standards requirements. All parts of the vehicle and all equipment mounted on or in the vehicle shall conform to this vehicle safety standard.

**3.12.16 Inspections.** Each vehicle is required to be inspected annually by the appropriate regulatory agency. CATS shall be notified of inspections performed by another governmental agency other than CATS. The results of those inspections shall be transmitted to CATS, and any applicable signed certification shall be displayed or carried on the vehicles. If a regulatory agency revokes the permits to operate the vehicles in this service as a result of unsatisfactory inspection ratings, the buses shall not operate, and contract actions will be taken in accordance with applicable terms and conditions of a resultant Services Agreement.

**3.12.17 Quality Assurance and Audits.** CATS shall have immediate and unrestricted access to all vehicle maintenance records during planned or unannounced visits or inspections to vehicles and facilities for the duration of the Contract. CATS shall be entitled, at all times, to conduct audit/inspections of any activities/bus in order to determine compliance with the provisions hereof. The Service Provider shall, upon request by CATS, immediately remove from operation any bus which is determined by CATS not to be in compliance herewith and shall repair, clean or take any other actions reasonably requested by CATS in order to cause such bus to not be in compliance. Nothing in this provision or in any inspection or approval by CATS of any bus shall

relieve the Service Provider of its obligation to maintain and operate each bus in strict compliance with the provisions hereof.

**3.12.18 Permits.** Service Provider must have all applicable City, County, and State business licenses.

**3.12.19 Preventative Maintenance (PM) – Generally.** Through an approved Preventive Maintenance Program, the Service Provider shall require all components of each bus, including its body, frame, furnishing, mechanical, electrical, hydraulic or other operating systems to be maintained in proper working condition, free from damage and malfunction. In response to this RFP, the Service Provider shall submit to CATS a complete and comprehensive preventive maintenance program. The preventive maintenance program submitted by the Service Provider to CATS will meet or exceed the standard manufacturers recommended or specified guidelines, including all add-on equipment installed by the second stage manufacturer. When two (2) service categories are provided by the manufacturer such as “normal service” and “heavy-duty cycle/severe service”, the heavy-duty cycle/severe service category guidelines will be used in establishing the PM program by the Service Provider. In addition, all maintenance work shall, at a minimum, conform to the requirements of the manufacturer’s warranties. To the extent available, CATS will provide a copy of the maintenance requirements of the bus manufacturers.

A. Adherence to preventive maintenance inspection schedules shall not be regarded as reasonable cause for deferred maintenance in specific instances where the selected Contractor’s employees observe that maintenance is needed in advance of said PMI schedule.

B. The Contractor shall not defer maintenance for reasons of shortage of maintenance staff, parts, or operable vehicles. The PMIs and running repairs shall receive priority in the use of the Contractor’s maintenance resources. The Contractor shall adjust the work schedules of its employees as necessary to meet all preventive maintenance activities, including the use of approved vendors or subcontractors to meet maintenance requirements.

**3.12.20 Preventative Maintenance of Heating and Air Conditioning Systems.** Service Provider shall provide a separate preventive maintenance program for the vehicle-heating and vehicle-air conditioning systems that meets or exceeds the manufacturer’s recommended or specified PM program. The heating and air conditioning PM program shall be submitted within the response to this RFP. All repairs and maintenance shall be performed according to the laws established by the North Carolina Department of Environmental Protection for air conditioning service. The Service Provider shall describe by brand name and model number the refrigerant recycling system proposed and whether this system is currently in use by the Service Provider or is yet to be purchased as a result of the award of this Contract.

The Service Provider shall properly maintain operating heating and air-conditioning systems on all revenue vehicles. At a minimum, vehicle- heating systems shall be operable between October 15 and April 1 and vehicle air-conditioning systems shall be operable between April 2 and October 14. During winter service operation, the measured temperature anywhere within the interior of the coach will not be less than 65 degrees F. During summer service operation, the interior vehicle

temperature shall be no greater than the higher of either 75 degrees F or 20 degrees below the ambient temperature (i.e., 100-degree ambient temperature = 80 degrees in the bus). No revenue vehicle shall be operated in revenue Service without a properly functioning heating or air-conditioning system.

**3.12.21 Vehicle Damage.** Service Provider shall repair as required all BOD revenue and support vehicle damage that occurs through the performance of this Contract. The Service Provider shall institute repairs of any non-structural damage to vehicles within 21 days of occurrence and prior to return to service. All repairs made relative to vehicle damage shall be performed by competent repair facilities capable of restoring the damaged vehicles back to their original configuration, appearance, and structural integrity. All bus accident damage must be photographed prior to repair and returning to service. Under no circumstances shall buses be permitted to operate in revenue service with missing panels, unpainted repairs or primer paint showing. All accidents and incidents shall be reported, in writing, within twelve hours of the accident/incident to CATS.

**3.12.22 General Repairs.** Service Provider shall provide as required all general repairs to vehicles provided by this contract. Repairs exceeding forty thousand dollars (\$40,000) should be reported to CATS prior to initiating the repairs.

A. Missing or Broken Glass. Service Provider shall not operate any bus in revenue service with missing or broken glass. This includes windshield, door glass, Bus Operator's windows, and all side windows. All lamp lenses on the exterior of the buses shall be attached to the bus during service. Cracked or damaged light lenses shall be replaced before the next day's pull-out.

B. Seats shall be always maintained in proper operating condition. All rips, tears, cuts, cracks, gum, graffiti, and other damage shall be cleaned or repaired prior to the start of Revenue Service on next day after discovery. Seat covers/seat inserts which are worn, damaged, and cannot be professionally repaired, using materials which are identical in design and color as those materials being replaced. If matching fabric/cushions are unavailable, then the Contractor will work with CATS Project Manager to select an acceptable substitute before the Contractor procures the replacement materials.

C. Bicycle racks which are bent, broken, or inoperable shall be replaced prior to the start of Revenue Service on next day after discovery.

**3.12.23 Vehicle Cleaning.** The Service Provider shall be responsible for maintaining the cleanliness of all revenue vehicles used in the provision of the service to provide a positive public image and appearance. At a minimum, vehicles shall have exteriors washed and cleaned of all dirt and accumulated grime and interiors cleaned of all dirt and trash daily prior to the start of each day to include rain days. All vehicles shall be free of outer body and interior damage (i.e., dents, torn upholstery, graffiti, etc.). In addition, the exterior and interior of each vehicle shall be thoroughly cleaned at every major inspection. The Service Provider shall be responsible for neglect or abuse of all existing or new vehicle equipment. The only exception to the revenue vehicles being washed by the bus wash is if the outside temperatures fall below freezing. At a minimum, all revenue vehicles shall be thoroughly detailed once a month.

**3.12.24 Facility Cleaning.** Shop floors shall be swept once a day and oil spills shall be cleaned immediately, in accordance with OSHA regulations.

**3.12.25 Maintenance Records.** The Contractor shall prepare, maintain, and make available to CATS, all records, and data relative to the maintenance of Revenue Vehicles. The Contractor shall use CATS Fleet Management System.

- A. Work orders shall be made for all tasks performed on Revenue Vehicles including all warranty and subcontracted tasks performed on City vehicles. Work orders shall include vehicle number, vehicle mileage when work order is opened, dates of complaint and repair, technician name, reported complaint, cause, correction details, labor hours and materials used, and work order closed out.
- B. The Contractor shall also maintain records related to preventive maintenance inspection and actions, minor and major systems failures, rebuilds and major component replacements, tire installation and usage, oil and fluid usage and analysis, road calls, and other information that would permit a forensic analysis of vehicle maintenance.

**3.12.26 Out of Service Requirements.** No vehicle shall be placed in Revenue Service if a deficiency has been identified. Out of Service Designations shall include:

- 1. Tires with air pressure below 20% of recommended pressure
- 2. Tires with less than 4/32" tread depth
- 3. Inoperative emergency exits/doors/windows
- 4. Inoperative communications devices (CAD/AVL, Radio, Cameras)
- 5. Inoperative, expired, or missing safety equipment
- 6. Revenue vehicle seats and interior components contaminated with bodily fluids
- 7. Operator seat broken or surface torn
- 8. ADA Wheelchair kneeling, ramp or lift features inoperable
- 9. ADA Wheelchair tie downs or seat sliders inoperable or missing
- 10. Leaking and/or cracked hydraulic lines; oil lines, coolant lines, or fittings, seals, or joints with either a Class II or Class III leak, as outlined; unsecured wiring harnesses, and harnesses or hoses and lines that are rubbing or chafing
- 11. Inoperative Automatic fire suppression system
- 12. Any condition not in compliance with applicable federal or state Regulations
- 13. Brakes making noise, locking up or not stopping properly
- 14. Air system free of leaks and moisture
- 15. Inoperative exterior lights

**3.12.27 Revenue Fleet Maintenance Plan.** The Contractor shall submit a Revenue Fleet Maintenance Plan no less than thirty (30) days prior to the Start of Service, including a quality management element to meet the following requirements of this Contract which are further described below:

- 1. Maintain all Revenue Vehicles in accordance with OEM specifications

2. Implement a reliability centered maintenance (RCM) program
3. Perform preventative maintenance vehicle inspections
4. Maintain electrical systems and on-board hardware systems under the guidance of CATS I&T.
  - i. Collaborate and coordinate with CATS I&T department maintaining farebox, IVLU (AVL), APC, destination signs and modems.
5. Maintain all communications systems, including but not limited to radio dispatch
6. Adhere to out of service criteria
7. Body repair damage
8. Maintain CATS branding (paint, logos, decals, etc.) on all Revenue Vehicles in a “like new” condition.
9. Properly keep all records electronically related to vehicle maintenance
10. Manage and record vehicle and component warranties and claims
11. Manage and coordinate insurance claims in coordination with the City’s insurance administrator
12. Provide towing of Revenue Vehicles
13. Perform oil and fluid analysis
14. Perform emissions control programs
15. Clean and maintain the interior of vehicles free of trash, debris, graffiti
16. Maintain the exterior of all vehicles and perform minor and major detailing

### **3.12.28 Vehicle Commissioning and Decommissioning.**

- (A) Except as provided below, the Contractor shall be responsible for the acceptance, commissioning, decommissioning, and disposal of all Revenue Vehicles in coordination with CATS Finance, CATS Fleet Analyst and City’s Fleet Management Division. Within 60 days of the Start of Service date, the Contractor shall provide a Vehicle Commissioning and Decommissioning Plan (VCDP) which shall be reviewed and approved by the CATS Project Manager.
- (B) The VCDP shall include the following minimum Contractor responsibilities:
  - (1) conducting pre-award reviews and post-delivery (Inspections) requirements in accordance with FTA requirements, including but not limited to Buy America certification, purchaser requirement certification, and Federal Motor Vehicle Safety Standards (FMVSS) certification. The Contractor shall provide a resident inspector, if necessary.
  - (2) On-site inspections including but not limited to interior and exterior finish and appearance, drivetrain, suspension and steering, brakes, ADA equipment, and vehicle subsystems.

- (3) Coordination with Technology Vendors of equipment upfitting or removal
  - (4) Road testing and operator and technician training
  - (5) Receipt and review and filing of vehicle documentation (manuals, warranties, titles, etc.
  - (6) No Revenue Vehicle may be operated in revenue service until completion of onboarding and acceptance by TMOC and CATS staff.
  - (7) All Revenue vehicles must meet FTA Useful Life or be damaged beyond repair to be considered for removal from service.
  - (8) Revenue vehicles cannot be removed from service until authorized by CATS Staff.
  - (9) Completion of all required documentation prior to removal.
  - (10) All auxiliary equipment shall be removed prior to decommission including but not limited to CATS decals, radio, farebox and camera system.
  - (11) Upon approval of decommission TMOC Staff will deliver vehicles to the City Auction Yard or the scrap yard if applicable.
- (C) City shall be responsible for tag and title processes for all newly acquired or decommissioned Revenue Vehicles.

**3.12.29 Zero Emissions Vehicles and Fuel Stations.** The City of Charlotte is committed to transitioning to a fully electric fleet by 2030 and low carbon city by 2050.A. Within 60 days of the Start of Service date, the Contractor shall provide a Charging Management Plan for CATS review and approval. The Contractor shall notify CATS of significant deviations from the Charging Management Plan.

3.12.29.1. The City shall furnish and install electric vehicle charging stations in sufficient quantity, type, and schedule to support the electric vehicle purchases.

**3.12.30 CATS Maintenance Auditing Program.** During the term of the Contract, CATS reserves the right for an independent maintenance consultant(s) or CATS auditor to provide expert review of the Service Provider's maintenance practices and audit the condition of CATS' vehicles.

1. Cooperation - These fleet audits will include extensive vehicle inspections, utilizing the pits and lifts of the facility, and involve inspection of maintenance documentation and the Service Provider's procedures. Road testing and oil/fluid analysis will be involved. The Service Provider must provide full cooperation to audit team and arrange for efficient use of their time through facility and vehicle access.

2. Access to Reports - CATS intends for these audits to not only act as an independent monitoring of the Service Provider's maintenance efforts, but also as a means to facilitate continuous improvement. Audit reports will be available to the Service Provider and the audit team will provide follow-up meetings and suggestions.
3. Fluid Analysis – Prior to the collection of oil or other fluids for analysis, CATS shall notify the Service Provider in advance. The Service Provider must inform CATS of any scheduled preventive maintenance on any bus that might affect the samples to be tested.
4. Repairs – Any deficiencies in the vehicle fleet identified by the audits shall be repaired. Within ten (10) days after notification of such deficiencies, the Service Provider shall present a written repair schedule/timeline to CATS for approval.

### 3.13 Safety

**3.13.1 Safety Management System.** Service Provider shall implement a safety program that adopts and supports the Safety Management System (SMS) approach defined by the FTA and supports the CATS Agency Safety Plan (ASP) core components of Safety Management Policy, Safety Risk Management, Safety Assurance and Safety Promotion. The Service Provider shall submit a comprehensive plan to CATS for approval at least thirty (30) days in advance of the Contract start date that explains how they will support and follow the CATS ASP. The Service Providers plan must address how they will follow each section outlined below, as well as specifically address each facility of service covered by the contract. An approved SMS plan is required prior to the start of services. Vehicle Operator procedures for handling emergencies and incidents (medical, fire, safety, fuel and other fluid spills)

- Accident Investigation Training
- Hazard Identification (as defined in SMS Plan)
- Hazard Risk Management
- Safety Assurance
- Corrective Action Plan (CAP) including Root Cause Analysis
- Management of Change
- Assault Prevention & Awareness
- Handling potential blood borne pathogens
- Accident Response Plan
- Accident review process and trend analysis
- Employee retraining (remedial) provisions
- Fatigue management for bus operators and other shift-work staff, including processes for ensuring limitations to the hours of service for these staff
- Use of an inertia-based camera system for capturing near-accidents and analyzing triggered events, including retraining employees on unsafe driving behaviors and analyzing data regarding near-misses
- Facility and yard safety



- Shop safety
- Nose to tail parking and required spotters
- Maintenance practices to promote safe functioning of vehicles
- Programs and methods to be used in promoting safety awareness, including administrative functions

**3.13.2 Monthly Safety Meetings.** CATS Safety and Security conduct monthly Bus Safety & Security Committee Meetings. The Bus Safety & Security Committee members shall represent all company employees. Therefore, the Service Providers shall ensure the bus safety & security committee is comprised of both front-line employees and supervisor staff from Operations and Maintenance. To ensure continuity, members shall serve on the committee for a minimum period of 12 months. Devotion from the service period must have prior approval by CATS.

**3.13.3 Periodic Readiness Training and Drills.** Service Provider shall support periodic emergency readiness training and drills. Service Provider shall also participate in drills and readiness exercises conducted by CATS.

**3.13.4 Public Transportation Safety Certification Training Program (PTSCTP).** The Service Provider must have staff who oversees safety and conduct safety audits meet the minimum training requirements under Federal Regulation 49 CFR 672 which requires receiving a PTSCTP certificate and meeting the two (2) year recertification requirements.

**3.13.5 Post-Accident Re-Training.** CATS training department shall provide a program for post-accident training. The training shall be consistent with the needs of CATS, the City of Charlotte, NCDOT, and FTA.

**3.13.6 Enterprise Risk Management Programs.** CATS has implemented a program and various processes for managing risks and pursuing opportunities outlined in the Agency Safety Plan, section 2.3, Safety Risk Assessment. Service Provider must follow the ASP processes. As part of this program, it is understood that some risks must be accepted to achieve goals and conduct business, while other risks are unacceptable. To this end, CATS and Service Provider will work collaboratively to manage the unacceptable risks, while ensuring that service delivery standards are maintained.

**3.13.7 Safety Equipment.**

- A. The Service Provider shall make disposable gloves, anti-microbial hand sanitizer and Band-aides available to all employees.
- B. The Service Provider shall ensure that all revenue vehicles have properly operating safety equipment, fire extinguishers, and reflectors.
- C. The Service Provider shall ensure that all necessary facility safety equipment is in good working condition. If safety equipment is found inoperable, Service Provider shall immediately notify CATS Facilities Management staff in writing.
- D. The Service Provider shall provide all necessary and required personal protective equipment.
- E. The Service Provider shall provide basic first aid kits for maintenance facilities for employee selfcare.

### 3.13.8 Accident or Severe Incident Procedure.

- A. **Emergency Notifications.** Service Provider must comply with emergency notification procedures set forth in the Agency Safety Plan, Section 3.4, page 37.



Agency Safety Plan  
Rev 2 FINAL 2022111

- B. **Vehicle & Passenger Accidents.** Service Provider must comply with the responsibilities related to accidents and incidents set forth in CATS' S&S03, Accident Incident Investigation and Reporting.
- C. **Reporting.** Service Provider's reporting shall comply with Federal, State and CATS requirements. See Attachment - Accident Definitions & Criteria for Monthly Reporting. For all events classified as an accident or incident, a bus operations control report shall be provided to CATS within sixty (60) minutes of the incident; the investigating supervisor shall provide a report within twelve (12) hours of the incident; and subsequent employee statements and follow-up documents shall be provided within twenty-four (24) hours of the incident. Accident reports shall be legible and include information as described in CATS S&S-03, Accident/Incident Investigation and Reporting. Additionally, Service Provider must provide all other accident or incident notifications as may be required by the Contract or by CATS.
- D. **Accident Investigation Staff.** The Service Provider's designated accident investigation staff shall respond immediately in person to any incidents or accidents and complete an accident investigation. Unreported/discovered vehicle damage shall be reported in the same manner as the notification procedure. Service Provider shall make every effort to investigate the cause of unreported damage.
- E. **Required Information.** Details of every vehicle and Passenger accident or incident, including vehicle number, damage estimates to CATS vehicles, preventability claims, severity category, elapsed hours between the prior workday and time of accident, and hours worked in the previous seven (7) calendar days shall be reported to CATS by the fifth (5th) Business Day of the following month. The Service Provider shall also submit a Quarterly Accident Claims log due by 10th Business Day after quarter ends.

### 3.13.9 Workplace Safety.

- A. The Service Provider shall be responsible for compliance with all applicable Federal, State and local laws, ordinances, and regulations during the performance of this Contract. As conditions or regulations change, CATS will require the Service Provider to comply with additional safety requirements as deemed appropriate. Such additional requirements shall be provided to the Service Provider in writing.

- B. Service Provider shall implement safety rules and procedures in accordance with transit industry best practices and CATS procedures. These include but are not limited to the following:
- Furnish and enforce the use of all personal protective equipment needed to complete the tasks required by this Contract.
  - Provide employees special safety training prior to working with hazardous materials or operations and reinforce expectations through ongoing training reinforcing the information.
  - Provide warning signs, barricades and verbal warnings as required by OSHA and CATS.
  - Provide copies of the CATS emergency evacuation procedures, for each facility, to its employees; train the employees on emergency evacuation procedures; conduct regular exercises; and support CATS Fire Warden Program and the CATS Emergency Preparedness and Continuity Plan.
  - Develop safety policies for the operating facility and submit them to CATS for approval. Once approved, distribute to employees, and provide training.
  - Manage issues of employee fatigue, including processes to institute limits to the hours of service of Bus Operators in accordance with the FMCSA Hours of Services for Motor Coach Operations, 49 CFR 395 and defined in CATS ASP.
  - Manage safety-related items: bloodborne pathogens, control of hazardous energy, electrical safety, fall protection, heat stress, machine guarding, noise exposure, power industrial trucks, welding and cutting standards.
- C. The Service Provider is required to document its Safety Program in its Safety Management System (SMS) plan that supports the CATS ASP, components and key activities of SMS, and an Emergency Response Plan in support of the CATS EPCP that is submitted to CATS for review and approval.
- D. The Service Provider is required to coordinate its safety efforts with the Office of CATS Safety and Security in the interest of ensuring a seamless approach to the safety of CATS' system. This includes all efforts to fully implement Safety Management Systems (SMS) as described in the FTA's National Public Transportation Safety Plan and CATS ASP.
- E. Service Provider shall fully promote and support CATS' Employee Safety Reporting System . See Safety Issue Reporting Form .



Safety Issue  
Reporting Form.pdf

Service Provider meet the requirements and processes identified in the CATS ASP.

- F. The Service Provider is required to submit an OSHA 300 log detailing industrial injuries and supporting documents to CATS Office of Safety and Security monthly.

- G. CATS policies preclude the use of mobile phones and other personal electronic devices while on duty. CATS requires a zero-tolerance policy for violations of this procedure.

### 3.14 Security

**3.14.1 On-site Security.** CATS provides on-site security personnel to patrol the facility grounds and monitor building access. All Service Provider employees are expected to visibly wear a CATS-issued badge while on CATS property, inside CATS buildings, and while performing CATS Service. All Service Provider employees will comply with directions given by security department personnel including producing issued access control badges upon demand. Visitors must enter through the main entrance of the Facility and sign in at the front desk lobby area on the 2<sup>nd</sup> floor. Visitors are required to be escorted while on CATS property or inside CATS buildings by the party they are scheduled to see. All vendors and visitors must park their vehicles in the assigned designated visitor parking area located on the first floor of the parking deck at 3145 S. Tryon Street. Any contractor or vendor granted access to the bus lot must have their company's name visibly displayed or decal on the **outside** of their vehicle.

**3.14.2 Contracted Local Law Enforcement and Security.** CATS contracts with private contracted security/police agency for the services of sworn police officers and security guards to provide law enforcement and security assistance for incidents that occur on CATS properties and rolling stock. CATS relies on its local law enforcement to respond to all incidents and accidents that occur outside of CATS properties and facilities. The types of incidents that law enforcement/security should be contacted for include, but are not limited to, medical assistance needed by a passenger, operator or member of the public; an assault; fighting on a bus or on CATS property; display and/or use of a weapon; bomb threats; threats against the public; disorderly conduct; passenger intoxication; trespass; theft of services; drug use; smoking on a bus or on CATS property; vandalism; suspicious activity; suspicious packages, major vehicle crash involving bus and vehicle towing.

**3.14.3 Emergency Calls.** Major incidents where passengers, operators or members of the public are in imminent harm or danger should be reported to 911 immediately. After reporting the incident to 911 for response of the Charlotte Mecklenburg Police Department (CMPC), Fire Department or EMT, CATS' contracted law enforcement should also be called. Major incidents include, but are not limited to, a passenger, operator or member of the public requires medical assistance, an assault, fighting on a bus or on CATS' property, display and/or use of a weapon, bomb threats or threats against the public.

### 3.15 Fare Policy, Collection and Accounting

**3.15.1 Fare Policy.** CATS shall, in its exclusive discretion, establish all fare structures, policies, promotions, and discounts, which may include passes, tickets, tokens, transfers, and coupons. All

Service Provider employees must be familiar with and adhere to all parts of the adopted fare structure. The Service Provider shall cooperate to ensure the sale of these passes and coupons. The Service Provider shall not utilize any tickets, transfers, tokens, passes, cards or other non-cash fare substitutes other than those specified by CATS.

**3.15.2 Fare Collection and Driver Accountability.** All drivers, or other authorized personnel, shall request passengers deposit the required Fare upon boarding the bus (which includes collecting any passes, cards, tickets, tokens, vouchers, coupons, university ID and transfers as determined in accordance with CATS' specifications and schedules) in the Farebox or by scanning. Drivers are responsible for collecting all Fares and recording required information regarding the use of promotional Fare media. The Driver should ensure that each passenger is depositing the correct fare in the farebox.

**3.15.3 Correlation of Fares and Passengers.** The Service Provider shall ensure that the amount of Fare revenue collected is consistent with the number of passengers utilizing the CATS' Service. Significant discrepancies between the number of reported passengers and the revenue collected on a given day shall be reported to CATS with 1 business day. Continued discrepancies shall be addressed through the development of an action plan.

**3.15.4 Fare Security and Collection Monitoring.**

**3.15.4.1** The Service Provider shall maintain the security of fare boxes and associated revenue collection systems. The Service Provider shall be responsible for overseeing security over collected funds, equipment in service, and all inventoried fare boxes and associated equipment.

**3.15.4.2** The Service Provider must maintain adequate internal controls for all operations, specifically including Fare revenue handling. The Service Provider shall maintain procedures that include methods for monitoring fare collection and utilization of security controls and devices that prevent theft and expose pilferage. These procedures must be included with submitted Proposals to this RFP.

At least annually, CATS and/or City audit staff will review the Service Provider's control procedures and notify the Service Provider in writing of any deficiencies. The Service Provider is required to provide written responses to CATS within thirty (30) days and implement corrective actions within sixty (60) days of any CATS' written findings.

**3.15.4.3 Fare Revenue Accounting and Reconciliation.**

The successful Service Provider will maintain an effective Fare revenue handling plan. Some of the requirements to be incorporated in this Plan include:

- a. All passes, tickets, tokens, vouchers, coupons, and transfers must be stored in secure areas.
- b. Each bus going through the fuel lane shall be probed. If the bus is unable to be probed, the Service Provider shall adhere to the CATS procedures.

Revenue accounting and reconciliation requires the Service Provider to do the following:

- a. Remove the cashbox from each bus that comes through the service lane and follow procedures in case of any exposed money.
- b. Adhere to cashbox security procedures.
- c. Communicate to ensure the CATS Revenue Division is informed of any potential issues that could impact reconciliation of bus fares.
- d. Follow procedures established by CATS in the pulling of vaults.

**3.15.5 Fare Collection.** CATS-provided revenue vehicles will be equipped with electronic fare boxes. CATS and the selected Service Provider will mutually agree on fare collection/fare handling procedures prior to the award of a Contract.

### 3.16 Marketing and Public Relations

All marketing and public relations, including media contacts, are the responsibility of CATS Marketing and Communications Division. Marketing activities include, but are not limited to all advertisement media, business contacts to promote service(s), flyers, schedules, route maps, direct mail, banners, radio, TV, press releases, media contracts, trade publications, and any other such advertisement tools which may be utilized.

**3.16.1 Schedules/Maps/Distribution.** Schedules and route maps are to be designed and printed by CATS Marketing and Communications Division. Distribution of maps by the Service Provider shall be coordinated with the Marketing and Communications Division to ensure that distribution locations can be frequently supplied. These costs shall not be included in the Proposal costs. CATS may, from time-to-time, call upon the Service Provider to assist in delivering materials.

**3.16.2 Bus Promotions.** Service Provider shall provide buses upon request for CATS promotional appearances, use, and photographs.

**3.16.3 Media Relations.** The Service Provider shall refer all media requests to CATS Marketing and Communications Division and shall not provide any information without prior approval by CATS. The Contractor shall cooperate with the City in responding to all Public Information Act requests in accordance with Chapter 132 of the North Carolina General Statutes.

**3.16.4 Timetables, Maps and Marketing Materials.** The Service Provider shall make timetables, maps and other CATS-prepared marketing materials available on all buses used for Service provision. It is the Service Provider's responsibility to maintain a sufficient supply of printed timetables available by coordinating restocking needs with CATS Marketing and Communications Division.

**3.16.5 Seat Notices/Rider Alerts.** The Service Provider shall ensure that CATS-generated seat notices/rider alerts are properly distributed to passengers and posted in visible locations in each vehicle. Notices shall be removed on the stated removal date.

**3.16.6 Passenger Surveys.** CATS, in its discretion, obtains additional documentation of service using passenger surveys. These surveys may be administered by authorized representatives of

CATS or its designee. The Service Provider shall ensure the cooperation of all personnel with any operational procedures related to such surveys, including the distribution of survey questionnaires or other actions necessary to obtain service-related information.

### 3.17 Service Quality, Standard, and Performance Indicators

**3.17.1 Maximize Customer Experience.** Service Provider is required to manage its business Service in ways that maximize the customer experience and work to continuously improve its processes and procedures. Standards include ensuring there are qualified supervisory personnel available to physically respond (as necessary) to any accidents/serious incidents or other service disruptions during all hours of revenue Service in accordance with Contract requirements, providing sufficient transportation supervisor coverage in the Service Area to ensure an appropriate response time as determined by CATS, educating all employees on CATS services to provide proactive support for customers, managing the daily availability of vehicles and operators to facilitate the speedy restoration of service in the event of a service disruption, establishing effective procedures for handling mechanical issues on in-service buses that minimize the impact on service, and investigating and analyzing incidents and customer comments to identify the root cause of recurring problems and adjust processes and procedures accordingly.

**3.17.2 Additional Customer Service.** If directed by CATS, the Service Provider is required to add additional personnel to support the CATS customers, including but not limited to customer field support staff. Should CATS issue such a directive, CATS will work collaboratively with the Service Provider to develop the scope for such an effort. The price for the effort will be negotiated at the time, using the pricing details provided in the Proposal as the basis of calculating the incremental cost increase for the directed change.

**3.17.3 Contract Performance Monitoring.** CATS representatives will, from time to time, ride in CATS-furnished, Service Provider-operated vehicles with or without prior notice to the Service Provider to ensure compliance with the Contract.

**3.17.4 Performance Measures.** Performance measures are included in this Contract to provide the highest level of service possible. CATS will monitor the Service Provider in the performance of the Contract to ensure adherence to all performance specifications. The Service Provider is expected to continually meet or exceed the performance metrics as outlined in this Contract. Should the Service Provider exceed or fall short of acceptable standards, payments to the Service Provider shall be adjusted from the total fixed and variable costs of the original invoice (not including other reimbursements, fees, etc.). Adjustments are based on the incentive or PDC percentage indicated in the Contract. The Service Provider shall be required to submit detailed Action Plans to address any performance indicators that fall short of the standard.

**3.17.5 Operations and Maintenance Quality Assurance.** CATS Quality Assurance staff, or other agency or service provider acting on CATS' behalf, for both Vehicle Maintenance and Operations shall perform audits of the Service Provider's performance throughout the term of this Contract.

These include but are not limited to audits of personnel or vehicle files, remote audits of archival data, in-service and yard audits. The results of these audits shall be rated and recorded. Any deficiencies noted require a written response from the Service Provider.

**3.17.6 Key Performance Indicator Incentives and PDCs.** Service Provider will be eligible to be paid incentives and will be subject to disincentives based upon monthly performance. Details regarding the structure of the incentive and disincentives are provided below.

The following information is provided as a general overview of the methodology that will be used to measure performance, as well as the general magnitude of the disincentives associated with performance.

Service Provider incentives and disincentives imposed by CATS will be applied to Operational measures include on time performance, passenger complaints, vehicle accidents/collisions, passenger accidents/injuries, and miles between road calls.

Incentives and disincentives are assessed one month in arrears. Charges against the Service Provider may be referred to a disincentives, PDCs, or liquidated damages. These liquidated damages are included because in the event of non-performance by the Service Provider it would be difficult to determine the exact amount of loss or damages suffered by CATS in loss of public goodwill, reputation, and convenient operation of the public transit system. The amounts stated below are reasonable and accurately reflect the damages that CATS would be expected to incur for each enumerated violation. The existence of these liquidated damages and incentives shall be interpreted as limiting in any way CATS' right to proceed against the Service Provider for additional damages or to seek a different remedy in response to non-performance. Goals, incentives and disincentives are set forth below into 5 categories:

#### Category I - Operations

**On-Time Performance.** An on-time trip is one that departs no more than 1 minute early and no more than 5 minutes late.

On Time Performance	Incentive/ LD
85.00% and above	\$1,000
83.00% to 84.99%	\$0
80.01% to 82.99%	-\$250
80.00% and below	-\$500
<b>Minimum Goal: 85.00%</b>	<b>\$0</b>

**Total preventable accidents per 100,000 Vehicle Miles.** An accident is any contact with an object, vehicle or person which results in property damage or injury. A preventable accident is one in which the driver failed to do everything that reasonably could have been done to avoid the crash, as defined by the National Safety Council's Guide to Determine Motor Vehicle Accident Preventability. The final determination of preventability is at the sole discretion of CATS.



Accident Rate	Incentive/LD
0	\$1,000
0.01 – 0.69	\$0
0.7 or above per preventable accident	-\$200
Goal: 0.0	0.00%

**Miles Between Road Calls.** A Road Call is any failure of any component or system on a vehicle that causes the vehicle to be unable to complete its scheduled revenue service without repair. For purposes of this paragraph, road call mileage shall be calculated by dividing the number of Road Calls by the total vehicle mileage of the fleet of Revenue Vehicles traveled in a monthly reporting period.

Miles Between Road Calls	Incentive/ LD
More than 12,000	\$1,000
11,999 or less	-\$500
Goal: Greater than 12,000	0.00%

**Missed Trips.** This performance goal will be measure as a percentage of trips provided on each day. For each calendar day contractor is not able to provide at least 97% of scheduled trips, liquidated damages will be assessed. Liquidated damages will not be assessed when the failure to provide the required level of service is due to circumstances beyond the Company's control, as determined solely and finally by CATS (Ex. Training required by CATS, bus bridges requested by CATS, inclement weather, etc.).

% of Scheduled Trips Provided	Incentive/ LD
97% - 100%	None
Below 97%	-\$100 per missed trip
Goal: 100%	None

**Missed Last Trip.** Missing the last scheduled trip or failing to operate the last scheduled trip to the end of its line greatly inconveniences customers and thereby causes further damages to CATS. Therefore, liquidated damages will be assessed wherever the company fails to provide the last scheduled trip (whether completely or in part). Liquidated damages will not be assessed when the failure to provide the required level of service is due to circumstances beyond the Company's control, as determined solely and finally by CATS (Ex. Training required by CATS, bus bridges requested by CATS, inclement weather, etc.).

Missed Last Trip	Incentive/ LD
Any occurrence	-\$200 per occurrence
Goal: 0	None

**Incident Reporting.** All incidents, such as vehicle accidents, are to be reported in writing (email acceptable) within 24 hours of occurrence. CATS will assess liquidated damages for each occurrence (failure to properly report within 24 hours).

Failure to Report	Incentive/ LD
Each Occurrence	-\$100
Goal: 0 Occurrences	\$0

**Major Incident Reporting.** CATS GM BOD shall be informed of major incidents (accidents or incidents where injuries exist, or medic is required) by phone call or text after the occurrence of the major incident. The Company's GM or designee must report a major incident within 1 hour of when the GM or designee's first knew or first should have known of a major incident. Failure to properly report major incidents harms CATS ability to respond to such incidents and liquidated damages will be assessed for each occurrence (failure to report properly within 1 hours). Compliance with this section does not relieve the Company of its other incident reporting obligations.

Failure to Report – Major Incident	Incentive/ LD
Each Occurrence	-\$500
Goal: 0 Occurrences	\$0

**Violations of Law or Regulation.** Any fines or penalties resulting from violations to local, state, or federal regulations (such as but not limited to OSHA, the ADA, and/or other civil rights laws and regulations) and actually assessed will be the sole responsibility of and will be paid by the contracted service provider. However, if CATS determines that such a regulatory violation has occurred (via observation of an occurrence that CATS reasonably believes constitutes a violation of law or regulation or via receipt of a report, deemed credible by CATS, attesting to such an occurrence) CATS may assess liquidated damages in the absence of a fine or charge from a local, state, or federal authority (For example and not for the purposes of any limitation: CATS may assess liquidated damages under this section whenever a passenger using a wheelchair is "passed up" by an operator). Such damages are meant to compensate CATS for the harms that occur when such laws and/or regulations are violated in connection with CATS system.

Observed or Reported Regulatory Violation	Incentive/ LD
Each Occurrence	-\$500
Goal: 0 Occurrences	\$0

## Category II - Complaints

**Operator Performance Complaints.** This performance goal will be measured through monthly counts of documented valid customer complaints regarding operator performance. All complaints

logged in the CATS Customer Service database regarding Service Provider's service will be counted in this measure. Liquidated damages will be assessed when the number of valid complaints exceeds the thresholds in the table below. Complaints may include but are not limited to: unsafe operation, passenger passed up, operator discourtesy, operator conduct etc.

Complaints	Incentive/ LD
0 to 10	\$300
11-22	\$0
23 or more	-\$100 per valid complaint over 23
Goal: Fewer than 10 valid complaints	

**Customer Complaint Response.** Upon receipt of a customer complaint from CATS customer service ("notification"), Company must make initial customer contact within 2 business days. Measured on a per occurrence basis.

Complaint Response Time	Incentive/ LD
Within 2 days of notification	\$0
More than 2 days after notification	-\$50
Goal: 2 days or fewer	\$0

**Customer Complaint Resolution.** Upon receipt of a customer complaint from CATS customer service ("notification"), Company must investigate and resolve customer concerns within 5 business days. Measured on a per occurrence basis.

Complaint Resolution Time	Incentive/ LD
Within 5 days of notification	\$0
More than 5 days after notification	-\$100
Goal: 5 days or fewer	\$0

### Category III - Maintenance

**Preventative Maintenance Intervals.** Conducting Preventative Maintenance service is critical to the reliability of the fleet. The established PMI standard is 98% on time. Liquidated damages will be assessed whenever the PMI goal is not met. Such damages will be assessed per unmaintained vehicle when the PMI is below 98%.

PMI %	Incentive/ LD
100%	\$1,000
98% - 99.9%	\$0
Below 98%	- \$500 per vehicle
Goal: 100%	\$1,000

**Vehicle Down Time.** The total number of days that any vehicle is down due to maintenance issues or open work orders is “down time” (excluding vehicle down due to accidents). The Company’s goal should be to ensure that vehicles are returned to service within 3 days. Liquidated damages will be imposed for any Revenue Vehicle unavailable for service more than 3 days. CATS incurs additional costs when vehicles are down for an extended period of time, therefore additional damages may be assessed if unavailability extends beyond 15 days. Liquidated damages will not be assessed when down time is due to circumstances beyond the Company’s control, as determined solely and finally by CATS (Ex. CATS fails to provide needed parts).

Days	Incentive/ LD
0 - 3	\$0
4 – 15	-\$200 per vehicle
15+	-\$200 per vehicle (additional)
Goal: 0 - 3	\$0

**Bus Cleanliness.** Buses are expected to be cleaned regularly - both interior and exterior. Failure to regularly clean buses may damage CATS’ reputation or cause disputes with CATS’ advertisers. CATS may assess liquidated damages when a vehicle’s appearance does not meet CATS’ standards (which will be applied reasonably) due to the Company’s failure to clean buses regularly. Damages will be assessed per bus per occurrence (via audits performed by CATS).

Occurrence	Incentive/ LD
Each Occurrence	-\$50
Goal: 0 Occurrences	\$0

#### Category IV – Personnel

**Maintenance/Availability of Required Records.** The Company is expected to keep and maintain all required records related to employee qualifications and fitness for duty. CATS may perform audits of all documents described in the contract and may assess liquidated damages (per occurrence) whenever such records are missing or not available in the required form or location. Damages may be assessed in the following circumstances:

- Fit for duty - personnel returning to work after an injury or serious illness or long term absence are required to have "fit for duty" documentation upon return, and go through retraining.
- Safety Sensitive - safety sensitive records, up to 20% random sample of the active employee list with a courtesy 12-24 notice of audit. (e.g. Defensive driving, DL records, etc.).
- Other – any other personnel-related records that are reasonably required to be available to CATS and are maintained by the Company.

Records Missing or Unavailable	Incentive/ LD
Each Occurrence	-\$25
Goal: 0 Occurrences	\$0

**Operating Safety Procedure Violation.** Driving a CATS vehicle with a suspended or expired license creates risk for CATS. If CATS determines that the Company has allowed operators to operate CATS' vehicles with a suspended or expired license CATS may assess liquidated damages. Damages assessed Per occurrence.

Operating Safety Violation	Incentive/ LD
Each Occurrence	-\$100 per day per operator
Goal: 0 Occurrences	\$0

**Availability of GM or Designee.** The Company's GM or designee must be available at all times (24/7/365). Communication and coordination in response to events/incidents is an important responsibility of the Company. CATS suffers diminished effectiveness in response to events/incidents when the Company's GM or designee is unavailable. The Company shall ensure that the GM and their designees are not simultaneously unavailable due scheduling (ex. Planned vacations). The Company shall ensure that the GM or designee promptly responds when contacted by CATS Staff (lack of a prompt response shall be construed as unavailability). CATS may assess liquidated damages whenever the GM or designee is unavailable – as determined by CATS.

GM or Designee Unavailable	Incentive/ LD
Each Occurrence	-\$500
Goal: 0 Occurrences	\$0

### **Category V – Record Keeping / Data Management**

**Data and Information Timeliness/Accuracy.** All NTD and recurring reports are due at a designated time either daily, monthly, or annually. All ad hoc reports, media inquiries, and surveys are due within the stated CATS stated deadline for response (which in case of urgency may be within a 24 hour period). When data and information, described in this paragraph, is not provided within the required timeframe or is inaccurate, CATS may assess liquidated damages (for each occurrence).

Failure to Provide Timely/Accurate Data	Incentive/ LD
Each Occurrence	-\$50
Goal: 0 Occurrences	\$0

**Software Use and Performance.** All operations and maintenance data and information shall be recorded by the contractor into CATS software platforms. Failure to properly record operations and maintenance data and information creates administrative issues for CATS and can harm CATS operations. Liquidated damages will be assessed for each observed occurrence of a failure to properly record such data and information in CATS software platforms.

Failure to Record Data in Software Systems	Incentive/ LD
Each Occurrence	-\$50
Goal:	\$0

**Farebox Usage & Destination Sign.** Farebox must be logged-in and destination sign must be activated when operating CATS vehicles. All equipment is required to be logged into AVL/APC while being operated whether in revenue service, training, maintenance or otherwise. CATS may assess liquidated damages for each observed occurrence of a failure to comply with this paragraph.

Failure to Log-In or Activate	Incentive/ LD
Each Occurrence (Either)	-\$25
Goal: 0 Occurrences	\$0

**3.17.7 Adjustments to Performance Goals.** CATS will periodically meet with the Service Provider to consider its input on performance goal adjustments. CATS shall have the final say in the setting of performance indicator goals.

**3.17.8 Performance Monitoring Plan.** The Service Provider shall develop and submit a Performance Monitoring Plan after the award of the Contract. This Plan shall include, at a minimum, details regarding how the Service Provider will:

- Monitor daily operations, including, but not limited to, Vehicle Operator check-in, pull-out, safety, schedule adherence, and pull-in.
- Oversee Radio and Run Dispatch functions to include (but not limited to) service delivery, schedule adherence, and On-Time Performance.
- Measure training/retraining efforts, including accident and Customer Service retraining.
- Perform Quality Assurance inspections for both Operations and Maintenance and the supervision of these functional areas.
- Manage Customer Service issues including establishing and maintaining a culture of courtesy and service.
- Perform in-service (on board, shadow, etc.) audits, with focus on passenger boarding and safe operation.

The Plan shall include methods the Service Provider will use to identify metrics and goals, the process to measure performance success, establish frequencies of quality assurance inspections, the process to establish steps to correct deficiencies in performance, and the plan to communicate findings to CATS as provided in section 3.11.13 above (Remedial Action Plan). Sample Performance Monitoring Plans may be included in submitted proposals.

**3.17.9 Employee Survey.** Periodically, CATS conducts surveys of employees (of both the Department and its Service Providers) to gain insight into overall management of CATS operations. The Service Provider shall encourage participation in such surveys by all its employees and to cooperate with and coordinate the administration of the surveys.

**3.17.10 Service Data and Performance Monitoring Tools.** Service will be monitored and measured by but not limited to CAD/AVL, planning, and route scheduling systems. These systems will be provided by CATS.

**3.17.11 Exceptions and Extensions.** From time to time, situations will arise wherein a factor outside of the control of the Service Provider will impede performance. When such a situation arises, the Service Provider is eligible for an exception or extension. Whenever possible, the Service Provider must request an exception or extension in advance. Such requests must be submitted in writing and should fully explain the circumstances being faced; the specific contractual requirement or deadline for which an exception or extension is requested; an explanation of efforts undertaken to mitigate the impacts of the exception or extension; and the specific relief being requested. The request should be submitted to CATS for consideration. CATS retains sole discretion in approving all exceptions or extensions.

### **3.18 Policies**

**3.18.1** Service Provider shall comply, and cause its assigned personnel and subcontractors to comply, with CATS' system-wide policies and procedures, as revised, supplemented, and updated from time to time.

**3.18.2** CATS will notify the Service Provider of any changes to system-wide policies or procedures. Service Provider will be responsible for the distribution of such policies and procedures, as amended, supplemented and updated from time to time, to all assigned personnel and shall require familiarity with the policies and procedures by all assigned personnel.

### **3.19 Mobilization Plan and Start-Up**

**3.19.1 Mobilization Plan.** Service Provider shall submit a mobilization plan with its Proposal. This plan shall include all the key elements and resources necessary to guarantee uninterrupted services on the date established for contracted services to begin and a schedule of milestone dates. Specific items to be addressed in the mobilization plan include:

- Summary of the key elements, or activities, involved in the mobilization and start-up process.
- An overview of the staff necessary to accomplish mobilization and start-up, including roles and duration of involvement, including anticipated full-time start

dates for all Key Personnel and a description of additional staff required to support the effort.

- An overview of the Service Provider's approach to inspecting and accepting CATS assets, including buses and equipment.
- Any other start-up or mobilization activities planned.

**3.19.2 Employee Communication, Onboarding and Training.** The Service Provider's mobilization plan shall detail the communication with incumbent employees and timelines for application, interview, training, etc. Should employees being transferred be required to undergo training, Service Provider shall work with the existing Service Provider as to agreeable dates/times employees will be allowed to attend training session(s).

**3.19.3 Access to Equipment for Mobilization.** During mobilization, CATS will make available to the Service Provider buses for training during the weekday and weekend periods for training purposes. During this period, CATS will be responsible for the service and maintenance of these vehicles. The Service Provider will be responsible for any vehicle/facility damage and/or abuse resulting from training activities.

**3.19.4 Plan Approval Required.** All plans referenced in the Scope of Services and requested by CATS shall be submitted in accordance with the schedule established by CATS. All plans require CATS approval before implementation.

**3.19.5 Service Transition.** The Service Provider shall be responsible for facilitating a smooth transition in service providers, including orientation and training of operators on new Services and service expectations, deploying field supervisory personnel at strategic locations to address any issues, monitoring of street operations, ensuring readiness of buses, and the provision of information to passengers.

#### **3.19.6. Transition Plan and Timeline**

The Service Provider shall contain sufficient detail for CATS to understand processes, resources, personnel, and timelines necessary to achieve an effective and smooth transition and start-up process of Procurement Services for the Contractor to assume responsibility for all required operations and maintenance throughout the transition timeline.

##### **A. The transition plan must include:**

1. Contact information for the Contractor's Key Personnel involved in the transition.
2. A schedule of all transition activities using a Gantt chart or critical path methodology.
3. A risk management matrix that identifies potential problems during the transition period along with a descriptive plan for mitigating these problems.
4. The Contractor's staffing plan, status of hiring and onboarding personnel including drug and alcohol testing, background checks, and training activities.
5. A matrix of all required permits, licenses, insurances, and the status thereof.
6. Designation of third-party auditors for Vehicles, Equipment, and Inventory and the status of audits, if any.
7. A budget for use of the Allowance for Transition and Start Up.



- B. The Contractor shall submit a status report on the Transition Plan to the CATS Project Manager by 2:00 PM on each Friday until the Start of Service and on a schedule mutually agreed upon thereafter. The update shall identify any actions necessary by the City to ensure the smooth transition of responsibilities.

### 3.20 Service Improvements and Innovations

**3.20.1** CATS' desire is to provide the most efficient and cost-effective service without compromising service quality. If there are elements of this scope of services that could be modified to improve service quality or reduce costs based on Service Provider experience and/or industry best practices/innovations, such modifications can be described in the Approach to Service Provision subsection of the Proposal Content section 3.3.1 Purpose and Expectations in this RFP. the Offeror is strongly encouraged to propose ways to identify and improve efficiencies in service delivery, proven methods to better the overall customer experience and determine the most beneficial use of CATS vehicles in revenue service.

**3.20.2 Service and Technology Innovations.** Service Provider will be required to support CATS in deploying future transit innovations to include but not limited to:

- Battery electric buses and vehicle charging systems,
- Collection of real-time data for communication to the public,
- Mobility as a service technology,
- Innovative fare collection or other public transit innovations that may arise.

Should CATS decide to launch such project(s), CATS will work collaboratively with the Service Provider. Service Providers shall describe in their proposal their approach and capability for supporting such efforts.

### 3.21 Optional Procurement Services

The City is considering a Service Provider to manage Procurement of Goods and Services that support fixed route operations. Offeror is strongly encouraged to provide pricing and propose a management plan to cover the services as described in this section.

**3.21.1 Procurement of Goods and Services for Bus Operations and Maintenance.** Service provider will be responsible for procuring goods and services needed by Bus and Maintenance Operations to fulfill the Service Provider's obligations under this Agreement. Service provider shall own their own stand-alone ERP procurement software. The City will not provide I&T support nor grant access to the City network.

Service provider may assume certain contractual obligations or agreements related to the Bus Operations (as described in more detail in Section 3.21.1.1. below).

Service provider may assume such contractual obligations-upon prior written notification to the City. Any contractual obligations entered into, or liabilities assumed by service provider in connection with Bus Operations will be binding as long as the Service provider is under contract. In the event that the service provider's contract expires, the City shall assume all future obligation and liabilities under said contractual obligations either on behalf of itself, its designee, or any successor to the Service provider.

#### **3.21.1.1. Purchasing of Equipment and Supplies.**

Service provider shall notify the City quarterly regarding the types and amounts of materials, supplies, tools, equipment, including buses, needed for use in Bus Operations. Service provider and the City will divide purchasing responsibility in the manner described in this section and its subsections.

**3.21.2. CATS Purchasing:** Purchases of products, materials, and/or services in the following categories will performed by the City (and therefore not by Service provider or its subcontractors):

- I. Capital Assets: Capital asset means a unit of rolling stock, land, a facility, a unit of equipment, an element of infrastructure, or intellectual property (including software), with a useful life of more than one year that are capitalized in accordance with Generally Accepted Accounting Principles (GAAP). Capital asset also includes an addition, improvement, modification, replacement, rearrangement, reinstallation, renovation, or alterations to capital assets that materially increase the value of the asset (apart from ordinary repairs and maintenance.)
- II. Fuel Purchasing: The City will purchase all fuel needed for the operation of the BOD.
- III. Professional Services: The City will purchase professional services as needed for the operation of the BOD.

#### **3.21.3. Inventory.**

If the City decides to have Procurement Services responsibilities moved to the Service Provider, the current inventory will be assumed by the Service Provider at Fair Market Value.

- a. For the purpose of this section, "Fair Market Value" means the price that would be paid by the Contractor to acquire said part(s) in a wholesale market.
- b. It is CATS intent that the Contractor shall take possession of all Inventory on the first day of the Contract and:
  - i. Provide a credit to CATS equal to the Fair Market Value of each part used by the Contractor during the first six months of the Contract. Thereafter, the Contractor shall:

- ii. notify CATS of any remaining inventory it wishes to retain for its use, and credit the Fair Market Value of said inventory on the next monthly invoice; and/or,
  - iii. notify CATS of any remaining inventory it **does not** wish to retain for its use. The parties shall jointly agree on the method of disposal of the inventory.
- c. If the parties determine to sell or dispose of said inventory, the Contractor shall be responsible for its sale or disposal. The Contractor shall provide CATS with a credit on the next appropriate monthly invoice, less 10% of the proceeds that it may retain from the sale of inventory to defray the cost of its efforts to dispose of the inventory.
- d. provide all labor, repairs, parts, supplies, lubricants, solvents, diagnostic equipment, software and software updates, and all other components, services, tools, and equipment (including diagnostic equipment) which may be required to fulfill its maintenance responsibilities.
- e. Manage all Inventory, including establishing accounts with such vendors as it may deem necessary in the performance of its maintenance responsibilities.

## 4. PROPOSAL CONTENT AND FORMAT

The City desires all Proposals to be identical in format in order to facilitate comparison. Submitted Proposals will be in the format required by this section.

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

Proposals must also include a 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 detailed below. Failure to do so may result in the City, at its sole discretion, deeming the Proposal non-responsive. Clearly marked appendices for certain technical or financial information may be used to facilitate Proposal preparation.**

### 4.1. Proposal Content

Submitted proposals shall include the following submittal items.

#### 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 on behalf of the Proposer. The cover letter shall provide the name, address, telephone and facsimile numbers of the Company along with the name, title, address, email address, and telephone numbers of the executive that has the authority to contract with the City. The cover letter shall succinctly present the Company's understanding of the Project and include a summary of the approach to perform the required Services.

#### 4.1.2. Qualifications of the Firm.

Proposing Companies must use the table below to provide information relative to Firm qualifications.

**Section 4**  
**Proposal Content and Format**

Qualifications of the Proposing Firm		
No.	Requested Information	Proposer Response
1.	Company's legal name.	
2.	Company Location (indicate corporate headquarters and location that will be providing the Services).	
3.	How many years has your company been in business? How long has your company been providing the types of Services as described in Section 3 and how many public sector clients does your company currently have?	
4.	Describe your direct experience on at least three projects of similar size, scope and complexity completed in the past five years. Provide current contact information for persons who can be contacted as references. Include dates, locations, character, costs, and project managers for these previous projects.	
5.	List any projects or services terminated by a government entity. Please disclose the government entity that terminated and explain the reason for the termination.	
6.	List any litigation that your company has been involved with during the past two (2) years for Services similar to those in this RFP.	
7.	If your company is a subsidiary, identify the number of employees in your company or division and the revenues of Proposing Company or division.	
8.	Identify the percentage of revenue used for research and/or development by the Proposing Company or division.	
9.	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.	
10.	Briefly describe your company's complete corporate structure, including any parent companies, subsidiaries, affiliates and other related entities.	
11.	Describe the ownership structure of your company, including any significant or controlling equity holders.	
12.	Provide a management organization chart of your company's overall corporate organization, including director and officer positions and names and the reporting structure.	
13.	If the Proposal will be from a team composed of more than one (1) company/joint venture partners or if any subcontractor will provide more than fifteen percent (15%) of the Services, please describe the relationship, to include the form of partnership, each team member's role, and the experience each company will bring to the relationship that qualifies it to fulfill its role. Provide descriptions and references for the projects on which team members have previously collaborated.	
14.	If your company has been the subject of a dispute or strike by organized labor within the last five (5) years, please describe the circumstances and the resolution of the dispute.	

## Section 4

### Proposal Content and Format

Qualifications of the Proposing Firm		
No.	Requested Information	Proposer Response
15.	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.	

#### 4.1.3. Qualifications of Proposed Staff.

This section shall be used to provide information the Company's proposed Staffing and Personnel Plan and Key Personnel as more fully described in Sections 3.6 through 3.8 of the Scope of Services. Proposing Companies must use the table below to provide the requested information.

In addition to the information requested in this section, Proposing Companies must submit an organizational chart that includes proposed positions; reporting relationships; departments, divisions, and/or work units; and descriptions of key tasks.

Qualifications of Proposed Staff		
No.	Requested Information	Proposer Response
1.	Who is the proposed General Manager for this project? Explain this person's background and experience, including professional certifications, and include a resume and references. Explain the nature of the General Manager's relationship with Corporate Management.	
2.	What other positions are you proposing for this engagement? To what extent do they add value to the management of the transit system? Explain background, experience, professional certifications, and include a resume and references for any recommended positions.	
3.	Who will be in charge of data reporting required by CATS? Explain this person's background, experience and include a resume and references.	
4.	Should it become necessary for CATS leadership to contact or meet with Corporate Support, describe how such contact will be facilitated.	
5.	Describe the Company's proposed on-site staff distribution to accomplish the required services. The description should include a chart that partitions the time commitment of each professional staff member across the proposed tasks.	
6.	Please describe why your firm believes the managers proposed are suited for this engagement. What experience do they bring which will be beneficial to this assignment?	
7.	If any of the resident managers proposed are not currently an employee of your firm, please attach a letter from the candidate that reflects their commitment to the engagement.	
8.	What is your approach to addressing the possible relationship, if any, between the Company and TMOC	

## Section 4

### Proposal Content and Format

Qualifications of Proposed Staff		
No.	Requested Information	Proposer Response
	employees and the current labor agreements? What steps would you take to ensure a smooth transition? If you anticipate having personnel re-apply for positions, describe your application process and selection criteria, and how performance will be evaluated.	
9.	Explain how your organization ensures that personnel performing the required Services are qualified and proficient.	
10.	Describe how ongoing quality service will be ensured through workforce investments and employee retention planning for all personnel.	
11.	Provide information regarding the level of staffing at your organization's facilities that will be providing the Services, as well as the level of staffing at subcontractors' facilities as applicable.	

#### 4.1.4. Approach to Service Provision.

Using the section number order in the Scope of Services, Section 3 as a guide, describe how your proposed solution will meet or exceed the City's goals for efficient, effective, and collaborative transit management. Proposing Companies need not duplicate elements of scope incorporated in Proposal Content Sections 4.1.2. (Qualifications of the Proposing Firm) and 4.1.3. (Qualifications of Proposed Staff).

Note: In providing narrative for this section, please include references to relevant scope sections (section and page number).

##### 4.1.4.1. Mandatory and Optional Submittal Items

In addition to submittal items referenced in Proposal Content Sections 4.1.2. (Qualifications of the Proposing Firm) and 4.1.3. (Qualifications of Proposed Staff), the following list of mandatory and optional items are requested to help the Evaluation Committee assess the Proposing Company's service delivery capabilities.

Mandatory and Optional Submittal Items				
Scope Ref. #	Scope Reference Title	Submittal Item(s)	Mandatory	Optional
3.9.	Substance Abuse Testing	Drug and Alcohol Policy	✓	
3.11.9	Reporting	Various sample reports		✓
3.11.12	Remedial Action Plan	Sample Remedial Action Plan		✓
3.12.19	Preventative Maintenance (PM) – Generally	Preventative Maintenance Program	✓	
3.12.20	Preventative Maintenance of Heating and Air Conditioning Systems	Heating and Air Conditioning Preventative Maintenance Program	✓	
3.13.1	Safety Management System	Sample Safety Management Plan		✓
3.15.4	Fare Security and Collection Monitoring	Written procedures for monitoring fare collection, including security controls and methods	✓	
3.17.8	Performance Monitoring Plan	Sample Performance Monitoring Plan		✓

## Section 4 Proposal Content and Format

Mandatory and Optional Submittal Items				
Scope Ref. #	Scope Reference Title	Submittal Item(s)	Mandatory	Optional
3.19.	Mobilization Plan	Mobilization Plan for CATS	✓	

### 4.1.5. Exceptions to the RFP.

Using the table provided below, Proposing Companies are required to submit exceptions to the RFP requirements and the sample contract in accordance with RFP Section 1.6.12. If exceptions are not identified in the submitted Proposal, they may not be considered during Contract negotiation and could result in Proposal being rejected from further consideration. If legal counsel needs to review the Sample Contract prior to signature, reviews must be completed before your Proposal is submitted.

The City intends to enter into a City-drafted Contract with the successful Company that contains the terms and conditions set forth in RFP Attachment B (Sample Contract). 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 proposed additional terms or conditions 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.

Exceptions to the RFP (RFP requirements and Sample Terms)			
Company Name:			
Section #	RFP Page #	Specific Exception	Alternative Solution as Applicable

### 4.1.6. Required Forms.

To be considered responsive to this RFP, Proposing Companies must complete the Proposal Forms listed below and included in RFP Attachment B.

- Required Form 1. Request for Proposals Acknowledgement
- Required Form 2. Addenda Receipt Confirmation
- Required Form 3. Proposal Submission Form
- Required Form 4. Proposed Pricing Worksheet
- Required Form 5. References
- Required Form 6. M/W/SBE Utilization



## **Section 4**

### **Proposal Content and Format**

---

- Required Form 8. Certification Regarding Debarment, Suspension, and Other Responsibility Matters
- Required Form 9. Byrd Anti-Lobbying Certification
- Required Form 10. Financial Capacity Certification and Guaranty

## 5. PROPOSAL EVALUATION CRITERIA AND PROCESS

### 5.1. 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. 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 or to format the Proposal as required 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 the criteria below.

Criteria	Proposal Content Section(s)
Qualifications and experience of the proposing firm	4.1.1. (Cover Letter), 4.1.2. (Qualifications of the Firm), 4.1.5. (Exceptions to the RFP)
Qualifications and experience of proposed staff	4.1.3. (Qualifications of Proposed Staff), Required Form 5 (References)
Approach to service provision	4.1.4. (Approach to Service Provision)
Cost effectiveness and overall best value	Required Form 4 (Proposed Pricing Worksheet)

### 5.2. Proposal Evaluation Process

Submitted proposals that are responsive to this solicitation will be reviewed by the Evaluation Committee, with each of the evaluation criteria listed above receiving one of the following ratings:

- **Excellent.** Exceeds evaluation standards in a beneficial way to the City and has a high probability of meeting or exceeding service provision requirements; has no significant weaknesses.
- **Acceptable.** Meets evaluation standards for acceptable service provision; has good probability of satisfying service provision requirements, with the likelihood of correcting potential areas of concern.
- **Marginal.** Does not meet evaluation standards for acceptable service provision; has low probability of satisfying service provision requirements; has significant deficiencies.
- **Unacceptable.** Fails to meet minimum requirements for acceptable service provision.

Following the evaluation of written submittals, 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.

## Section 5

### Proposal Evaluation Criteria and Process

---

The City may in its discretion require proposing firm(s) to make presentations to and/or be interviewed by the Evaluation Committee. During such interview and/or presentation, the Proposing Company may be required to orally and otherwise present its Proposal and to respond 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.

As part of the evaluation process, the City intends to establish a shortlist of the most highly qualified proposing firms. If discussion(s) with proposing firm(s) are required to clarify service offerings, the shortlist will be established following such discussion. Otherwise, the shortlist will be established following evaluation of the written proposals. Only shortlisted firms will be invited to interview with the Evaluation Committee, if such interviews are held.

#### **5.2.1. Financial Capacity Certification and Guaranty.**

To be considered responsive to this solicitation, proposing firms must submit Required Form 10, Financial Capacity Certification and Guaranty located in RFP Attachment B. By submitting this form, Proposing Companies will certify that they have sufficient short- and long-term financial stability to complete the obligations of a contract resulting from this solicitation.

Shortlisted firms will be required to demonstrate short- and long-term viability by providing detailed information on financial capacity and strength. The City's Internal Audit Division will review the submitted information and make a recommendation to the Evaluation Committee as to whether a shortlisted Company has sufficiently demonstrated financial stability. Shortlisted firms that do not sufficiently demonstrate financial stability will be removed from further consideration.

**ATTACHMENT A – SAMPLE CONTRACT**

**STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG**

**TRANSIT MANAGEMENT SERVICES  
CHARLOTTE AREA TRANSIT SYSTEM  
BUS OPERATIONS DIVISION  
CONTRACT # [INSERT]**

THIS SERVICES CONTRACT (the “Contract”) is made and entered into as of \_\_\_\_\_, by and between [COMPANY NAME] doing business in North Carolina (the "Company"), and the City of Charlotte, a North Carolina Municipal Corporation (the "City"). The parties agree that the terms and provisions of this Contract apply to the mutual obligations of the parties beginning [EFFECTIVE DATE] (the “Effective Date”).

**RECITALS**

**WHEREAS**, the City through the Charlotte Area Transit System (“CATS”), sent out a “Request for Proposals for Transit Management Services” 269-2023-1363, dated [DATE], requesting proposals from qualified vendors to provide the City with transit management services for its Bus Operations and Maintenance (the “Bus Operations and Maintenance” services). This Request for Proposals, together with all attachments and amendments, is referred to herein as the “RFP”; and

**WHEREAS**, in response to the RFP, the Company submitted to the City a proposal dated [DATE]. This proposal together with all attachments and separately sealed confidential trade secrets is referred to herein as the “Proposal”; and

**WHEREAS**, the parties hereto desire to enter into a contract for the Company to provide transit management services, including the coordination and management of all bus operations as assigned to the Company by the City;

**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. INTENT & PURPOSE.**

This Contract sets forth terms and conditions by which the Company shall provide transit management services to the City. Said services shall be provided in accordance with:

- This Contract, including all exhibits, effective on the date set forth above; and
- The City’s Request for Proposal 269-2023-1363, issued [DATE], as modified by all addenda, and including all attachments, exhibits and other such related documents (“RFP”); and
- The Company's Proposal, dated [DATE], including all attachments, exhibits and other such related documents ("Proposal"), as accepted and agreed to by the City.

This Contract shall control with respect to any conflict or inconsistencies in the documents set forth above, unless otherwise agreed to by the parties in writing. The following Exhibits are attached to this Contract and are incorporated into and made a part of this Contract by reference:

Exhibit A:	Scope of Services
Exhibit B:	Federal Transit Administration Terms

Exhibit C:	[COMPANY NAME] Proposal and Best-and-Final-Offer (the "Proposal")
Exhibit D:	Liquidated Damages & Incentives
Exhibit E:	RFP 269-2023-1363
Exhibit F:	Company License of CATS Facilities

Each reference to this Contract shall be deemed to include all Exhibits. In the case of any Conflict between the Contract and the Exhibits or between the Exhibits themselves: Exhibit B will govern over all other documents, the Contract itself will govern over all other Exhibits, and any other Conflicts will be resolved in favor of the document which is listed first in this section. Each reference to [COMPANY NAME] in the Exhibits and Appendices shall be deemed to mean the Company.

## **2. DESCRIPTION OF WORK.**

### **2.1 Management Services.**

- A. **General.** The City engages the Company as an independent contractor to advise the City and manage the Bus Operations and Maintenance for of the Charlotte Area Transit System ("CATS") within CATS' Bus Operations Division ("BOD") subject to the direction of the City's transit management staff. The Company shall perform the services as agreed to by the parties and specified below and in Exhibit A attached to this Contract and incorporated herein by reference (the "Work"), provided nothing herein shall be construed to release the Company from performing all other normal and routine managerial functions reasonably required in the day-to-day delivery of the Bus Operations and Maintenance services: The Company shall perform the Work onsite at the City's facilities in Mecklenburg County, North Carolina, except to the extent the City specifically agrees in writing to the contrary. Unless otherwise provided, the Company shall obtain and provide all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work. As used in this Contract, the "Company" means the Company itself and shall also include any subcontractors, subsidiaries, or agents of the Company who are involved in the performance of the Work. For the purpose of this Contract, management includes, but shall not be limited to, management responsibilities related to carrying out the functions of equipment and building utilization/maintenance, security, routing, scheduling, fare analysis, equal service standards, purchasing, budgeting, safety, employee selection and training, employee relations, labor negotiations, public relations, equipment selection, and developing specifications for capital equipment and improvements, unless otherwise directed by the City's transit management staff. Additionally, management shall include all other normal and routine managerial functions reasonably required in the day-to-day delivery of the Bus Operations and Maintenance services.
- B. **Labor Standards.** The Company shall at all times comply with and shall timely take all steps necessary and appropriate to assure compliance with the terms and conditions of labor protective arrangements and certifications issued by the US Department of Labor pursuant to Section 5333(b) of the Federal Transit Act, 49 U.S.C § 5333(b) (also known as "Section 13(c)") with regard to grants of financial assistance provided to City by the FTA.
- C. **City Role & Company Role.** The services rendered pursuant to this Contract shall be provided in a manner satisfactory to the City and according to service, quality and quantity standards as specified by the City's transit management staff. The City shall have sole responsibility for determining the type and quantity of service provided. The Company's performance shall be guided by an annual budget and performance objectives established by the City, and in compliance with all applicable Federal, State and local laws, regulations or ordinances. The Company shall have primary responsibility for managing the primary and support functions of Bus Operations and Maintenance. The City shall have primary responsibility for policy direction, funding, marketing, finance, grant application/administration, as well as both short- and long-range planning of the Bus

Operations and Maintenance.

2.2. BUS OPERATIONS AND MAINTENANCE Employment Structure

- A. Employees of the Company. The Company shall provide management services for Bus Operations and Maintenance including the management of Bus Operations and Maintenance employees. The Company shall directly employ the General Manager of Bus Operations and Maintenance, Department Heads, and Superintendents (together the “Key Personnel”). The Company shall directly employ all administrative staff and support staff, who by the nature of their work are not eligible for membership in the collective bargaining unit (together the “Administrative Staff”).
- B. Existing Subsidiary Company. Bus Operation and Maintenance requires the continued employment of vehicle operators and mechanics, who by the nature of their work are eligible for membership in a collective bargaining unit (hereinafter “Operators and Mechanics”). Operators and Mechanics will hired by the Company, but may be employed by a subsidiary company. As of the Effective Date of this Contract, Operators and Mechanics are employees of Transit Management of Charlotte (“TMOC”), a subsidiary company founded by a previous contracted management company.
- C. Ongoing Utilization of a Subsidiary Company. The Company will continue to employ Operators and Mechanics through TMOC. Operators and Mechanics will be the only Bus Operation and Maintenance employees employed by TMOC. The Company may propose utilization of a new or different subsidiary to serve as the employer of Operators and Mechanics. Utilization of a new subsidiary must be approved by the City in writing.

2.3 Subsidiary Company.

- A. For as long as TMOC (or any subsequent subsidiary corporation serving as the employer of Operators and Mechanics) is utilized in employment of Bus Operation and Maintenance employees, TMOC shall be the employer of Operator and Mechanics necessary for the delivery of Bus Operation and Maintenance services. The Company, will serve as TMOC’s parent company on the Effective Date of this Contract and retains the right to exercise full control and supervision over its employees and their hiring, promotions, discipline, and discharge, subject to:
  - (i) All applicable Federal, State and local laws and regulations; and
  - (ii) Any existing collective bargaining agreement covering employees employed in the delivery of Bus Operations Maintenance and
  - (iii) Any existing Section 13(c) Agreement covering employees in Bus Operation and Maintenance services.
- B. In the event this Contract is terminated or expires, the City or its designee shall immediately and automatically assume responsibility for the payment and performance of all outstanding obligations arising out of TMOC’s employment of Operators and Mechanics including, wages, benefits, pension, or profit-sharing plans, and liability for vested but unfunded or underfunded benefits.

- C. The Company and its subsidiaries are independent contractors of the City and are neither employees nor agents of the City. The Company retains the right to exercise full and exclusive control and supervision over its employees and their compensation and discharge except as provided herein. The Company will be solely responsible for all matters relating to payment of their employees, including the withholding and payment of employees' taxes, insurance contributions, and the like. The Company will be fully responsible for its acts and those of its employees during the life of this Contract and nothing herein shall be construed as creating a partnership, agency, joint venture or other similar relationship between the City and the Company.

2.4 Bus Operation and Maintenance Operating Expenses.

- A. The City shall be fully responsible for the finances of the Bus Operation and Maintenance services, including the provision of accurate and timely financial reports which meet the needs of the Company. The Company shall be responsible for monitoring the budget provided for Bus Operation and Maintenance through use of official City financial records. Operating Costs will be paid through the invoicing process specified in this Contract. The City agrees to pay all operating expenses directly flowing from Bus Operation and Maintenance. Such operating expenses are defined to mean and include:
- I. The gross amount of wages and salaries paid to or for the benefit of all employees necessary for the delivery of Bus Operation and Maintenance; all social security, unemployment, and other payroll taxes now or hereafter imposed or levied on an employer and paid on the salaries and wages of such personnel ; and the expense of workers' compensation insurance covering all such employees. Such expense of workers' compensation insurance shall include all costs associated with self-insurance including, without limitation, the cost of all surety and other bonds, claims processing and litigation, administrative costs, and the costs of any indemnity contracts or other indemnification agreements with any third party, arising from or relating to self-insurance for workers' compensation.
  - II. Contributions to a pension plan that meets Federal requirements pursuant to the Employee Retirement Security Act of 1974, or any amendments thereto, and other employee costs, including medical and hospitalization program cost. It is also understood and agreed that the term "operating expenses" shall include past, present, and future pension or profit-sharing plan liability including, without limitation, liability for vested, but underfunded or unfunded benefits.
  - III. All payments made in settlement of claims or satisfaction of judgment arising out of injury or death of persons, or damage to property or any other claim incurred in the provision of Bus Operation and Maintenance (except claims arising from intentional torts, ) and all reasonable expenses incident thereto, including the expense of operating a claims department; reasonable attorney's fees, court costs and other expenses; medical, hospital and ambulance services, to the extent that all such expenses are not covered by insurance; and the cost of bonds and deposits required by law.

- IV. All general and miscellaneous expenses incident to the operation and proper maintenance required for the provision of Bus Operation and Maintenance including, but not limited to, the cost of telephone, postage, freight, stationery and printing, office supplies, checks, maintenance of office equipment and machines, books, newspapers, utility services, materials, reasonable legal fees, arbitration expenses, audit expenses, bank charges, comprehensive bodily injury and property damage liability insurance on all vehicles (if not provided by the City), American Public Transit Association expenses, National Safety Council expenses, cost of technical journals and services, and other expenses of a usual and customary nature incident to the provision of Bus Operation and Maintenance services.
- V. All expenses associated with the provision of Insurance as required by this Contract.
- VI. Costs of materials, supplies, and/or other items purchased for use in the provision of Bus Operation and Maintenance services and the payment of rental or use charges due for tires, machinery, and other items leased for such purpose (subject to the limitations of Section 2.5 below).
- VII. All of the above expenses shall be those associated with Bus Operation and Maintenance only and shall in no way reflect the passing through of costs to the City for benefits derived for the Company or its other subsidiaries.

#### 2.5 Purchasing.

The City is interested in The Company taking on some Purchasing responsibilities. If this option is selected, The Company and the City will divide purchasing responsibility in the manner described in this section and its subsections.

- A. City Purchasing: Purchases of products, materials, and/or services in the following categories will be performed by the City (and therefore not by the Company or its subcontractors):
  - I. Capital Assets: Capital asset means a unit of rolling stock, land, a facility, a unit of equipment, an element of infrastructure, or intellectual property (including software), with a useful life of more than one year that are capitalized in accordance with Generally Accepted Accounting Principles (GAAP). Capital asset also includes an addition, improvement, modification, replacement, rearrangement, reinstallation, renovation, or alterations to capital assets that materially increase the value of the asset (apart from ordinary repairs and maintenance.)
  - II. Fuel Purchasing: The City will purchase all fuel needed for the Bus Operation and Maintenance services.
  - III. Professional Services: The City will purchase professional services (other than those purchased under this Contract) as needed for support of the Bus Operation and Maintenance services.
  - IV. Miscellaneous Other Purchase: [Section to be adjusted based on RFP responses]



B. Company Purchasing: The Company shall make all purchases necessary for provision of Bus Operation and Maintenance services except for purchases in the categories listed in Section 2.5.A (I-IV) above. All purchases made by the Company or any of its subsidiaries must be made in compliance with the standards of Section 2.5.C below.

C. Company Purchasing Standards: The Company has discretion in determining what purchasing practices are appropriate under the Contract. Notwithstanding the previous sentence, the Company shall establish a procedure for purchasing, which will ensure that all purchases comply with applicable federal requirements. That purchasing procedure will be submitted to the City. All purchases made under this Contract, by the Company or its subsidiaries, must be made using the procedures outlined in the purchasing procedure submitted to the City. The Company is to ensure that all affected Company employees are aware of this requirement and have in their possession a copy of this procedure for guidance and reference purposes.

## 2.6 Revenue.

Revenue derived from Bus Operation and Maintenance services shall be collected, counted, and deposited according to City procedures and shall remain, from the initial receipt thereof, the absolute property of the City.

## 2.7 Budget and Projections.

The Company agrees to prepare or assist in the preparation of the necessary annual budgets and projections as are required by the City and agrees to furnish periodic reports and recommendations to the City relating to service policies.

## 2.8 Labor Relations.

2.8.1 Negotiations. The Company shall be responsible for the negotiations of collective bargaining agreements. The Company agrees hereto that they shall not use binding interest arbitration as a means or method to resolve disputes that may occur in the negotiations of collective bargaining agreements, unless such arbitration is required by Federal law or regulation or an agreement created pursuant to Federal law or regulation.

2.8.2 Employee Relations. The Company shall conduct an annual employee survey to identify areas of employee relation concerns. To the extent allowed by law and any applicable collective bargaining agreement, the Company shall work with employee involvement groups to address concerns raised through such surveys. The City shall reimburse the Company and/or TMOC for the reasonable costs of the services of a consultant to perform an annual Employee Attitude Survey, including any associated follow-up work. The Company shall provide the City with regular reports /updates of its employee relations activities.

2.8.3 Strike Contingency Planning. The Company shall maintain a current strike contingency plan at all times. The plan will address what may be done to remedy a strike through means of litigation as well as the operational contingencies in place to mitigate a strikes impact upon the transit riding public. The contingency plan shall maximize the amount of service provided during the strike and prevent the transit system from interruption.

**3. COMPENSATION & COST REIMBURSEMENT.**

3.1 The Company shall submit monthly invoices as described in Section 3.2. The total amount paid to the Company shall not exceed the following:

*Base Year One*

The total amount paid for Year One of the Contract will not exceed \$[XXXXXXXX], invoiced at \$[XXXXXXXX] per month.

*Base Year Two*

The total amount paid for Year Two of the Contract will not exceed \$[XXXXXXXX], invoiced at \$[XXXXXXXX] per month.

*Base Year Three*

The total amount paid for Year Three of the Contract will not exceed \$[XXXXXXXX] invoiced at \$[XXXXXXXX] per month.

*Option Year One*

To be negotiated, but not to exceed an amount equal to the Base Year Three total amount paid multiplied by [XXXXXXXX] %.

*Option Year Two*

To be negotiated, but not to exceed an amount equal to the Option Year One total amount paid multiplied by [XXXXXXXX] %.

**3.2 Invoices.**

By the fifth (5<sup>th</sup>) business day of each month, the Company shall submit an invoice to the City detailing the services performed the previous month, including the number of hours worked by the Company broken down by day, Company employee, hourly rate and task performed. Each invoice must also include a detailed description of all operating costs from the previous month. The City will reimburse the Company for all operating costs when such operating costs have been incurred and documented in compliance with the terms of this Contract. Invoices must be accompanied by any required monthly reports as outlined in Exhibit A, the Company's Proposal or as otherwise requested by the City. Failure to submit these reports will delay approval of the invoice. The City shall make reasonable effort to pay the Company within thirty (30) days of the receipt of an accurate, properly submitted, uncontested invoice.

Copies of subcontractor invoices and other documents as may be required by the City shall support the monthly invoice to establish that the amounts are allowable.

3.2.1 The City may adjust the amount to be paid under each invoice based on the measures of performance described in Exhibit D. The City shall have the sole and final determination of whether payment to the company should be increased or decreased in accordance with Exhibit D. The Company is required to report all data and information that may be necessary to determine whether the company has met the standards outlined in Exhibit D.

3.2.2 The Company shall not charge the City at overtime rates (as defined by the Fair Labor Standards Act), regardless of the number of hours worked in a given day or week.

3.2.3 The Company shall send one (1) original and three (3) copies of all invoices to:

City of Charlotte

Attention: CATS Operations –

3145 South Tryon Street,

Charlotte, NC 28217

and e-mail one copy to COCAP@ci.charlotte.nc.us

3.2.4 Each invoice shall cite the Contract number, the specific task description for which payment is being requested, the time period covered by the invoice, and the amount of payment requested. Additionally, each invoice must include a sales tax statement on a form to be provided by the City. Failure to provide this information on each and every invoice may result in a delay in payment. There shall be no interest penalties assessed against the City for late or partial payments.

3.2.5 As a condition of payment, the Company must invoice the City for Work within 60 days after such Work is performed. THE COMPANY WAIVES THE RIGHT TO CHARGE THE CITY FOR ANY SERVICES THAT HAVE NOT BEEN INVOICED TO THE CITY WITHIN 60 DAYS AFTER SUCH SERVICES WERE RENDERED.

**3.3 Time Records.**

The Company shall be responsible for keeping documentation sufficient to verify the time billed to the City. The City shall have the right to audit the Company's time cards, invoices, reports and other documents relating to the Work performed under this Contract, and shall not be required to pay for: (a) any time billed that was excessive in light of the result achieved, or (b) any Work that did not meet the standards and requirements referenced in 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. to 5:00 p.m. Monday through Friday, whenever requested by the City.

**3.4 Employment Taxes and Employee Benefits.**

The Company acknowledges and agrees that its employees and subcontractors are not employees of the City. The Company represents, warrants and covenants that it will pay all withholding tax, social security, Medicare, unemployment tax, workers' compensation, and other payments and deductions which are required by law in connection with provision of the Work.

**4. 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 the Work, (ii) a list of the City's personnel whose presence or assistance reasonably may be required by the Company to perform the Work, and (iii) any other equipment, facility or resource reasonably required by the Company to perform the Work. Notwithstanding the foregoing, the Company shall not be entitled to request that the City provide information, personnel, or facilities other than those which Exhibit A specifically requires the City to provide. 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) which 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 the Company of any claim or defense it may otherwise have based on the City's failure to provide such information, personnel, facility or resource.

**5. REMOVAL, REPLACEMENT AND PROMOTION OF COMPANY PERSONNEL.**

- 5.1 The City will have the right to require the removal and replacement of any personnel of the Company or the Company's subcontractors who are assigned to perform Work for the City. The City shall be entitled to exercise such right in its sole discretion by providing written notice to the Company.
- 5.2 The City must approve in writing any hires or transfers of personnel to "Key Personnel" positions as defined in the Scope of Work, and the City shall have the right to interview all personnel that the Company proposes to hire or transfer to such positions. As used in this Contract, the term "Key Personnel" shall mean the resident management team consisting of a: General Manager, Assistant General Manager, and Director of Maintenance, and any other personnel of the Company or its subcontractors who are identified as Key Personnel in the Company's Proposal, or whom the City from time to time designates in writing to the Company as fulfilling a key role in the delivery of Bus Operation and Maintenance. Unless approved by the City in writing, the Company will not:
  - (i) remove the Company's Key Personnel or permit its subcontractors to remove Key Personnel; or
  - (ii) materially reduce the involvement of the Company's Key Personnel or allow its subcontractors to materially reduce the involvement of Key Personnel.
- 5.3 The Company will replace any personnel who leave the BOD with equivalently qualified persons. The Company will replace such personnel as soon as reasonably possible, and in any event within thirty (30) days after the Company first receives notice that the person will be leaving the BOD.
- 5.4 As used in this Contract, the term "personnel" includes all staff provided by the Company or its subcontractors, including but not limited to Key Personnel.

**6. REPRESENTATIONS AND WARRANTIES OF COMPANY.**

The Company represents, warrants and covenants that:

- 6.1 The Company has the qualifications, skills and experience necessary to perform the Work described or referenced in this Contract.
- 6.2 The Work shall satisfy all requirements set forth in this Contract. Additionally, all Work performed by the Company pursuant to this Contract shall meet the highest industry standards and shall be performed in a professional and workmanlike manner by staff who have the necessary skills, experience and knowledge.
- 6.3 Neither the Work, nor any deliverables provided by the Company under this Contract, will infringe or misappropriate any patent, copyright, trademark, trade secret or other intellectual property rights of any third party. The Company shall not violate any non-compete agreement or any other agreement with any third party by entering into or performing this Contract.
- 6.4 In connection with its obligations under this Contract, the Company shall comply with all applicable federal, state, and local laws and regulations and shall obtain all applicable permits and licenses.
- 6.5 The Company is a legal entity duly incorporated, validly existing and in good standing, and is

authorized and qualified to do business in North Carolina. The Company has all the requisite power and authority to execute, deliver and perform its obligations under this Contract, and the execution, delivery, and performance of this Contract have been duly authorized by the Company.

**7. OTHER OBLIGATIONS OF THE COMPANY.**

**7.1 Work on the City's Premises.** The Company will, whenever on the City's premises, obey all instructions and City policies that the Company is made aware of with respect to performing work on the City's premises.

**7.2 Execution of and Compliance with Lease.** The Company will, execute an agreement governing the Company's use of the City's facilities (a sample of which is attached hereto as Exhibit F). The Company will comply with all terms of the lease. The Company shall indemnify the City from any lawsuits or claims alleging the facility's occupied by the Company are unsafe or not compliant with legal requirements pertaining to facility standards, provided that the alleged facility issue exists due to the actions of the Company and/or its subcontractors (Including but not limited to claimed violations of OSHA and/or the ADA).

**7.3 Regeneration of Lost or Damaged Data.** If the Company loses or damages any data in the City's possession, 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.

**7.4 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.

**8. TERM.**

The initial term of this Contract shall be XXX (X) years. The City shall have the unilateral right to renew this Contract for XXX (X) optional one (1) year terms.

**9. SUBSTITUTE PERFORMANCE.**

The parties acknowledge that time is of the essence in performing the Work and that, if the Company fails to perform the Work as set forth in this Contract, the City may, in its discretion, perform or cause to be performed some or all of the Work and doing so shall not waive any of the City's rights or remedies under this Contract, at law or in equity. The Company shall reimburse the City for all additional costs incurred by the City in exercising its rights to perform or cause to be performed some or all of the Work pursuant to this Section. The City may also deduct such additional costs incurred for the substitute performance from the amounts owed to the Company.

**10. TERMINATION OF CONTRACT.**

**10.1 Termination.**

A. **For Convenience.** The City may terminate this Contract at any time without cause by giving written notice to the Company at least forty-five (45) days before the date of termination. Such notice will specify the date upon which termination becomes effective. In the event the City terminates this Contract, the Company shall continue performing the Work until the termination date designated by the City in its termination notice. If the City terminates this Contract without cause, the City shall negotiate an equitable settlement of termination costs. Such costs shall not include non-project-specific

overhead; punitive exemplary, special, indirect, consequential or incidental damages; or loss of anticipatory profit.

- B. For Cause. The City may terminate this Contract upon the Company's default of any material duty or obligation of the Company under this Contract and the Company's failure to cure to such default within thirty (30) calendar days of the City's written notice to the Company of such default. If the default is not capable of cure within said thirty (30) calendar days, the Company shall provide written notice to the City together with a schedule of cure within fifteen (15) calendar days of the City's notice of default, shall begin action to cure the default within said thirty (30) calendar days, and shall diligently proceed to cure the default. The City may accept the Company's schedule of cure, may make a written demand that the Company cure the default within a time period set by the City, or may terminate this Contract at the end of the thirty-day default period.
- C. Immediate Termination by 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 grounds for termination without a cure period and without the occurrence of any other events of default):
  - i. 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
  - ii. The Company takes or fails to take any action which constitutes grounds for immediate termination under this Contract, including but not limited to failure to obtain or maintain the insurance policies, bonds, and endorsements as required by this Contract; or
  - iii. The Company fails to fulfill or maintain in a timely and proper manner any obligations, duties or provisions of or under this Contract; or
  - iv. The Company fails to consistently meet the reporting requirements of this Contract.

#### 10.2 Process.

- A. Opportunity to Cure. Any notice of default under 10.1 B. shall identify this Section of this Contract, cite the Section(s) the Company is not in compliance with and state the City's intent to terminate this Contract if the default is not cured within the specified period, if a cure period shall be applicable.
- B. Payment Obligation. The City's obligation to make the payments required by this Section is conditioned upon the Company providing to the City, prior to the date of termination, all materials referenced in Section 10.2 and Section 10.3. Nothing in this Section shall be construed as limiting any right of the City in the event of a breach by the Company.
- C. Termination Conversion. If the Contract is terminated by the City for cause but it is later conclusively determined that the Company has not in fact defaulted, the termination shall

be deemed to have been affected for the convenience of the City and the Company shall be paid through the date of the termination.

- D. Authority to Terminate. Authority to terminate this Contract on behalf of the City rests with the City Manager and Deputy City Manager, or any designee of the forgoing having the same level of delegated signature authority as would have been required to execute the Contract.

#### 10.3 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 is 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. The expiration or termination of this Contract shall not relieve either party of the obligation to comply with FTA's record retention requirements.

#### 10.4 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, functions and operations provided by the Company hereunder to another provider or to the City, as determined by the City in its sole discretion. 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 migrate the work of the Company to another provider or to the City as described below (the "Transition Services"). Transition Services shall include but not be limited to the following:

- I. Pre-Migration Services
  - a) Working with the City to jointly develop a mutually agreed upon Transition Services Plan to facilitate the termination of the Work; and
  - b) Notifying all affected contractors and subcontractors of the Company.
- II. Migration Services. Performing activities as required by the Transition Services Plan.
- III. Throughout Process and Post-Migration Services
  - a) Answering questions regarding the Work on an as-needed basis;
  - b) Providing such other reasonable services needed to effectuate an orderly transition to a new provider or the City.
- IV. Other Transition Services. Other Transition Services shall include but not be limited to the following:

Access - The Company shall provide the City and any new provider reasonable access to the operating facility and the City's revenue vehicles.

Data - The Company shall share (to the extent permitted by law) with the City and the new provider wage, benefit, employee records and other relevant information relating to any operating subsidiary employees who at any time engaged in providing Work under the Contract.

Documents - The Company shall provide the City and the new provider with copies of all leases, permits, licenses, and other relevant documents.

Substance Testing - The Company shall provide the City with all documents pertaining

to FTA Drug and Alcohol requirements including a completed FTA Drug and Alcohol summary MIS report for its period of operations on the FTA form FTAOH-26-0001-94-1, or subsequent revision.

Maintenance - The Company shall provide the City with all maintenance records associated with the Contract, including all FTA-required documentation.

Record Retention - The Company shall retain all records associated with this Contract in its possession for a minimum of three (3) years after expiration or termination of the Contract.

**10.5 No Effect on Taxes, Fees, Charges or Reports.**

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; to file any daily, monthly, quarterly or annual reports; or relieve the Company from any claim for damages previously accrued or then accruing against the Company.

**10.6 Other Remedies.**

The remedies set forth in this Section 10 and in Section 9 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.

**11. RELATIONSHIP OF THE PARTIES.**

The relationship of the parties established by this Contract is solely that of independent contractors. 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, co-owners or otherwise as participants in a joint venture. Neither party nor its agents or employees is the representative of the other for any purpose and neither party has power or authority to act for, bind, or otherwise create or assume any obligation on behalf of the other.

**12. CITY OWNERSHIP OF WORK PRODUCT.**

- A. The parties agree that the City shall have exclusive ownership of all reports, documents, designs, ideas, materials, reports, concepts, plans, creative works, software, data, programming code 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 agrees that its appointment of the City as an attorney-in-fact is coupled with an interest and is irrevocable.
- B. 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," as defined in this Contract.
- C. The Company will treat as Confidential Information all data provided by or processed for the City in connection with this Contract. Such data 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 this Contract.



**13. OWNERSHIP OF EQUIPMENT & SUPPLIES.**

- A. General Rule. At the termination of this Contract, all equipment and/or supplies located at the City's facilities or otherwise used in providing services under this Contract shall be deemed to be the property of the City, unless the Company establishes ownership in accordance with paragraph 13.B below.
- B. Company Ownership. In order to establish ownership of any equipment and/or supplies at the termination of this Contract, the Contractor must provide written documentation to the City that it:
- i. Purchased such equipment or supplies at its sole expense;
  - ii. Did not include the acquisition cost of such equipment in its price proposal to the City in response to the initial RFP;
  - iii. Was not compensated or reimbursed by the City for such equipment, either directly or through any other cost reimbursement paid by the City to the Company; and
  - iv. Was not required to purchase the equipment or supplies as replacement for any equipment or supplies used by the Company previously.

If the Company purchases equipment or supplies that it intends to claim as its property, the Company shall provide the City written notice and documentation (e.g. an invoice) at the time such purchase occurs.

- C. City Right to Purchase. The City shall have the right to purchase any equipment and/or supplies owned by the Company that are located at the City's facilities or are otherwise being used by the City at the expiration of this Contract. The City shall be under no obligation to make such a purchase and may exercise the right to purchase in its sole discretion. As a part of the Transition Services discussed herein, the Company shall provide the City with a comprehensive list of all equipment and/or supplies located at the City's facilities or otherwise being used by the City. The City shall have the right to purchase some or all of the equipment and/or supplies identified at the then current fair market value of the same.

**14. INDEMNIFICATION.**

- A. 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 by any of them 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 Work or any products or deliverables provided directly or indirectly 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; or (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).

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

## **15. INSURANCE.**

Throughout the term of this Contract, the Company shall comply with the insurance requirements described in this Section and its subsections.

### **15.1 General Requirements.**

- i. The Company shall not commence any work in connection with this Contract until it has obtained all of the types of insurance set forth in this Section, and the City has approved such insurance. The Company shall not allow any subcontractor to commence work on its subcontract until all insurance required of the subcontractor has been obtained and approved.
- ii. All required insurance policies required shall be with insurers qualified and doing business in North Carolina and recognized by the Secretary of State and the Insurance Commissioner's Office.
- iii. The Company's insurance, except for Automobile Liability, 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 Contract. The Company and each of its subcontractors shall and does waive all rights of subrogation against the City and each of the Indemnitees (as defined in Section 14).
- iv. The City shall be exempt from, and in no way liable for, any sums of money that may represent a deductible for any insurance policy. The payment of such deductible shall be the sole responsibility of the Company and/or subcontractor providing such insurance.
- v. Within three (3) business days after execution of this Contract, the Company shall provide the City with certificates of insurance documenting that the insurance requirements set forth in this Section have been met. The City will be given thirty (30) days' written notice of any intent to amend coverage or make material changes to or terminate any policy by either the insured or the insurer. The Company shall further provide such certificates of insurance to the City at any time requested by the City after execution of this Contract within five (5) business days of the City's request. The City's failure to review a certificate of insurance sent by or on behalf of the Company shall not relieve the Company of its obligation to meet the insurance requirements set forth in this Contract.

- vi. Should any or all of the required insurance coverage be self-funded/self-insured, the Company shall furnish to the City a copy of the Certificate of Self-Insurance or other documentation from the North Carolina Department of Insurance.
- vii. If any part of the Work under this Contract is sublet, the subcontractor shall be required to meet all insurance requirements set forth in this Section 15, provided that the amounts of the various types of insurance shall be such amounts as are approved by the City in writing. However, this will in no way relieve the Company from meeting all insurance requirements or otherwise being responsible for the subcontractor.

#### 15.2 Types of Insurance.

The Company agrees to purchase and maintain during the life of this Contract, with an insurance company acceptable to the City and authorized to do business in the State of North Carolina, the following insurance:

15.2.1 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.

15.2.2 Fidelity Bond. A fidelity bond insuring against dishonesty and fraudulent acts, of the Company, its agents, and all employees, officers, directors and any independent Contractors or subcontractors in an amount of not less than one million dollars (\$1,000,000).

15.2.3 Commercial General Liability. Bodily injury and property damage liability as shall protect the Company and any subcontractor performing work under this Contract from claims of bodily injury or property damage which arise from operation 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 injury liability, and contractual liability assumed under the indemnity provision of this Contract. The City shall be named as an additional insured under the Commercial General Liability policy.

15.2.4 Errors and Omissions Liability Insurance. Errors and omissions liability 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. Proof of this policy of insurance shall be submitted to the City's Risk Management Division before acceptance.

15.2.5 Workers' Compensation Insurance. The Company shall meet the statutory requirements of the State of North Carolina, \$100,000 per accident limit, \$500,000 disease per policy limit, and \$100,000 disease per employee limit.

#### 15.3 City Insurance Requirements.

**15.3.1 General Liability.** The City shall furnish as an operating expense and maintain, at its sole cost and expense at all times during the term of this Contract and any renewal or extension thereof: (i) a standard policy of automobile liability insurance or its equivalent having a combined single limit of not less than \$5,000,000 per occurrence insuring the Company, TMOC and their agents, servants and employees for the ownership, maintenance, use of operation of the buses and other vehicles used in connection with the management and operation of the Bus Operation and Maintenance services; (ii) a standard policy of general liability insurance or its equivalent having a combined single limit of not less than \$1,000,000 per occurrence insuring the Company, TMOC and their employees for bodily injury and property damage for which they become legally obligated to arising from the management and operation of the Bus Operation and Maintenance services pursuant to this Contract.

Each such policy shall be written by an insurer reasonably acceptable to the Company/TMOC and the City and shall be endorsed to name the Company and TMOC as additional insured. Each such policy shall provide that the coverage afforded thereby is primary to the Company and TMOC, not excess, and shall provide that such policies cannot be cancelled or materially altered without providing thirty (30) days prior written notice to the Company and TMOC. The City shall provide the Company with certificates of insurance evidencing compliance with this Section.

Should the City fail to furnish and provide such insurance, to the extent permitted by law, the City shall indemnify, defend and hold Company, TMOC and their agents, servants and employees harmless from and against losses, liabilities, claims, damages and expenses (including reasonable attorney's fees) resulting from or arising out of the City's failure to furnish and maintain the insurance as set forth above. In the event of such failure by the City, the Company may, at its sole option, furnish such policy or policies, without prejudice to any other remedy the Company may have, and the cost and expense of furnishing and maintaining such policy or policies shall be deemed an operating expense of the Bus Operation and Maintenance services payable in accordance with the terms of this Contract.

This Section shall not, however, apply to criminal penalties or other awards and judgments arising out of willful or intentional torts, gross negligence or fraud committed by the Company, TMOC or their agents, servants or employees.

**15.3.2 Workers' Compensation.** TMOC shall furnish Workers' Compensation coverage through self-insurance, with the City responsible for all costs associated with such self-insurance, insuring TMOC and covering all employees of TMOC utilized in the delivery of Bus Operation and Maintenance services in accordance with all applicable laws and regulations, together with employer's liability coverage of not less than \$500,000 per employee for disease. TMOC shall furnish such insurance consistent with the annual operating budget for Bus Operation and Maintenance and the provision pertaining to tort liability in Section 15.3.3 below.

**15.3.3 Tort Liability.** Whatever negligent tort liability for personal injury or property damage may be incurred by third parties, and any workers' compensation liability incurred in connection with or arising out of the provision of Bus Operation and Maintenance, the costs and expenses thereof, including any and all liability of the Company or TMOC, their agents, servants or employees, shall be part of the costs and expenses incurred by the City in the operation of Bus Operation and Maintenance and shall be paid by the City. The City shall hold the Company and TMOC harmless from any liability except where covered by separate insurance.

Notwithstanding the provision above, the Company and TMOC shall be liable for any dishonesty, fraudulent misconduct, willful or intentional tort, gross negligence committed or directed by Company, TMOC or their agents, servants or employees.

**15.4 Mutual Waiver of Subrogation.** The City, Company, and TMOC hereby agree to maintain insurance on their own respective property to the full insurable value thereof. The parties hereby mutually release, discharge, and hold each other harmless from all claims and liabilities arising from or caused by fire or other casualty covered by the insurance required pursuant to this Section, to extent payment is made.

**16. 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, or by electronic mail to the intended recipient at the address set forth below:

For the Company:

For the City:

Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment, or waiver of any provision of this Contract shall further be copied to the following (in addition to being sent to the individuals specified above):

Notice shall be effective upon the date of receipt by the intended recipient. 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.

**17. COMMERCIAL NON-DISCRIMINATION.**

The Company agrees to comply with the Non-Discrimination Policy set forth in Chapter 2, Article V of the Charlotte City Code, which is available for review at <http://library.municode.com/index.aspx?clientId=19970> and incorporated herein by reference. The Company consents to be bound by the award of any arbitration conducted thereunder.

**18. CONFIDENTIALITY.**

**18.1 Definitions.** As used in this Contract, The term “Confidential Information” shall mean any information, in any medium, whether written, oral, or electronic, not generally known in the relevant trade or industry, that is obtained from the City or any of its suppliers, contractors or licensors which falls within any of the following general categories:

- 18.1.1 *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.
- 18.1.2 Information of the City or its suppliers, contractors or licensors marked “Confidential” or “Proprietary.”
- 18.1.3 Information relating to criminal investigations conducted by the City, and records of criminal intelligence information compiled by the City.
- 18.1.4 *Information contained in the City’s personnel files, as defined by N.C. Gen. Stat. 160A-168.* This includes all information gathered by the City about employees, except for that information which is a matter of public record under North Carolina law.
- 18.1.5 Citizen or employee social security numbers collected by the City.
- 18.1.6 *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.
- 18.1.7 Local tax records of the City that contain information about a taxpayer’s income or receipts.
- 18.1.8 Any attorney / client privileged information disclosed by either party.
- 18.1.9 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.
- 18.1.10 The name or address of individual homeowners who, based on their income, have received a rehabilitation grant to repair their home.
- 18.1.11 Building plans of city-owned buildings or structures, as well as any detailed security plans.
- 18.1.12 Billing information of customers compiled and maintained in connection with the City providing utility services
- 18.1.13 Other information that is exempt from disclosure under the North Carolina public records laws.

Categories **18.1.3** through **18.1.13** 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 year prior to the date of this Contract.

**18.2 Restrictions.** The Company shall keep the Confidential Information in the strictest confidence in the manner set forth below:

- 18.2.1 The Company shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information, except as authorized by the City in writing.
- 18.2.2 The Company shall not, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information to any third party, other than an agent, subcontractor or vendor of the City or the Company having a need to know such Confidential Information for purpose of performing work contemplated by written agreements between the City and the Company, and who has executed a confidentiality agreement incorporating substantially the form of this Contract. The Company shall not, directly or indirectly, disclose, divulge, reveal, report or transfer Highly Restricted Information to any third party without the City's prior written consent.
- 18.2.3. The Company shall not use any Confidential Information for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written agreements between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.
- 18.2.4 The Company shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information.
- 18.2.5 The Company shall use reasonable efforts (including but not limited to seeking injunctive relief where reasonably necessary) to prohibit its employees, vendors, agents and subcontractors from using or disclosing the Confidential Information in a manner not permitted by this Contract.
- 18.2.6 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.
- 18.2.7 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.
- 18.2.8 The Company shall restrict employee access to the Confidential Information to those employees having a need to know for purposes of their jobs.
- 18.2.9 The Company shall take reasonable measures to prevent the use or disclosure of Confidential Information by its employees in a manner not permitted by this Contract. The Company shall have each of its employees who will have access to the Confidential Information sign a confidentiality agreement which provides the City and its vendors, licensors, subcontractors, employees and taxpayers the same level of protection as provided by this Contract.

18.3 Exceptions. The City agrees that the Company shall have no obligation with respect to any Confidential Information that the Company can establish:

- 18.3.1 Was already known to the Company prior to being disclosed by the City;
- 18.3.2 Was or becomes publicly known through no wrongful act of the Company;
- 18.3.3 Was rightfully obtained by the Company from a third party without similar restriction and without breach hereof;
- 18.3.4 Was used or disclosed by the Company with the prior written authorization of the City;
- 18.3.5 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;
- 18.3.6 Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the Company shall take reasonable steps to obtain an agreement or protective order providing that this Contract will be applicable to all disclosures under the court order or subpoena.

**19. MISCELLANEOUS**

- 19.1 Entire Contract. This Contract and the documents enumerated in Section 1, all of which are incorporated herein by reference, constitutes 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.
- 19.2 Amendment. No amendment or change to this Contract shall be valid unless in writing and signed by both parties to this Contract.
- 19.3 Contract Monitoring. During the term of this Contract and for a period of three (3) years after termination or expiration of this Contract for any reason, the City shall have the right to audit the Company's compliance with the terms and conditions of this Contract, including but not limited to all provisions related to payment and performance. Accordingly, the Company must maintain ALL RECORDS (not including duplicates) regardless of the medium or form in which the record may be related to this Contract in any way for a period of three (3) years after the termination or expiration of this Contract. The City shall have the right to conduct such audits, either through its own staff or through an independent auditor, at such times as the City deems appropriate. The Company shall fully cooperate with all such audits, and shall make available for copying and inspection all books and records requested by the City or its designated agent. The Company shall further allow the City or its designated agent to inspect the Company's facilities in connection with such audits. 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. Notwithstanding the foregoing, in the event an audit reveals an overcharge to the City in excess of five thousand dollars (\$5,000) or a failure to perform services that has cost the City more than ten thousand dollars (\$10,000), the Company shall reimburse the City for all costs relating to the audit, including but not limited to internal staff hours and amounts paid to an outside auditor.



On demand of all books of account, computer files and other records, reports and financial statements of the Company in any way pertaining to the provision of the services described in this Contract shall be made available to the City for audit. Such records shall be clearly identified, readily accessible and be retained by the Company for at least three (3) years after the termination of this Contract. Reporting and record-keeping requirements for governmental entities are set forth in 2 C.F.R. Part 200. Reporting and record-keeping requirements for private non-profit and for-profit entities are set forth in OMB Circular A-110. The approved closeout of this Contract shall not alter these requirements.

19.4 Right to Purchase. In the event this Contract is terminated or expires, the City may, at its sole option, purchase all of the stock of TMOC for the sum of Ten Dollars (\$10.00). All of such stock shall be forthwith transferred, assigned and conveyed to the City's assignee or designee, provided TMOC is released from any and all obligations hereunder by the City and its assignee or designee.

19.5 Licensing. Within twenty-four (24) hours of the City's request, the Company shall provide current notarized copies of all valid licenses and certificates required for performance of the Work at any time during the term of this Contract. Licenses and certificates required for this Contract include, by way of illustration and not limitation, the following: i) a valid North Carolina business license; ii) any additional licenses pertaining to or that may be required to be held by field professionals participating in the Work.

19.6 Governing Law, Jurisdiction, and Venue. North Carolina law shall govern the interpretation and enforcement of this Contract and any other matters relating to this Contract (all without regard to North Carolina conflicts of law principles). 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 that they may have with respect to venue in any court sitting in Mecklenburg County, North Carolina. This Section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this Section.

19.7 Binding Nature and Assignment. This Contract shall bind the parties and their successors and permitted assigns. Neither party may assign this Contract without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void.

19.8 City not Liable for Special or Consequential Damages. 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 consequential, indirect, or special damages or lost profits related to this Contract.

19.9 Force Majeure. The parties shall not be liable for performance under this Contract by virtue of Force Majeure Events (as defined below). The Company, however, shall take all reasonable precautions to ensure such events do not result in undue delay in performance under this Contract if such events are anticipated through reports of the media, emergency management officials or other similar sources. If the City determines, within its sole discretion, that the Company failed to take such reasonable precautions, the City may find such failure constitutes a default under this Contract and is grounds for an adjustment in the

Company's monthly management fee or termination of this Contract. A Force Majeure Event is a failure or delay that satisfies all of the following conditions:

- (i) Could not have been prevented by reasonable precaution;
- (ii) Cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and
- (iii) 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.

Upon the occurrence of a Force Majeure Event, the Company shall notify the City immediately by telephone or other prompt means of its ability to operate in the immediate aftermath of such event. If the company is unable to operate immediately the Company shall advise the city of its contingency plans to resume operation as soon as practicable and safe. Such information shall be provided to the City in writing not less than two (2) days after the occurrence of such Force Majeure event. If any Force Majeure Event prevents the Company from performing its obligations for more than five (5) days, the City shall have the right to terminate this Contract by written notice to the Company.

Strikes, slowdowns, lockouts, walkouts, industrial disturbances and other labor disputes shall not constitute Force Majeure Events and shall not excuse the Company from the performance of its obligations under this Contract. Nothing in the preceding Force Majeure provisions shall relieve the Company of any obligation it may have regarding disaster recovery, whether under this Contract or at law.

19.10 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.

19.11 No Publicity. No advertising, sales promotion or other materials of the Company or its agents or representatives may identify or reference this Contract or the City in any manner absent the written consent of the City. Notwithstanding the foregoing, the parties agree that the Company may list the City as a reference in responses to requests for proposals and may identify the City as a customer in presentations to potential customers.

As a condition of entering into this Contract, the Company further agrees to refrain from the following absent the City's prior written approval:

- (i) Making any statement to the media regarding the subject matter of this Contract or the City's position on any issue relating to this Contract; or
- (ii) Making any statement to the media on any issue which is likely to cause the Company or City staff to be viewed as anything other than neutral with respect to the subject matter of this Contract or cast doubt on the competence or integrity of the City.

Failure to comply with this Section shall constitute a material breach and, without limiting any other remedies the City may have, shall entitle the City to terminate this Contract for default.

19.12 Approvals. All approvals or consents required under this Contract must be in writing.

19.13 Interest of Public Officials. No member, officer, or employee of the City or of a local public body during his or her tenure or for one year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

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

19.15 Survival of Provisions. All provisions of this Contract which by their nature and effect are required to be observed, kept, or performed after termination of this Contract, shall survive the termination of this Contract and remain binding thereafter including, but not limited to, the following:

- Section 3.4      “Employment Taxes and Employee Benefits”
- Section 6        “Representations and Warranties”
- Section 10       “Termination of Contract”
- Section 12       “City Ownership of Work Product”
- Section 13       “Ownership of Equipment and Supplies”
- Section 14       “Indemnification”
- Section 16       “Notices and Principal Contacts”
- Section 18       “Confidentiality”
- Section 19       “Miscellaneous”

19.16 Interests of the Parties. The Company covenants that its officers, employees and shareholders have no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract.

19.17 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 this Contract.

19.18 Harassment. The Company agrees to make itself aware of and to comply with the City’s Harassment Policy. The City shall not tolerate or condone acts of harassment based upon race, sex, religion, national origin, color, age, or disability. The Company agrees that violation of this policy constitutes grounds for the City to terminate this Contract.

19.19 Equal Access to Facilities. In connection with the execution of this Contract, no person shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity pursuant to Title VI of the Civil Rights Act of 1964. In addition, all reasonable service accommodations as required under the Americans with Disability Act of 1990 shall be made in connection with the services provided pursuant to this Contract.

19.20 Title to Property. Unless otherwise specified in writing and in accordance with all applicable contractual requirements: all real estate, buildings and improvements, buses, and motor vehicles for the delivery of Bus Operation and Maintenance services shall be furnished by the City and shall remain the property of the City.

19.21 Changes 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 for default by written notice to the Company. The Company shall notify the City within ten (10) days after it becomes aware that a change in Control will occur. 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 the ownership of voting securities, by agreement or otherwise.

19.22 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 Work. 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 applicable to this Contract. 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 Work.

19.23 Taxes. The Company shall pay all applicable federal, state and local taxes that may be chargeable against the performance of the Work.

19.24 Construction of Terms. 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.

19.25 Liquidated Damages For Failure To Perform. In the event of an incident that constitutes non-performance the parties agree that it would be difficult to determine the exact amount of loss or damages suffered by City in loss of public goodwill, reputation, and convenient operation of the public transit system. The Company agrees that the amounts stated in Exhibit D are reasonable and accurately reflect the damages that the City would incur for each encumbered

violation. Therefore, for every occurrence that constitutes a state of non-performance, the Contractor will be liable to City, as liquidated damages for the amounts identified in Exhibit-D “Performance Standards.” Nothing in this clause shall be interpreted as limiting in any way City’s right to proceed against the Contractor for additional damages caused by such non-performance on the part of the contractor. The City reserves the right to deduct said liquidated damages from any amount due the Contractor under this Contract or, at its option, to collect such liquidated damages directly from the Contractor or its surety.

19.26 E-Verify Requirements. Contractor understands that “E-Verify” refers to the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with N.C. Gen. Stat §64-25(5). Employers must use E-Verify. Each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with N.C. Gen. Stat §64-26(a). Subcontractors must also comply with E-Verify and the Contractor will ensure compliance by any subcontractors hired by the Contractor.

19.27 Contract Data. The City shall have exclusive ownership of the following (collectively referred to as “Contract Data”): (a) all data produced or generated under this Contract for the benefit of the City or its customers; and (b) all data provided by, accessed through, or processed for the City under this Contract. The Company will promptly provide the Contract Data to the City in machine readable format upon the City’s request at any time while this Contract is in effect or within three years after this Contract terminates.

19.28 Company Will Not Sell or Disclose Contract Data. The Company will treat Contract Data as Confidential Information under this Contract. The Company will not reproduce, copy, duplicate, disclose, or use the Contract Data in any manner except as authorized by the City in writing or expressly permitted by this Contract.

19.29 Conflicts of Interest. The Company will not take any action that is or is likely to be perceived as conflict of interest under this Contract. The Company has not made and will not make any gifts to City employees or officials in connection with this Contract.

19.30 Reservation of City Option to Add Maintenance Services. As part of the intent of this contract, the City expressly reserves unilaterally for itself the option and right to add operations and maintenance services for additional vehicles or types of vehicles as may be required to sustain the operation of its Bus fleet and Special Transportation Services fleet to the responsibilities of the Company pursuant to this contract.

## **20. Dispute Resolution.**

In the event of a dispute, the following process will be followed as a pre-condition to litigation by either party, except the City shall have the right to seek an order compelling the Company to fulfill its obligations regarding labor relations and strike contingency immediately if required to mitigate or avoid a disruption of service related to a strike.

- A. Good Faith Meeting. Representatives of each party shall meet as soon as reasonable to attempt in good-faith to resolve the dispute. The Company must be represented by a person with the authority to settle the dispute. The parties may by agreement and in good-faith conduct further meetings as necessary to resolve the dispute. If resolution is not achieved, the parties shall initiate mediation as set forth below.
- B. Mediation. Once a dispute is ripe for mediation under this section, the parties shall proceed in the following manner:
- i. Selection of Mediator. The parties shall in good-faith select a mediator certified in accordance with the rules of mediator certification in Superior Court in North Carolina. If the parties desire a mediator not so certified, the City's consent to such a mediator must first be obtained in writing. If the parties cannot agree to a mediator within a reasonable time, the City shall have the right to unilaterally select a certified mediator.
  - ii. Mediation Agreement. Upon selection of a mediator, the parties shall in good-faith enter into a mediation agreement that shall include terms governing the time, place, scope, and procedural rules of the mediation. The agreement shall also include terms governing the compensation, disqualification, and removal of the mediator. All terms of the mediation agreement must be consistent with the terms of this Contract, as well as all applicable laws. If the parties fail to agree to the procedural rules to be used, then the American Arbitration Association Standard Mediation Rules shall be used to the extent such rules are consistent with this Contract and applicable law.
  - iii. Stalemate. If after all reasonable good-faith attempts to resolve the dispute have been made, it appears to the mediator that the parties are at a stalemate with no significant likelihood of reaching resolution, the mediator shall so inform the parties and shall issue a written notice of stalemate, which shall conclude the dispute resolution process, unless the parties agree otherwise.

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

[signature blocks]

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

---

Deputy Finance Officer

---

Date



**EXHIBIT A**

**ADD SCOPE OF WORK**



**EXHIBIT B**

**FEDERAL TRANSIT ADMINISTRATION CONTRACTING TERMS**

This Attachment is attached and incorporated into the {---Contract Title---} (the “Contract”) between the City of Charlotte and {---Vendor Legal Name---} (“The Company”). Capitalized terms not defined in this Attachment shall have the meanings assigned to such terms in the Contract. In the event of a conflict between this Attachment and the terms of the main body of the Contract or any other Attachment or appendix, the terms of this Attachment shall govern.

**1. THE COMPANY SHALL COMPLY WITH ALL FEDERAL REQUIREMENTS.**

A. The Company acknowledges and understands that this Contract will be financed at least partially with funding from the federal government. The Company further acknowledges and understands that this Contract is therefore subject to: (1) all applicable federal laws, (2) all applicable federal regulations, (3) all applicable federal policies, (4) the conditions and requirements of all federal grants that in any way will fund any part of the work under this Contract, and (5) the most recent Federal Transit Administration’s “Master Agreement,” including any certifications or contract provisions that the Master Agreement requires to be included in this Contract. For purposes of these Federal Contracting Requirements, items (1) through (5) in the immediately preceding sentence, as those items may be amended or updated from time to time, are referred to collectively as “Federal Law.”

B. All provisions of Federal Law are incorporated into this Contract by reference and are fully binding on the Company as if they were recited here verbatim. The Company shall ensure that all provisions of Federal Law are incorporated into all subcontracts (of every tier) and in all contracts with those supplying any materials, equipment, or other products related in any way to this Contract, such that all subcontractors of every tier and all suppliers are contractually required to comply with all provisions of Federal Law.

C. The Company at all times shall: (1) fully comply with all provisions of Federal Law, (2) ensure that all work under this Contract (including, by example only, all subcontracted work) fully complies with all

provisions of Federal Law, and (3) ensure that no aspect of the Company’s performance under this Contract would cause the City or any of its officials, employees, or agents to be at any risk of violating any provision of Federal Law. In addition, the Company shall not perform any act, fail to perform any act, or refuse to comply with any City request to the extent that doing any of those things would create any risk of the City or any of its officials, employees, or agents being in violation of any provision of Federal Law.

D. These Federal Contracting Requirements identify and summarize many provisions of Federal Law. However, the Company acknowledges and agrees that the Company is fully and ultimately responsible for identifying and learning about all provisions of Federal Law. If these Federal Contracting Requirements omit any provision or requirement of Federal Law, the Company shall remain fully responsible for identifying and learning about that provision or requirement and for fully satisfying the Company’s obligations under Article 1.1.C of these Federal Contracting Requirements with respect to that provision or requirement. The Company shall not be excused from ensuring full compliance with any provision or requirement of Federal Law because that provision or requirement is omitted from these Federal Contracting Requirements, nor shall the Company have any claim or remedy against the City because any such provision or requirement has been so omitted.

E. By executing this Contract, the Company represents to the City and covenants with the City that, as of the date that this Contract takes effect, the Company has fully complied with all provisions of Federal Law and that the Company shall continue to fully comply with all provisions

## Attachment A Sample Contract

of Federal Law at all times while this Contract is in effect.

F. Notwithstanding any other provision in this Contract, the Company and the City agree that Federal Law and these Federal Contracting Requirements take priority over all other Contract provisions. This means that, if a conflict arises between another Contract provision and any provision of Federal Law or of these Federal Contracting Requirements, such that the Company cannot satisfy both provisions, the Company shall fully comply with the provision of Federal Law or of these Federal Contracting Requirements. In such a situation, the Company shall disregard the other, conflicting Contract provision, but the Company shall do so only to the minimal extent needed to comply fully with Federal Law and with these Federal Contracting Requirements, and the Company otherwise shall fully comply with that conflicting Contract provision to the extent possible.

G. The Company and the City agree that, in any situation where the Company can comply with both another Contract provision and with a provision of Federal Law or of these Federal Contracting Requirements, even if the two provisions address the same subject matter (*e.g.*, if another Contract provision imposes an obligation on the Company beyond those obligations imposed by Federal Law), that will not be deemed a conflict. Rather, in such a situation, the Company shall fully comply with Federal Law, with these Federal Contracting Requirements, and with the other Contract provision.

### 2. ACCESS TO CONTRACT RECORDS.

A. For purposes of this Article 2 of these Federal Contracting Requirements, "Contract Records" means all documents (whether in hard copy, digital, or other format) that refer or relate to any aspect of this Contract or to the Company's performance under this Contract. By example only (and not for purposes of limitation), Contract Records include all of the following to the extent that they refer or relate to any aspect of this Contract or to the Company's performance under this Contract: subcontracts, contracts with suppliers and other third parties, invoices and other billing records, audits and

other financial and accounting records, memos, letters, and emails.

B. For purposes of this Article 2 of these Federal Contracting Requirements, "Retention End Date" means the later of:

- (a) The third anniversary of the date on which this Contract is terminated or expires, or
- (b) If, on or before that third anniversary, the Company has received notice (from the City or otherwise) of one or more lawsuits, legal proceedings, disputes, audits, or investigations related in any way to this Contract, the date on which the City later notifies the Company in writing that all such lawsuits, legal proceedings, disputes, audits, and investigations have fully and finally concluded. The City and the Company intend for all Contract Records to be retained, maintained, and made available for inspection and copying until all such lawsuits, legal proceedings, disputes, audits, and investigations have fully and finally concluded, even if that requires retaining, maintaining, and making those records available after the third anniversary of this Contract's termination or expiration.

C. Through and including the Retention End Date, (a) the Company shall retain and maintain all Contract Records that the Company ever creates, receives, or otherwise possesses or controls so that those Contract Records are always complete, legible, and readily accessible, (b) as the City may request from time to time, the Company shall promptly make any and all Contract Records available for inspection and copying by the City, by the federal government, and by their respective Companies and agents, and (c) the Company shall comply with all requirements imposed by 2 C.F.R. §200.334.

D. Through and including the Retention End Date, the Company shall ensure that each subcontractor (of every tier) and each supplier providing any material, equipment, or other product shall: (a) retain and maintain all Contract Records that the subcontractor or supplier ever creates, receives, or otherwise

## Attachment A Sample Contract

possesses or controls so that those Contract Records are always complete, legible, and readily accessible, (b) as the City may request from time to time, promptly make any and all Contract Records in that subcontractor's or that supplier's possession or control available for inspection and copying by the City, by the federal government, and by their respective Companies and agents, and (c) comply with all requirements imposed by 2 C.F.R. §200.333.

- E. In addition to taking all other necessary and appropriate steps to satisfy its obligations under Article 2.B(2) of these Federal Contracting Requirements, the Company shall ensure that each subcontract (of every tier) and each supplier contract includes provisions requiring that the subcontractor or the supplier retain, maintain, and make available Contract Records as required by Article 2.B(2).
- F. This Article 2 will survive this Contract's termination or expiration regardless of how, when, or under what circumstances this Contract is terminated or expires.

### 3. BUY AMERICA.

- A. For purposes of this Contract, the "Buy America Requirements" means all requirements imposed by 49 U.S.C. §5323(j) and 49 CFR Part 661, as those provisions may be amended from time to time. For example, the Buy America Requirements include a requirement that iron, steel, and manufactured products supplied or used under this Contract are manufactured in the United States or otherwise originate in the United States.
- B. The Company shall comply with all Buy America Requirements and shall take all steps necessary and appropriate to ensure that no aspect of the work under this Contract puts the City out of compliance with any of the Buy America Requirements. The Company shall provide the City, in accordance with this Article 3, with all certifications that may be requested or required from time to time by the City or by the federal government related in any way to the Company's compliance with the Buy America Requirements.
- C. The Company shall ensure that each subcontractor (of every tier) and each supplier providing any material, equipment, or other product for this Contract: (1) fully complies with the Buy America Requirements, (2) provides the City, in accordance with this Article 3, with all certifications that may be requested or required from time to time by the City or by the federal government related in any way to that subcontractor's or that supplier's compliance with the Buy America Requirements, and (3) fully complies with all other requirements that this Article 3 contemplates for, or imposes on, subcontractors or suppliers. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 3.C, the Company shall ensure that each subcontract (at every tier) and each supplier contract includes provisions requiring that the subcontractor or the supplier fully comply with all Buy America Requirements and with this Article 3.
- D. All certifications submitted to the City under this Article 3 – whether submitted by the Company, by a subcontractor, or by a supplier – must be complete and must be submitted on forms provided by or approved by the City. The first time that the Company proposes to use a particular material, equipment, or product from a particular manufacturer, the Company must submit with its certification under this Article 3 a signed letter from the manufacturer confirming that the material, equipment, or product satisfies all Buy America Requirements. In addition to complying with any other requests from the City to provide certifications under this Article 3, the Company shall submit a certification of its compliance with all Buy America Requirements with each submittal or payment request that it submits to the City and when all work is fully and finally completed. If the Company fails to submit a proper certification under this Article 3 by any deadline specified by this Contract or by the City, the City may withhold any and all payments due to the Company under this Contract until the Company brings itself into full compliance with this Article 3.

## Attachment A Sample Contract

- E. If the Contractor believes it is necessary to provide iron, steel, or manufactured products that do not comply with the Buy America Requirements or that otherwise would put the City, the Work, or the Project out of compliance with the Buy America Requirements, the Contractor will submit a written justification to the City detailing the item, its estimated cost, the Contractor's rationale for using it, and the reasons that the Contractor believes that the Buy America Requirements cannot be satisfied. The City will determine whether to request a waiver of the Buy America Requirements for that item from the federal government. If the City decides not to request a waiver, or if the City requests a waiver but that request is not approved, the Contractor will fully satisfy its obligations under this Article 1.3 and will not be entitled to any remedy.
- F. The City from time to time may investigate whether the Contractor, any subcontractor, and/or any supplier has complied with or is complying with this Article 1.3. If the City conducts such an investigation, the Contractor will fully cooperate with that investigation and will ensure that each subcontractor (of every tier) and each supplier does the same. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 1.3.F, the Contractor will ensure that each subcontract (of every tier) and each supplier contract related to the Work or to the Project includes provisions requiring that the subcontractor or the supplier fully cooperate with any such investigation.
- G. Any violation of the Buy America Requirements or of this Article 1.3 by the Contractor, by any subcontractor, or by any supplier will be deemed a material breach of this Contract by the Contractor. If such a breach happens, the City may terminate this Contract for default and/or may pursue any and all other remedies that the City has under this Contract or under the law. To avoid any doubt, the Contractor's obligations under Article 41.12 of this Contract's General Conditions include an obligation to defend, indemnify, and hold harmless each and all of the Indemnitees (as that term is defined in Article 41.12) against any Charges (as that term is defined in Article 41.12) arising out

of or related to any violation of the Buy America Requirements or of this Article 1.3 by the Contractor, by any subcontractor, or any supplier.

- H. The Company acknowledges and agrees that, to the extent that the Vendor or any subcontractor or any supplier will provide any rolling stock under this Contract, the "Buy America Requirements" for purposes of this Article 3 also include all requirements imposed by 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, as those provisions may be amended from time to time. It is solely the Vendor's responsibility to determine whether the Company, each subcontractor, and each supplier will provide any rolling stock such that 49 U.S.C. 5323(j)(2)(C) and/or 49 C.F.R. 661.11 apply.

#### 4. CIVIL RIGHTS LAWS AND REGULATIONS.

The Company acknowledges that the City must comply with all applicable federal civil rights laws and regulations and with 49 U.S.C. § 5323(h) (3) to the extent that the statute is applicable. The Company acknowledges and agrees that "Federal Law" for purposes of Article 1.1 of these Federal Contracting Requirements includes all applicable federal civil rights laws and regulations, as they may be amended from time to time. Some of those civil rights laws and regulations are identified and summarized below, and the Company acknowledges that its obligations under Article 1.1 of these Federal Contracting Requirements include an obligation to fully comply with the laws and regulations identified below and to ensure that all suppliers and all subcontractors (of every tier) fully comply with those laws and regulations. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 4, the Company shall ensure that each subcontract (of every tier) and each supplier contract includes provisions requiring that the subcontractor or the supplier fully comply with this Article 4 and with all applicable federal civil rights laws and regulations. Applicable federal civil rights laws and regulations include, by example only and not for purposes of limitation:

## Attachment A Sample Contract

- A. **Nondiscrimination.** 49 U.S.C. § 5332 and its implementing regulations, which prohibit discriminating against any employee or any applicant for employment because of race, color, religion, national origin, sex, disability, or age.
- B. **Race, Color, Religion, National Origin, Sex.** Federal laws and regulations requiring that all job applicants must be employed, and all employees must be treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). For example, a person's race, color, religion, national origin, or sex cannot be considered for purposes of hiring; promotion; demotion or transfer; recruitment or recruitment advertising; layoff or termination; determining rates of pay or other forms of compensation; or selection for training, including apprenticeship. The laws and regulations imposing these requirements include for example Title VII of the Civil Rights Act (42 U.S.C. § 2000e *et seq.*); 49 U.S.C. § 5332 and its implementing regulations; United States Department of Labor regulations ("Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor") found in 41 C.F.R., Chapter 60; and Executive Order No. 11246 ("Equal Employment Opportunity in Federal Employment") dated September 24, 1965 and found at 42 U.S.C. § 2000e.
- C. **Age.** Federal laws and regulations prohibit discriminating against current or prospective employees on the basis of age. These laws and regulations include for example the Age Discrimination in Employment Act (29 U.S.C. §§ 621-634); United States Equal Employment Opportunity Commission (U.S. EEOC) regulations ("Age Discrimination in Employment Act") found in 29 C.F.R. part 1625; the Age Discrimination Act of 1975 (42 U.S.C. § 6101 *et seq.*); United States Department of Health and Human Services regulations ("Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance") found in 45 C.F.R. part 90; and 49 U.S.C. § 5332 and the regulations implementing that statute.
- D. **Disabilities.** Federal laws and regulations prohibit discriminating against individuals on the basis of disability. These laws and regulations include for example Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794); the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*); the Architectural Barriers Act of 1968 (42 U.S.C. § 4151 *et seq.*); and 49 U.S.C. § 5332 and the regulations implementing that statute.
- E. **Access to Services for Persons with Limited English Proficiency.** The Company shall facilitate compliance with, and shall ensure that all suppliers and all subcontractors (of every tier) facilitate compliance with: (1) Executive Order No. 13166 ("Improving Access to Services for Persons with Limited English Proficiency"), found at 42 U.S.C. § 2000d-1 note and (2) applicable provisions of the United States Department of Transportation Notice ("DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons") found at 70 Fed. Reg. 74087 and dated December 14, 2005.
- F. **Environmental Justice.** The Company shall facilitate compliance with, and shall ensure that all suppliers and all subcontractors (of every tier) facilitate compliance with: (1) Executive Order No. 12898 ("Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations") found at 42 U.S.C. § 4321 note and (2) United States Department of Transportation Order 5620.3 ("Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations") found at 62 Fed. Reg. 18377 *et seq.* and dated April 15, 1997.
5. **EMPLOYEE PROTECTIONS.**
- A. The Company shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, including Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5. The Company also shall comply with the Fair Labor Standards

## Attachment A Sample Contract

Act (FLSA), 29 U.S.C. § 201 et seq. to the extent that the FLSA applies to employees performing work with federal assistance involving commerce and as the federal government otherwise determines applicable.

- B. The Company shall ensure that every subcontractor (of all tiers) and all suppliers fully comply with the laws and regulations referenced in Article 1.5.A of these Federal Contracting Requirements. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 5.B, the Company shall ensure that each subcontract (of every tier) and each supplier contract includes provisions requiring that the subcontractor or the supplier fully comply with this Article 5 and with all with all of the laws and regulations referenced in Article 5.A.

### 6. ENERGY CONSERVATION.

The Company shall fully comply with the standards and policies related to energy efficiency in the state energy conservation plan issued under the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321, *et seq.* The Company also shall ensure that each supplier and each subcontractor (of every tier) fully complies with those same standards and policies. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 6, the Company shall ensure that each subcontract (at every tier) and each supplier contract includes provisions requiring that the subcontractor or the supplier fully comply with this Article 6.

### 7. GOVERNMENT-WIDE DEBARMENT & SUSPENSION.

- A. The Company shall fully comply with, and shall facilitate the City's compliance with, those United States Department of Transportation regulations entitled "Non-procurement Suspension and Debarment," which are found in 2 C.F.R. part 1200 and which adopt and supplement the United States Office of Management and Budget's "Guidelines to Agencies on Government Wide Debarment and Suspension (Non-procurement)," which are found in 2 C.F.R. part 180. The Company acknowledges that these regulations govern: (1) every contract at any tier under which compensation of \$25,000 or more will be paid, (2) every contract at any tier for a federally required

audit (irrespective of the contract amount), and (3) every contract at any tier that must be approved by the FTA (irrespective of the contract amount).

- B. The Company shall ensure that it and all of its officers, principals, affiliates, suppliers, and subcontractors (of every tier) are fully eligible, without limitation, to participate in this federally funded Contract and are not currently declared by any federal department or agency to be:
- a) Debarred from participation in any federally assisted award;
  - b) Suspended from participation in any federally assisted award;
  - c) Proposed for debarment from participation in any federally assisted award;
  - d) Declared ineligible to participate in any federally assisted award;
  - e) Voluntarily excluded from participation in any federally assisted award; or
  - f) Disqualified from participation in any federally assisted Award.
- C. The Company at all times shall fully comply with the regulations in 2 C.F.R. part 180, subpart C, as supplemented by the regulations in 2 C.F.R. part 1200.
- D. The Company shall ensure that, at all times, all suppliers and all subcontractors (of every tier) fully comply with all provisions of this Article 7 to the same extent that the Company is required to do so. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 7.D, the Company shall ensure that each subcontract (at every tier) and each supplier contract includes provisions requiring that the subcontractor or the supplier fully comply with this Article 7.
- E. By executing this Contract, the Company certifies to the City that the Company has fully complied as of the date that this Contract takes effect with all provisions in this Article 7 and that the Company shall continue to fully comply with all provisions in this Article 7 at all times while this Contract remains in effect. The Company acknowledges and agrees that the

## Attachment A Sample Contract

certification provided by the Company under this Article 7.E is a material representation of fact on which the City shall rely. If at any time this certification is found by the City to be false or inaccurate in any way, that shall be deemed a material breach of this Contract by the Company, and in such a situation the City may pursue any and all remedies available to it under this Contract and otherwise at law. Additionally, the Company acknowledges that, if such a breach happens, the federal government also may choose to pursue any and all remedies available to it, including for example seeking the suspension and/or debarment of the Company.

### 8. NO GOVERNMENT OBLIGATION TO THIRD PARTIES.

- A. The City and the Company acknowledge and agree that the federal government is not a party to this Contract and that the federal government shall not, because of this Contract, have any obligations or liabilities to the City, to the Company, or to anyone else. The City and the Company acknowledge and agree that the first sentence of this paragraph shall not be affected by the federal government concurring in, or approving of, the solicitation or award of this Contract unless the federal government explicitly consents in writing to being a party to this Contract.
- B. The Company shall ensure that each subcontract (of every tier) and each supplier contract includes a provision in which the parties to that subcontract or supplier contract acknowledge and agree that the federal government is not a party to that subcontract or supplier contract and that the federal government shall not, because of that subcontract or supplier contract, have any obligations or liabilities to that subcontract's or supplier contract's parties or to anyone else.

### 9. PROGRAM FRAUD & FALSE OR FRAUDULENT STATEMENTS & RELATED ACTS.

- A. The Company shall fully comply with all provisions of the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. §§3801 *et seq.*) and with the United States Department of Transportation regulations entitled "Program Fraud Civil Remedies" that are found in 49 CFR Part 31.

- B. By executing this Contract, the Company certifies to the City the complete truthfulness and total accuracy of every statement that the Company has made, has caused to be made, shall make, or shall cause to be made that relates in any way to this Contract. The Company acknowledges and agrees that the certification provided by the Company under this Article 9.B is a material representation of fact on which the City will rely. If at any time this certification is found by the City to be false or inaccurate in any way, that shall be deemed a material breach of this Contract by the Company, and in such a situation the City may pursue any and all remedies available to it under this Contract and/or otherwise at law. Additionally, the Company acknowledges that, if such a breach happens, the federal government also may choose to pursue any and all remedies available to it, including for example imposing penalties on the Company under the Program Fraud Civil Remedies Act of 1986, 18 U.S.C. §1001, and/or 49 U.S.C. §5307(n)(1).
- C. The Company shall ensure that, at all times, all suppliers and all subcontractors (of every tier) fully comply with all provisions of this Article 9 to the same extent that the Company is required to do so. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 9.C, the Company shall ensure that each subcontract and each supplier contract includes provisions requiring that the subcontractor or the supplier fully comply with this Article 9.

### 10. RESERVED.

### 11. SAFE OPERATION OF MOTOR VEHICLES.

- A. The Company shall adopt and promote on-the-job seat belt use policies and programs for its employees and for anyone else who shall operate any vehicles in relation to this Contract, regardless of whether those vehicles are owned or leased by the Company, the City, or another person or entity.
- B. The Company shall adopt and enforce workplace safety policies to minimize crashes caused by distracted drivers. These policies shall include policies that ban and discourage text messaging by anyone

operating a vehicle in relation to this Contract, regardless of whether those vehicles are owned or leased by the Company, the City, or another person or entity.

**12. FEDERAL CHANGES.**

- A. The Company at all times shall fully comply with all applicable FTA regulations, policies, procedures, and directives, including for example those listed or by reference in the FTA Master Agreement, as they may be issued or amended from time to time. Any failure by the Company to do so shall be a material breach of this Contract by the Company.
- B. The Company shall ensure that all suppliers and all subcontractors (of every tier) at all times fully comply with all applicable FTA regulations, policies, procedures, and directives to the same extent that the Company is required to do so. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 12.B, the Company shall ensure that each subcontract (of every tier) and each supplier contract includes provisions requiring that the subcontractor or the supplier fully comply with this Article 12 just as the Company is required to do.

**13. INCORPORATION OF FTA TERMS.**

- A. The Company and the City acknowledge and agree that the United States Department of Transportation requires certain provisions (the "Applicable FTA Clauses") to be included in this Contract because this Contract is funded at least partially with federal funds. The Applicable FTA Clauses are specified in Federal Law and are also summarized in FTA Circular 4220.1F, as it may be amended or superseded from time to time. The City and the Company have tried to expressly include all Applicable FTA Clauses in these Federal Contracting Requirements or elsewhere in this Contract. However, the City and the Company agree that, if any of the Applicable FTA Clauses have not been expressly included in this Contract, those Applicable FTA Clauses are nonetheless deemed incorporated into this Contract by reference and shall be fully binding on the Company as if they had been expressly included in this Contract.

- B. Notwithstanding any other provision in this Contract, the Company and the City agree that the Applicable FTA Clauses shall take priority over all other Contract provisions. This means that, if a conflict arises between another Contract provision and any provision of the Applicable FTA Clauses, such that the Company cannot satisfy both, the Company shall fully comply with the Applicable FTA Clauses. In such a situation, the Company shall disregard the other, conflicting Contract provision, but the Company shall do so only to the minimal extent needed to comply fully with the Applicable FTA Clauses, and the Company otherwise shall fully comply with that conflicting provision. In contrast, in any situation where the Company can comply with both another Contract provision and with the Applicable FTA Clauses, even if these provisions address the same matter (for example, if another Contract provision imposes an obligation on the Company beyond those imposed by the Applicable FTA Clauses), that will not be deemed a conflict, and in such a situation the Company shall fully comply with the Applicable FTA Clauses and with the other Contract provision.
- C. The Company at all times shall: (1) fully comply with all provisions of the Applicable FTA Clauses, (2) ensure that all of the work under this Contract (including, by example only and not for purposes of limitation, all subcontracted work) fully complies with all provisions of the Applicable FTA Clauses, and (3) ensure that no aspect of the work under this Contract and no aspect of the Company's performance under this Contract would cause the City or any of its officials, employees, or agents to violate any provision of the Applicable FTA Clauses. In addition, the Company shall not perform any act, fail to perform any act, or refuse to comply with any City request to the extent that doing any of those things would create a risk of the City or any of its officials, employees, or agents being in violation of any provision in the Applicable FTA Clauses.
- D. The Company shall ensure that all provisions of the Applicable FTA Clauses (including of any Applicable FTA Clauses not expressly included in this Contract) are incorporated into all subcontracts (of any tier) and in all contracts with those supplying any materials, equipment, or other products such that all



subcontractors of every tier and all suppliers are contractually required to comply with all provisions of the Applicable Federal Clauses.

**14. FEDERAL ACQUISITION REGULATIONS (F.A.R.) COMPLIANCE.**

To the extent that this Contract provides for or allows for any adjustment to the Company's compensation based on costs or expenses incurred by the Company, any such adjustment will be determined based solely on any costs or expenses that: (A) are incurred in full compliance with all of this Contract's provisions, (B) for which the City is clearly required under this Contract to reimburse the Company, (C) are allowable, allocable, and reasonable, as those terms are defined and used in the Contract Cost Principles of the Federal Acquisition Regulations (F.A.R.) System (found in 48 CFR, Ch.1, Pt.31), including as those principles may be further defined or implemented by regulations or guidance adopted by the federal government, and (D) are otherwise allowed under applicable law.

**15. CLEAN AIR.**

- A. The Company shall fully comply with all applicable standards, orders, and regulations issued under the Clean Air Act (42 U.S.C. §§ 7401, *et. seq.*, as amended). The Company shall promptly notify the City if the Company receives notice of any possible or actual violation (a "Clean Air Act Violation") of the Clean Air Act or of any of those standards, orders, or regulations, and the Company shall provide the City with all information that the Company has about the actual or possible violation. The Company acknowledges and agrees that the City may be required by law to report (or that the City may choose to report, even if not required by law) any actual or possible Clean Air Act Violation to the FTA, to one or more EPA Regional Offices, and/or to other governmental entities, and the Company shall not be entitled to any remedy because the City does so.
- B. The Company shall ensure that all subcontracts (of every tier) and all contracts with those supplying any materials, equipment, or other products include provisions: (1) requiring each subcontractor and each supplier to promptly notify the Company and the City if the subcontractor or supplier receives notice of any possible or actual Clean Air Act Violation and to provide the Company and the City with all

information that the subcontractor or supplier has about the actual or possible violation and (2) in which each subcontractor and each supplier acknowledges and agrees that the City may be required by law to report (or that the City may choose to report, even if not required by law) any actual or possible Clean Air Act Violation to the FTA, to one or more EPA Regional Offices, and/or to other governmental entities and that the subcontractor or supplier shall have no claim, right, or remedy against the City or against any City official, employee, or agent because the City does so.

**16. CLEAN WATER.**

- A. The Company shall fully comply with all applicable standards, orders, and regulations issued under the Water Pollution Control Act (33 U.S.C. §§1251, *et. seq.*, as amended). The Company shall promptly notify the City if the Company receives notice of any possible or actual violation (a "Clean Water Act Violation") of the Water Pollution Control Act or of any of those standards, orders, or regulations, and the Company shall provide the City with all information that the Company has about the actual or possible violation. The Company acknowledges and agrees that the City may be required by law to report (or that the City may choose to report, even if not required by law) any actual or possible Clean Water Act Violation to the FTA, to one or more EPA Regional Offices, and/or to other governmental entities, and the Company shall not be entitled to any remedy because the City does so.
- B. The Company shall ensure that all subcontracts (of any tier) and all contracts with those supplying any materials, equipment, or other products include provisions: (1) requiring each subcontractor and each supplier to promptly notify the Company and the City if the subcontractor or supplier receives notice of any possible or actual Clean Water Act Violation and to provide the Company and the City with all information that the subcontractor or supplier has about the actual or possible violation and (2) in which each subcontractor and each supplier acknowledges and agrees that the City may be required by law to report (or that the City may choose to report, even if not required by law) any actual or possible Clean Water Act Violation to the FTA, to one or more EPA Regional Offices, and/or to other

## Attachment A Sample Contract

governmental entities and that the subcontractor or supplier shall have no claim, right, or remedy against the City or against any City official, employee, or agent because the City does so.

### 17. LOBBYING.

- A. The Company shall fully comply with 31 U.S.C. 1352, as amended; with any regulations implementing that statute; and with any non-superseded guidance about that statute issued by the federal government (this statute, those regulations, and that guidance together are the “Byrd Anti-Lobbying Amendment”).
- B. The Company shall ensure that each subcontractor (of every tier) and all of those supplying any materials, equipment, or other products fully comply with all requirements imposed by the Byrd Anti-Lobbying Amendment. In addition to taking any other steps necessary and appropriate to satisfy its obligations under this Article 17.B, the Company shall ensure that all subcontracts (of every tier) and all contracts with those supplying any materials, equipment, or other products include provisions requiring each subcontractor and each supplier to fully comply with all requirements imposed by the Byrd Anti-Lobbying Amendment and by this Article 17.
- C. In addition to complying with all other requirements of the Byrd Anti-Lobbying Amendment, in order to comply fully with the Byrd Anti-Lobbying Amendment for purposes of this Article 17, the Company and each subcontractor and supplier must file one or more certifications as required by 49 CFR Part 20 (entitled “New Restrictions on Lobbying”).
  1. In addition to all other consequences and implications provided by law for filing such a certification, when a subcontractor files one, the subcontractor is deemed to certify to the Company or subcontractor at the tier immediately above it that the certifying subcontractor has not, and shall not, use any federal funds to pay any person, entity, or organization to influence or attempt to influence an officer or employee of any governmental agency, any member of Congress, any officer or

employee of Congress, or any employee of a member of Congress concerning or in connection with any federal contract, federal grant, or any other award covered by the Byrd Anti-Lobbying Amendment.

2. When filing such a certification, the Company and each subcontractor and supplier also shall disclose along with that certification the name of any registrant under the Lobbying Disclosure Act of 1995 who has been paid non-federal funds to make lobbying contacts on the certifier’s behalf concerning or in connection with any federal contract, federal grant, or any other award covered by the Byrd Anti-Lobbying Amendment. All of these disclosures shall be made on forms designated by the City. Each subcontractor and supplier shall promptly forward to the Company or subcontractor at the tier immediately above it all such disclosures that the subcontractor or supplier receives from anyone involved in any way in the work under this Contract (e.g., lower-tier subcontractors), and the Company shall promptly provide the City with the Company’s own disclosures and with all such disclosures that the Company receives from subcontractors and suppliers.

### 18. CONTRACT WORK HOURS & SAFETY STANDARDS ACT.

- A. No laborer or mechanic, during any workweek in which he is involved in any way with work under this Contract, may work more than forty (40) hours unless he is paid at least one and one-half times his base pay rate for all hours over forty (40) that he works during that workweek. The obligations imposed by this Article 18.A shall be referred to as the “Overtime Requirements.”
- B. The Company shall ensure that the Overtime Requirements are fully satisfied with respect to any individual who performs any part of the work under this Contract, including for example with respect to any such individual who is employed by a subcontractor of any tier.
- C. Any violation of the Overtime Requirements by the Company or by any subcontractor or

## **Attachment A Sample Contract**

supplier shall be: (1) a material breach of this Contract by the Company and (2) a material breach by that subcontractor or that supplier of its subcontract or its supplier contract.

1. If such a breach happens, in addition to all other remedies provided by this Contract or by the law, the Company and any subcontractor or supplier that violated the Overtime Requirements shall be jointly and severally liable to the laborer or mechanic at issue for all wages that were not paid to that laborer or mechanic in accordance with the Overtime Requirements.
2. If such a breach happens, in addition to all other remedies provided by this Contract or by the law, the Company and any subcontractor or supplier that violated the Overtime Requirements shall be jointly and severally liable to the federal government for liquidated damages. Those liquidated damages shall be computed with respect to each individual laborer or mechanic who was underpaid, including each underpaid watchman and guard, as follows: Ten dollars (\$10.00) for each calendar day that each mechanic or laborer was required or permitted to work more than forty (40) hours during a workweek without being paid in accordance with the Overtime Requirements.
3. Whether or not the federal government asks or instructs the City to do so, the City may withhold (or may cause to be withheld) from any moneys owed to the Company and/or to any subcontractor or supplier that violated the Overtime Requirements such sums that the City determines may be necessary to satisfy any liabilities of the Company and/or that subcontractor or supplier for the unpaid wages and/or for the liquidated damages contemplated by this Article 18. These sums may be withheld from any moneys owed to the Company and/or to that subcontractor or supplier under: (1) this Contract, (2) any subcontract or supplier contract, and/or (3) any other contract or subcontract, under which the compensation to be paid shall be funded at least partially with federal funds.

- D. The Company shall ensure that the Company, all subcontractors (of every tier), and all suppliers shall: (i) prepare and maintain complete and accurate payroll records that fully comply with this Article 18 and with all industry standard accounting and employment practices and (ii) maintain all of those payroll records and make them available for inspection and copying as required for Contract Records under Article 2 of these Federal Contracting Requirements.
  1. These payroll records must include payroll information for all individuals who perform any of the work under this Contract, including by example for all guards and watchmen who perform any of that work.
  2. These payroll records must contain the following information for each employee: (a) his name and address, (b) his social security number, (c) his employment classifications, (d) the hourly or other rates at which he was paid, (e) the number of hours that he worked each day and each week, (f) detailed information about the deductions made from his pay, and (g) the actual wages paid to him.
- E. The Company shall allow the City, the FTA, the federal Department of Labor, and any of their agents or representatives to interview during working hours any employees or other personnel who have performed, are performing, or are expected to perform any part of the work under this Contract. The Company also shall ensure that all subcontractors (of every tier) and all suppliers allow such interviews to be conducted.
- F. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 18 to ensure that all subcontractors and all suppliers fully comply with this Article 18, the Company shall ensure that all subcontracts (of any tier) for any part of the work under this Contract and all contracts with those supplying any materials, equipment, or other products include provisions requiring each subcontractor and each supplier to fully comply with Article 1.18 of these Federal Contracting Requirements.

**19. PROCUREMENT OF RECOVERED MATERIALS.**

- A. The Company shall fully comply with Section 6002 of the Solid Waste Disposal Act, as that statute has been amended by the Resource Conservation and Recovery Act and by any other legislation.
- B. In addition to taking all other steps necessary and appropriate to satisfy its obligations under Article 19.A of these Federal Contracting Requirements, the Company shall do all of the following:
  - 1. Ensure that, whenever any material or product is procured for or related to this Contract, and that material or product is listed or identified in those Environmental Protection Agency (EPA) regulations in 40 CFR Part 247, the material or item is procured so that it contains the highest percentage of recovered materials that is practicable while still maintaining a satisfactory level of competition in the procurement process. Except to the extent that Federal Law may otherwise provide, the requirements of this Article 19.B.1 shall apply only where the purchase price of a particular material or product exceeds \$10,000 or where the value of the quantity of that material or product acquired during the preceding fiscal year exceeded \$10,000.
  - 2. Ensure that all solid waste management services used for or in relation to the work under this Contract are procured in a manner that ensures that those services shall maximize energy and resource recovery.
  - 3. Establish an affirmative program for the procurement of recovered materials identified in those Environmental Protection Agency (EPA) regulations in 40 CFR Part 24.
- C. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 19 of these Federal Contracting Requirements, the Company shall ensure that all subcontracts (of every tier) and all contracts with those supplying any materials, equipment, or other products include provisions requiring each subcontractor and each supplier to fully comply with this Article 19 to the same extent

that the Company must do so and to facilitate, support, and cooperate in the Company's compliance with this Article 19.

**20. RESERVED.**

**21. FLY AMERICA.**

- A. The Company shall fully comply with Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. §40118, as amended) and those United States General Services Administration regulations entitled "Use of U.S. Flag Air Carriers" that are found at 41 C.F.R. §§ 301-10.131 through 301-10.143 (together, this statute and those regulations shall be referred to as the "Air Travel Requirements").
- B. The Company shall ensure that all subcontractors (of every tier) and all suppliers fully comply with the Air Travel Requirements and with this Article 21 of these Federal Contracting Requirements. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 21.B, the Company shall ensure that all subcontracts (of every tier) and all contracts with those supplying any materials, equipment, or other products include provisions requiring each subcontractor and each supplier to fully comply with this Article 21 and with the Air Travel Requirements.
- C. In addition to taking all other steps necessary and appropriate to fully comply with the Air Travel Requirements, the Company and all subcontractors and suppliers shall use only U.S.-flag air carriers for any international air transportation that is used to transport any person or any property for or in relation to this Contract. The requirements of this Article 21.C shall not apply, however, to the extent that any needed air transportation is not provided by any U.S.-flag air carriers.

**22. CARGO PREFERENCE.**

- A. Whenever shipping any equipment, material, other product, or other commodity needed for or otherwise related to this Contract, the Company shall use privately owned U.S.-flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers). This requirement, however, shall apply only to

## Attachment A Sample Contract

the extent that privately-owned U.S.-flag commercial vessels are available for such shipping at fair and reasonable rates for U.S.- flag commercial vessels.

- B. Within twenty (20) days after the date of loading for a shipment originating within the United States, and within thirty (30) days after the date of loading for a shipment originating outside of the United States, the Company shall provide complete and legible copies of a rated, “on-board” commercial ocean bill-of-lading in English for that shipment to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the City (through the Company in the case of a subcontractor’s bill-of-lading).
- C. The Company shall ensure that all subcontractors (of every tier) and all suppliers fully comply with the requirements of Article 23.A and Article 23.B of these Federal Contracting Requirements to the same extent that the Company must comply with them. In addition to taking all other necessary and appropriate steps to satisfy its obligations under.

### **23. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES.**

The Company, by entering into this Contract certifies that, consistent with 2 C.F.R. § 200.216 it will not use “covered telecommunications equipment or services” (as that term is defined in Section 889 of Public Law 115-232) if such equipment or services will be used as a substantial or essential component of any system or as critical technology as part of any system provided under this Contract. The Company will include a requirement not to use such “covered telecommunications equipment or services” in any subcontracts for the provision of “covered telecommunications equipment or services” let under this Contract. “

As used in this clause “Substantial or Essential Component” means any component necessary for the proper function or performance of a piece of equipment, system, or service. “Covered telecommunications equipment or services” as used in this clause, includes but is not limited to:

- A. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- B. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- C. Telecommunications or video surveillance services provided by such entities listed in a) or b) or using such equipment provided by entities listed in a) or b).
- D. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

### **24. NOTICE OF DISPUTES, BREACHES, DEFAULTS, AND LITIGATION.**

If a current or prospective legal matter that may affect the city or the federal government emerges, the company must notify the city. The company must include a similar notification requirement in each of its subcontracts for twenty-five thousand dollars (\$25,000) or more.

- A. Legal disputes that require notification under this provision include, but are not limited to, a major dispute, breach, default, litigation, or naming the city or naming the federal government as a party to litigation or a legal disagreement in any forum for any reason.
- B. Matters that may affect the federal government (and thereby the city) include, but are not limited to, the or the federal government’s interests in the award, the accompanying underlying agreement, and any amendments thereto, or the federal government’s administration or enforcement

of federal laws, regulations, and requirements.

- C. Additional notice to U.S. DOT Inspector General. The Company must promptly notify the U.S. DOT Inspector General in addition to the FTA chief counsel or regional counsel for FTA region 4, if the company has knowledge of potential fraud, waste, or abuse occurring on a project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the false claims act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the project is the subject of this contract, another contract funded by the FTA, or an agreement involving a principal, officer, employee, or agent of the company. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the company. In this paragraph, "promptly" means to refer information without delay and without change.

whole or in part of non-ferrous materials such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**25. DOMESTIC PREFERENCES FOR PROCUREMENTS.**

As appropriate and to the extent consistent with law, the company should, to the greatest extent practicable under the Contract, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the united states (including, but not limited to iron, aluminum, steel, cement, and other manufactured products). For the purposes of this clause, (i) "produced in the united states" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the united states, and (ii) "manufactured products" means items and construction materials composed in

**EXHIBIT C**

**ADD BAFO**

**EXHIBIT D**

**ADD PERFORMANCE MEASURES**



**EXHIBIT E**

**RFP INCORPORATED**

**EXHIBIT F**  
**COMPANY LEASE OF CATS FACILITIES**



LICENSE  
AGREEMENT.pdf

**ATTACHMENT B  
REQUIRED FORMS**

ATTACHMENT B – REQUIRED FORMS

**ATTACHMENT B  
REQUIRED FORMS**

**REQUIRED FORM 1 – REQUEST FOR PROPOSALS ACKNOWLEDGEMENT**

**RFP# 269-2023-1363**

**Transit Management Services**

The Company hereby certifies receipt of the Request for Proposals for the City of Charlotte, North Carolina RFP #269-2023-1363, Transit Management Services. This form should be completed upon receipt of the City's Request for Proposals and emailed in time for the City to receive it by or before **May 5, 2023**. Failure to submit this form by the designated date shall not preclude the Company from submitting a proposal. Please email the completed Request for Proposals Acknowledgement Form to the attention of:

Todd Holcomb

Department of General Services – City Procurement

Email: [Todd.Holcomb@charlottenc.gov](mailto:Todd.Holcomb@charlottenc.gov)

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

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

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

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

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

Contact E-mail Address: \_\_\_\_\_

Contact Phone Number: \_\_\_\_\_

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

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

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

☐ **We do not plan to attend the Pre-Proposal Conference and do not plan on submitting a Proposal**

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

**ATTACHMENT B  
REQUIRED FORMS**

**REQUIRED FORM 2 – ADDENDA RECEIPT CONFIRMATION**

**RFP# 269-2023-1363**

**Transit Management 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](http://www.ips.state.nc.us) and the City's Contract Opportunities site at <http://charlottenc.gov/DoingBusiness/Pages/ContractOpportunities.aspx>.

<b>Addendum #</b>	<b>Date Downloaded from NC IPS</b>
#1	
#2	
#3	
#4	
#5	
#6	
#7	
#8	

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Title

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

**ATTACHMENT B  
REQUIRED FORMS**

**REQUIRED FORM 3 – PROPOSAL SUBMISSION FORM**

**RFP# 269-2023-1363**

**Transit Management Services**

This Proposal is submitted by:

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

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

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

\_\_\_\_\_

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

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

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

(Area Code) Telephone Number

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

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

## ATTACHMENT B REQUIRED FORMS

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

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

I, the undersigned, hereby acknowledge that my company was given the opportunity to provide exceptions to the Sample Contract as provided in the RFP. As such, I have elected to do the following:

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

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

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

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

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

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

**Company Representative (printed):** \_\_\_\_\_

**REQUIRED FORM 4 – PROPOSED PRICING WORKSHEET**

**RFP# 269-2023-1363**

**Transit Management Services**

To facilitate the evaluation of cost and best overall value, this form and format must be used by Proposing Companies to provide pricing for the Required Services.

**Note:** With the exception of Pricing Items 2 and 3, proposers may combine cost elements so long as sufficient detail regarding major assumptions and cost drivers is provided in the narrative section of the table.

<b>Proposing Company Name:</b>	
--------------------------------	--

Item of Pricing	Year One	Year Two	Year Three	Year Four (Option Year One)	Year Five (Option Year Two)
1. Mobilization and startup following notice to proceed					
2. Salary and benefits for Key Personnel					
3. Salary and benefits for operations and maintenance staff					
4. Administrative and corporate oversight costs					
5. Programmatic and management systems costs					
6. Service improvements and innovations					
7. Optional Procurement Services					
Total					
Cumulative Total					



**Attachment B**  
**Required Forms**

---

Item of Pricing	For each item of pricing, provide a narrative or list of major assumptions and cost drivers.
1. Mobilization and startup following notice to proceed	
2. Salary and benefits for Key Personnel	
3. Salary and benefits for operations and maintenance staff	
4. Administrative and corporate oversight costs	
5. Programmatic and management systems costs	
6. Service improvements and innovations	
7. Optional Procurement Services	
<b>Notes:</b> [Include other notes here as applicable]	

**REQUIRED FORM 5 – REFERENCES**

**RFP# 269-2023-1363**

**Transit Management Services**

Companies shall utilize the format below to provide a **minimum of three to five (5) client references**. 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.

Name of Client:	Main Phone:
Address:	
Primary Contact:	Title:
Primary Contact Phone:	Primary Contact E-mail:
Service Dates:	
Summary and Scope of Project:	
Contract Term and Value (Annual/Total):	Number of Client Employees:
Name of Client:	Main Phone:
Address:	
Primary Contact:	Title:
Primary Contact Phone:	Primary Contact E-mail:
Service Dates:	
Summary and Scope of Project:	
Contract Term and Value (Annual/Total):	Number of Client Employees:
Name of Client:	Main Phone:
Address:	
Primary Contact:	Title:
Primary Contact Phone:	Primary Contact E-mail:
Service Dates:	
Summary and Scope of Project:	
Contract Term and Value (Annual/Total):	Number of Client Employees:
Name of Client:	Main Phone:
Address:	
Primary Contact:	Title:
Primary Contact Phone:	Primary Contact E-mail:
Service Dates:	
Summary and Scope of Project:	
Contract Term and Value (Annual/Total):	Number of Client Employees:
Name of Client:	Main Phone:
Address:	
Primary Contact:	Title:
Primary Contact Phone:	Primary Contact E-mail:
Service Dates:	
Summary and Scope of Project:	
Contract Term and Value (Annual/Total):	Number of Client Employees:



**REQUIRED FORM 6 – M/W/SBE UTILIZATION**

**RFP# 269-2023-1363**

**Transit Management 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-owned Business Enterprise (MBE) and Woman-owned 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.

<b>Company Name:</b>	
----------------------	--

**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 by the firm to maximize inclusion of MWSBEs to be submitted with the firm’s proposal (attach additional sheets if needed):

---

---

---

Identify outreach efforts that will be employed by the firm to maximize inclusion during the contract period of the Project (attach additional sheets if needed):

---

---

---

*[Form continues on next page]*

**Attachment B**  
**Required Forms**

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

Subcontractor Name	Description of work or materials	Indicate "M," "S," and/or "W"	City Vendor #

Total MBE Utilization	%
Total WBE Utilization	%
Total SBE Utilization	%
<b>Total MWSBE Utilization</b>	%

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

\_\_\_\_\_

Date

\_\_\_\_\_

Representative Name

\_\_\_\_\_

Estimated Total Contract Value

**REQUIRED FORM 8 – CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER  
RESPONSIBILITY MATTERS**

**RFP # 269-2023-1363**

**Transit Management 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 (ten percent) 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:

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**REQUIRED FORM 9 – BYRD ANTI-LOBBYING CERTIFICATION**

**RFP # 269-2023-1363**

**Transit Management 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.

\_\_\_\_\_  
Print Name

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

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

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date

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

**REQUIRED FORM 10 – FINANCIAL CAPACTIY CERTIFICATION AND GUARANTY**

**RFP # 269-2023-1363**

**Transit Management Services**

To be considered responsive to this solicitation, proposing firms must complete this Required Form 10 to certify that they have sufficient short- and long-term financial stability to complete the obligations of a contract resulting from this solicitation.

Short-listed firms will be required to demonstrate short- and long-term viability by providing detailed information on financial capacity and strength. The evaluation of financial viability is necessary to protect the City from risk of default by a selected Company due to financial instability or insolvency. Evidence of financial viability will be required of parent companies serving as guarantors, joint venture participants, and subcontractors providing more than fifteen percent (15%) of the proposed services, as applicable.

Various analytical techniques will be used to assess the financial strength and stability of each Company, focusing on profitability, solvency, and efficiency. The analysis will include an evaluation of specific financial indices and ratios to maximize objectivity and provide measures that are more directly comparable among Companies.

Other factors that may impact the financial position of a Company, or which provide additional evidence of the financial strength of a Company, will also be assessed. These factors include years of experience in providing similar Services, and demonstration of the ability to obtain sufficient levels of liability and property damage insurance.

Relevant information regarding recent litigation and bankruptcy filings, which may materially affect a Company's financial position, will be examined. In addition to credit ratings and credit reports, bank and vendor references will be used to evaluate the credit worthiness of each Company.

The City's Internal Audit Division will review the submitted information and make a recommendation to the Evaluation Committee as to whether a shortlisted Company has sufficiently demonstrated financial stability. Shortlisted firms that do not sufficiently demonstrate financial stability will be removed from further consideration.

**CERTIFICATION AND GUARANTY**

In submitting a proposal to this RFP, the undersigned hereby acknowledges, certifies, and guarantees that the proposing firm and its guarantors, joint venture participants, and subcontractors, as applicable, have sufficient short- and long-term financial stability to complete the obligations of a contract resulting from this solicitation.

The undersigned further certifies that if this certification is false, such false certification will constitute grounds for the City to reject the Proposal submitted by the Company on this Project and to terminate any contract awarded based on such Proposal.

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

**Company Representative (printed):** \_\_\_\_\_