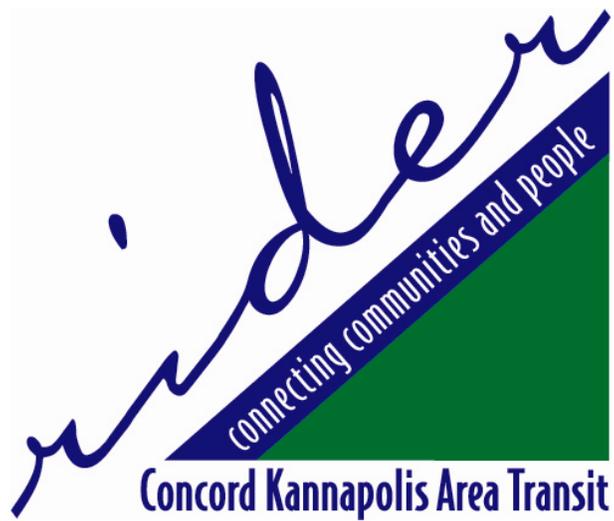


REQUEST FOR PROPOSALS
SOLICITATION
OF THE
CONTRACT PROVIDER FOR THE CONCORD
KANNAPOLIS TRANSIT SYSTEM (RIDER)



CITY OF CONCORD, NORTH CAROLINA

NOVEMBER 21ST, 2011

PROPOSALS DUE: DECEMBER 23RD, 2011

RIDER TRANSIT CENTER
3600 SOUTH RIDGE AVENUE
CONCORD, NC 28025

REQUEST FOR PROPOSALS

Solicitation of the Contract Provider for Concord Kannapolis Transit System

November 21st, 2011

Dear Service Provider:

The City of Concord, located in the State of North Carolina, is now accepting proposals for the Operation of Bus Services in the Concord / Kannapolis Urban Area. The requirements for submitting a proposal are stated in the attached Request for Proposals ("RFP"). Please review them carefully.

A pre-proposal conference for the purpose of reviewing the RFP and answering questions regarding the solicitation will be held on **December 6th at 2:00 PM**, in the Rider Transit Center located at 3600 South Ridge Avenue, Concord, NC 28025. Please bring a copy of the RFP with you at that time. All Service Providers must return a completed RFP Acknowledgement Form (see Section 10, Form One). Interviews may be requested by the Evaluation Committee from Service Providers that fall within the competitive range, and are tentatively set for the date listed in Section 3.1.

All proposals are due to the Rider Transit Center, 3600 South Ridge Avenue, Concord, NC 28025, no later than **December 23rd, 2011 at 2:00 PM**. One (1) original and six (6) copies of your proposal responses should be submitted in a sealed box or opaque envelope plainly marked with the service description, and one (1) original copy and six (6) copies of the cost proposal must be submitted in a separate and sealed envelope as follows:

Request for Proposals

Attention: L.J. Weslowski

Name of Company Submitting Proposal

Solicitation of the Contract Provider for Concord Kannapolis Area Transit System

All questions regarding this RFP should be directed to L.J. Weslowski, Transit Manager, via email at weslowlj@concordnc.gov or via fax at 704.920.6900. The City of Concord is an equal opportunity purchaser.

Sincerely,

Brian Hiatt, City Manager
City of Concord

1. INTRODUCTION

The City of Concord (“City”) is seeking a qualified Service Provider to operate, with its own employees, local bus services (the “Services”) throughout the Concord Kannapolis Area (the “Area”). The City will provide the Service Provider with a sufficient fleet of vehicles for the service level as noted in Section 5.D. The Service Provider will be responsible for identifying and establishing an operations and maintenance facility within 10 miles of the Rider Transit Center located at 3600 South Ridge Avenue, Concord, NC 28025. The City will not be responsible or liable for any costs to the Service Provider if these services do not begin by July 1st 2012.

The transit services to be provided include fixed-route operations within the Area. The selected Contractor shall provide the personnel, maintenance, materials, supplies, training, and superintendence necessary for safe, courteous, and reliable transportation of passengers. The Service Provider will be solely responsible for maintenance of the City-provided fleet of ten heavy-duty buses, two Light Transit Vehicles (LTVs), equipment, and a facility suitable for the provision of Services. Passengers will pay the Service Provider with cash or by showing valid and approved passes/tickets/transfers on each trip. The Service Provider will return all revenue collected to the City on a daily basis.

1.1. Background

The Cities of Concord and Kannapolis have entered into a joint inter-local agreement to establish a centrally governed and managed system of fixed route public transportation services for the Area formally known as Concord Kannapolis Area Transit, known locally as Rider. Rider has been in operation since April 2004. The City of Concord will be responsible for contracting with the Service Provider to meet the current and future transit needs of the Area.

At the highest level, those needs would be classified as follows:

- a. Provide safe, customer service focused, efficient service to passengers who desire to use the;
- b. Provide organizational integration and effectiveness;
- c. Promote a partnership between the participating municipalities and the Service Provider; and
- d. Collect data to report on trends for transportation issues.

1.2. Purpose of Solicitation

In issuing this RFP, the City is seeking to contract with the best Service Provider to provide a safe, easy to use, reliable, efficient and cost effective public transit solution both for the City and the passengers that use the services.

1.3. General Description of Tasks

Work associated with this RFP shall include but not be limited to the following tasks:

- 1.3.1. The Service Provider shall be responsible for all preparations necessary to continue operation of the services already in place including identification of an operations and maintenance facility within 10 miles of the Rider Transit Center. The Service Provider shall have complete responsibility for identifying and securing of the facility at a site approved by the City prior to the execution of any purchase or lease agreement by the Service Provider. All personnel shall be drug tested in accordance with all state and federal laws, hired and trained, provided with documented procedures, development of an aggressive safety program, facilities and equipment prepared, routes and schedules fine tuned, driver runs cut, and all other activities required for Service Provider start-up, and shall be established prior to start-up. The Service Provider will be required to submit a detailed Start-Up Plan and be approved by the City prior to the execution of a contract. An outline of the Start-Up Plan must be submitted as part of their proposal.
- 1.3.2. The Service Provider shall coordinate, manage, and control all necessary service activities, which shall include, but not be limited to:
 - a. Operating all Services to the levels and standards required as described throughout this RFP as well as any additional service added to the contract by the City;
 - b. Providing drivers and maintenance, supervisory, and administrative personnel;
 - c. Establishing all employment policies relative to Service Provider's personnel;
 - d. Developing driver training and testing programs;
 - e. Developing administrative, safety and security procedures, performance statistics, and financial records;
 - f. Developing methods to maximize service efficiency and reliability;
 - g. Performing all activities associated with the maintenance of equipment required for the operation of the system. This shall include maintenance of City buses as well as any other equipment provided by City (see Appendix D of City supplied and City maintained equipment).
 - h. Performing or assisting City staff in carrying out operational planning, scheduling, blocking, run-cutting and other related functions, such as

identifying running time and/or loading problems and recommending specific schedule and other adjustments to correct problems;

- i. Executing data collection and gathering services as requested by the City;
- j. Implementing all Federally required programs such as Federal Transit Administration (FTA) Drug and Alcohol Testing and compliance with the Americans with Disabilities Act (ADA);
- k. Responsibility for opening and closing of Rider Transit Center grounds and providing supervisory staff onsite during all hours of revenue service operation to assist customers and address any safety and/or security issues that may arise;
- l. Responsibility of the maintenance, repair and upkeep of all bus stop and related passenger amenities such as schedule holders, trash cans, benches, lighting and shelters (**optional**);
- m. Providing required insurance; and
- n. Maintaining financial security and integrity for the collection of fares and transfer of fares collected to the City. All fare collection and transfer must comply with FTA and city accounting methods.

1.4. **Interpretations and Addenda**

No interpretation or clarification of the meaning of any part of this RFP will be made orally to any Service Provider with the exception of questions posed at the pre-proposal conference. The questions asked at the pre-proposal conference and answers provided will be sent to all Service Providers that have indicated that they will be submitting an RFP response package. Otherwise, Service Providers must request such interpretations or clarification in writing from the City. Requests for information or clarification of this RFP must be made in writing and addressed L.J. Weslowski at the fax, or e-mail address listed below. Questions should reference the RFP page and section number.

L.J. Weslowski
Transit Manager
Rider Transit Center
3600 South Ridge Avenue
Concord, NC 28025
Fax: 704.920.6900
E-mail: Weslowlj@concordnc.gov

When responding to Service Provider questions, the City will provide the answer or information in writing or electronic format to all prospective Service Providers that have indicated that they will be submitting an RFP response package. Please submit your questions by **12:00 p.m. December 2nd, 2011.**

Any written responses issued by the City to questions and requests for information will be provided to all potential Service Providers. Any and all such interpretations and supplemental instructions will be made in the form of written addenda which will be sent to all firms who requested a RFP package. The City reserves the right to disqualify any firm who contact a City, Transit, or MPO official, employee, or agent concerning this RFP other than in accordance with this section. Nothing in this section shall prohibit the City from conducting discussions with Service Providers after the proposal opening.

2. GENERAL INFORMATION.

Section 2.0 contains information, which shall govern the general terms and conditions of this RFP and any subsequent proposal submissions.

2.1. Definitions

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

Agreement: Refers to the Contract executed between the Service Provider and the City.

Billable Time: Billable Time is the time the vehicle is in service carrying passengers (revenue time). Time between separate pieces of revenue work and the time it takes to go to and come from the point or points where vehicles are garaged or parked to the point or points where the vehicle goes into and out of service (deadhead time) are not billable. In most instances, this means that billable hours will be the “first stop to the last stop” on City-approved pieces of work.

City: Refers to the City of Concord, North Carolina, a municipal corporation established in accordance with the laws of the State of North Carolina.

Contract Administrator: Refers to the Rider Transit Manager or assigned designee, which will administer and manage the Contract for the City.

Effective Date: The date on which the City executes the Contract arising from this procurement effort.

Emergency Plan: Detailed plan of action that the Service Provider has submitted to the City for approval including how traffic accidents involving buses, traffic delays, and extreme weather will be addressed by the Service Provider.

Evaluation

Committee: Refers to the team composed of City staff and/or a consultant that will evaluate the proposals and make a recommendation to the Concord Kannapolis Transit Commission and Concord City Council.

Passengers: Refers to patrons of the Services offered.

- Proposal:* Refers to a properly signed and guaranteed written offer of the Service Provider to perform the Services and to furnish the labor, materials and equipment at the unit cost quoted on **Required Form Six**, Section 10.
- Road Calls:* Refers to calls for help to the Service Provider dispatcher for a broken down bus or any other problem that would prevent the timely execution of the Services.
- Revenue Vehicle Hour:* Refers to Billable time - the time the vehicle is in service carrying passengers (revenue time). Time between separate pieces of revenue work and the time it takes to go to and come from the point or points where vehicles are garaged or parked to the point or points where the vehicle goes into and out of service (deadhead time) are not billable. In most instances, this means that billable hours will be the “first stop to the last stop” on City approved pieces of work.
- Service Provider:* Refers to a Company that has been selected by the City to provide the Services as described in this RFP or that has submitted a Proposal in response to this RFP for review by the City.
- Services:* Refers to services or any work that is required to be performed by the Service Provider according to the terms and conditions as set forth in this RFP for Solicitation of the Contract Provider for Bus Services in the Concord Kannapolis Area.
- Service Start Date:* Refers to the date on which Services to be provided under the Contract begin. This date is expected to be July 1, 2012. The City will not be responsible or liable for any costs to the Service Provider if service does not begin on that date.

2.2. **City Point of Contact**

The Rider Transit Manager will be the one Point of Contact for the final Contract, who will represent the City’s best interests. The Transit Manager will facilitate the flow of information, as needed between the Service Provider and various City departments, and act as the Project Manager. The Transit Manager may recommend to the City's Contracting Officer or designee to invoke liquidated damages as described in Section 9.7 after any incident that the Service Provider does not meet the specifications of this RFP.

2.3. **Accuracy of RFP and Related Documents**

The City assumes no responsibility for conclusions or interpretations derived from technical and background information presented in this RFP, or otherwise distributed or made available during this procurement process. In addition, the City will not be bound by or be responsible for any explanation, interpretation or conclusions of this RFP or any documents provided by the City other than those given in writing by the City through the issuance of addenda. In no event may a Service Provider rely on any oral statement by the City or its agents, advisors or consultants.

Should a Service Provider find discrepancies or omissions in this RFP or any other documents provided by the City, the Service Provider should immediately notify the City of such potential discrepancy in writing, and a written addendum will be mailed or delivered to each Service Provider if the City determines clarification to be necessary. Each Service Provider requesting an interpretation will be responsible for delivering such requests to the City's designated representatives in writing.

2.4. **City Rights and Options**

The City, at its sole discretion, reserves the following rights:

- 2.4.1. To supplement, amend, substitute or otherwise modify this RFP at any time;
- 2.4.2. To cancel this RFP with or without the substitution of another RFP;
- 2.4.3. To issue additional requests for information;
- 2.4.4. To conduct investigations with respect to the qualifications and experience of each Service Provider;
- 2.4.5. To waive any minor defect or technicality in any Proposal received; and
- 2.4.6. To reject any or all Proposals.

2.5. **Expense of Submittal Preparation**

The City accepts no liability for the costs and expenses incurred by the Service Providers in responding to this RFP, in attendance at interviews, participating in contract development sessions, or in meetings and presentations required for the contract approval process. Each Service Provider that enters into the procurement process shall prepare the required materials and submittals at its own expense and with the express understanding that they cannot make any claims whatsoever for reimbursement from the City for the costs and expenses associated with the procurement. All documents and materials submitted as part of this RFP are property of the City and are not subject to return.

2.6. Proposal Conditions

The following terms are applicable to this RFP and your organization's Proposal.

2.6.1. RFP Not An Offer.

This RFP does not constitute an offer by the City. No binding contract, obligation to negotiate, nor any other obligation shall be created on the part of the City unless the City and your organization execute a written Contract. No recommendations or conclusions from this RFP process concerning the Service Provider 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.

2.6.2. General Reservation of Rights.

The City reserves the right, in its sole discretion, to reject any or all Proposals in response to this RFP, to waive any minor irregularities or informalities in a Proposal, and to enter into any agreement deemed by the City to be in the best interest of the City. The City reserves the right to discuss and negotiate with selected Service Provider any terms and conditions in the proposals including but not limited to financial terms.

2.6.3. City's Right to Terminate Discussions.

The Service Provider's participation in this process might result in the City selecting your organization to engage in further discussions. The commencement of such discussions, however, does not signify a commitment by the City to execute a Contract or to continue discussions. The City can terminate discussions at any time and for any reason.

2.6.4. Requirement for Representation as to Accuracy and Completeness of Proposal.

Each Service Provider shall make the following representations and warranty in its Proposal Cover Letter, the falsity of which might result in rejection of its Proposal: **"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."**

2.6.5. Statutory Requirements.

Any Contract awarded as a result of this RFP shall be in full conformance with all statutory requirements of North Carolina and all statutory requirements of the Federal Government, to the extent applicable.

2.6.6. Reservation of Right to Change Schedule.

The City shall ultimately determine the timing and sequence of events resulting from this RFP.

- 2.6.7. **Reservation of Right to Amend RFP.**
The City reserves the right to amend or cancel this RFP at any time during the process, if it believes that doing so is in the best interests of the City. Any addenda will be sent to each Service Provider in writing. Service Providers are required to acknowledge their receipt of each amendment by using the Addenda Receipt Confirmation Form set forth in **Section 10, Form Two**.
- 2.6.8. **Additional Evidence of Ability.**
A Service Provider shall be prepared to present additional evidence of its experience, qualifications, ability, products, service facilities, and financial standing if requested by the City.
- 2.6.9. **No Collusion or Conflict of Interest.**
By responding to this RFP, the Service Provider shall be deemed to have represented and warranted that the proposal is not made in connection with any competing Service Provider submitting a separate response to this RFP, and is in all respects fair and without collusion or fraud. Any evidence of collusion or fraud will be investigated and prosecuted by the City to the fullest extent of the law.
- 2.6.10. **Proposal Terms Firm and Irreversible.**
The signed Proposal shall be considered a firm offer on the part of the Service Provider. The City or other authorities reserves the right to negotiate costs and services. All Proposal responses (including all statements, claims, declarations, costs and specifications in the proposals) shall be considered firm and irrevocable for purposes of future Contract negotiations unless specifically waived in writing by the City. The Service Provider chosen for award should be prepared to have its Proposal and any relevant correspondence incorporated into the Contract, either in part or in its entirety, at the City's election. Any false or misleading statements found in the Proposal will be grounds for disqualification.
- 2.6.11. **Subcontracting.**
The successful Service Provider shall be the prime Service Provider and shall be solely responsible for contractual performance. In the event of a subcontracting relationship, the Successful Service Provider will assume all responsibility for the performance of the Services that are supplied by the subcontractor. Additionally, the City must be named as a third party beneficiary in all subcontracts.
- 2.6.12. **Withdrawal for Modification of Proposals.**
Service Providers may change or withdraw their Proposals at any time prior to Proposal opening; however, no oral modifications will be allowed. Only telegrams, letters, or other formal written requests for modifications or corrections of a previously submitted Proposal, which is addressed in the same manner as the Proposal, and received by the City prior to the scheduled closing time for receipt of Proposals, will be accepted. The

Proposal, when opened, will then be corrected in accordance with such written request(s), provided that the written request is contained in a sealed envelope, which is plainly marked “**Modifications to Proposal.**”

2.6.13. No Bribery.

In submitting a response to this RFP, each Service Provider certifies that neither it, any of its affiliates or subcontractor, 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 agreement.

2.6.14. Exceptions to RFP.

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

2.6.15. Fair Trade Certifications.

By submission of a Proposal, the Service Provider certifies that in connection with this procurement:

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

2.6.16. Compliance with Laws.

In submitting a Proposal, each Service Provider agrees to make itself aware of and comply with all local, state, and federal ordinances, statutes, laws, rules, and regulations applicable to the Services covered by this RFP. Each Service Provider further agrees that it will at all times during the term of the Contract be in compliance with all applicable federal, state and/or local laws or policy regarding employment practices. Such laws will include, but shall not be limited to Workers’ Compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), North Carolina Safety Regulation

19A.03D.0800, and all Occupational Safety and Health Administration (OSHA) regulations applicable to the work covered by this RFP.

2.6.16. Clarification of Ambiguities.

Any Service Provider believing that there is any ambiguity, inconsistency or error in this RFP shall promptly notify the City in writing of such apparent discrepancy. Notification shall be sent to the City at the address in Section 1.4. Failure to notify the City will constitute a waiver of claim of ambiguity, inconsistency or error.

2.6.17. Service Provider's Obligation to Fully Inform Themselves.

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

2.6.18. Post-Award Conference.

A post-award conference will be scheduled with the successful Service Provider as soon as practical after the award of the Contract. A Service Provider representative shall attend the conference along with anticipated major subcontractors. A detailed proposed **Start-Up Plan** and implementation schedule shall be submitted to the City's Transit Manager.

2.6.19. Disclaimer.

Each Service Provider must perform its own evaluation and due diligence verification of all information and data provided by the City. The City makes no representations or warranties regarding any information or data provided by the City.

3. DESCRIPTION OF PROCUREMENT PROCESS.

Section 3.0 contains information that shall govern the procurement process for this project.

3.1. Schedule and Process

The following chart shows the schedule of events to prepare your organization's Proposal. 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:

<i>DATE</i>	<i>EVENT</i>
November 21 st , 2011	<i>Issuance of RFP.</i> The City issues this RFP.
December 2 nd , 2011	<i>Submission of Written Questions.</i> Service Providers may submit to the City written questions for purposes of clarifying this RFP. All questions must be sent to L.J. Weslowski at the address, e-mail or fax number listed in Section 1.4 and must include the name of a Service Provider contact person to receive the City's answers. Questions are due by 12:00 PM . Questions received after this deadline may be answered at the discretion of Rider staff. Questions will be answered at the Pre-Proposal Conference.
December 6 th , 2011	<i>Pre-Proposal Conference. 2 PM, Rider Transit Center</i>
December 23 rd , 2011	<i>Proposal Submission.</i> Proposals are due by 2:00 PM on Friday, December 23 rd , 2011, at the Rider Transit Center as described in the cover letter. All Proposals will be time-stamped upon receipt and held in a secure place until this date.
January 17 th -20 th , 2011	<i>Interviews & Presentations</i>
March 2012	<i>Anticipated City Council Award Date.</i>
July 2012	<i>Service Contract Begins</i>

3.2. **Request For Proposals Acknowledgement**

Upon the Service Provider's receipt of this RFP, please acknowledge its receipt via fax or email using the Request for Proposals Acknowledgement Form located in Section 10, **Form One**. Complete the form in its entirety advising the City of your firm's intention to submit or not submit a Proposal and the name, address, telephone number, facsimile number and e-mail address of your primary and secondary contact person. The completed and signed form should be emailed or faxed to the Transit Department, Attention L.J. Weslowski @ weslowlj@concordnc.gov or 704.920.6900.

3.3. **Pre-Proposal Conference**

A pre-proposal conference will be conducted on **December 6th, 2011 at 2:00 PM** in the Rider Transit Center located at 3600 South Ridge Avenue, Concord, NC 28025. Attendance is optional; however, it will assist the City in providing the best information on its requirements and resources to all parties.

3.4. **Service Provider Investigation**

Service Providers shall satisfy themselves through personal investigation and by such other means, as they deem necessary, concerning the conditions, which may affect delivery of the proposed Services as well as their cost. No information derived from any part of this RFP or from the City, or any other source, shall relieve the Service Provider from any risk or from fulfilling the provisions of any Agreement resulting from this RFP.

3.5. **Interviews, Meetings and Negotiations with Service Providers**

The Service Provider(s) whose proposals are deemed to fall within the competitive range of proposal scores may be required to appear before the City and/or its representatives for an interview. During such interview, the Service Provider will be required to orally and otherwise present its Proposal and to respond in detail to any questions posed. Key management staff included in the Proposal must attend the interview. The tentative dates scheduled for interviews are the week of **January 17th-20th, 2012**. These dates may change as the City reviews proposals and attempts to align schedules for staff and Service Providers. The City reserves the right to forgo the interviews should it be determined that only one Service Provider falls within the competitive range.

3.6. **Submission of Proposals**

One (1) original Proposal signed in ink by an authorized company official along with the corporate seal, plus six (6) copies shall be submitted to the address listed in Section 1.4. The "original" Proposal and each of the six copies shall be complete and unabridged, and shall not refer to any other copy of the signed/sealed original for any references, clarifications, or additional information.

One original copy and six copies of the cost proposal must be submitted in a separate and sealed envelope and labeled as such. When received, all Proposals and supporting materials, as well as correspondence relating to this RFP, shall become the property of the City and is not subject to return.

Proposals or any part thereof, received by fax will not be considered. Please do not arrive at the Proposal opening for the purposes of reviewing your competitor's Proposals. Proposals will not be made available to inspect or copy until any trade secret issues have been resolved. Unsuccessful Proposers may request a debriefing session after the contract has been awarded.

3.7. **Binding Proposal**

Each Proposal shall be signed by an individual authorized to bind the Service Provider and shall contain a statement to the effect that the Proposal is a firm offer for a 180-calendar day period from the date of the opening. The City reserves the right to negotiate cost and services. All costs quoted shall be firm and fixed for the full Contract period of five years. The Proposal shall provide the name, title, address and telephone number of the individual with authority to contractually bind the Service Provider.

3.8. **Correction of Errors**

The person signing the Proposal must initial erasures or other corrections in the Proposal. The Service Provider 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.

3.9 **Evaluation Process**

Proposals will be evaluated based on the Service Provider's ability to meet the requirements of the RFP. To be deemed responsive, it is important for the Service Provider to provide appropriate detail to demonstrate to the satisfaction of each criterion and compliance with the performance requirements outlined in the RFP.

Each Service Provider's submission will consist of a technical proposal and a cost proposal. The technical proposal will account for 70 percent of the total evaluation while the cost proposal will account for the 30 percent of the total evaluation. The cost part of the proposals will be evaluated based on the cost per individual Revenue Vehicle Hour. The interview, if necessary, will assist the City in determining which Service Provider's proposal offers the best value to the City taking into consideration cost and other factors.

As soon as practical after opening the Proposals, the committee will recommend one firm for contract award by Concord City Council.

3.10 Basis of Award

The Committee will recommend to the City Council the award of a contract to the Service Provider whose proposal is deemed to be the most responsive and advantageous to the City, cost and other factors considered subject to negotiation and availability of sufficient funds.

3.11 Protest

This section describes the policies and procedures governing the receipt and resolution of vendor protests in connection with this RFP.

1. Types of Protests/Time Limits

- a) Protests based upon alleged restrictive specifications or alleged improprieties in the City's procurement process must be filed no later than five days prior to the proposal due date.
- b) Protests based upon alleged improprieties of a Proposal shall be filed no later than five days after the Protestor knows or should have known of the facts giving rise thereto.
- c) Protests based upon the award of a contract shall be filed no later than five days after the notification to the unsuccessful firms of the City's intent to award, or no later than five days after an unsuccessful firm becomes aware of the City's intent to award a contract, whichever comes first.

All protests must be filed in writing. Oral protests will not be accepted.

2. Where to File

Protests must be filed directly with the City Manager of the City of Concord, or designee, at the address indicated in the solicitation.

3. The Protest

The protest must contain the following information:

- i. The name, address and telephone number of the protestor.
- ii. Identity of the RFP (by number and description).
- iii. A statement of the specific grounds for protest and any supporting documentation. Additional materials in support of the protest will only be considered if filed within the time limits set in Paragraph B.

- iv. An indication of the ruling or relief desired from the City.
 - a) If the protest is filed before contract award, the potential contractor will be advised by the City of the pending protest.
 - b) If deemed appropriate by the City, an informal conference on the merits of the protest may be conducted with all interested parties allowed to attend.

4. Confidentiality of Protest

Material submitted by a protestor will not be withheld from any interested party, except to the extent that the withholding of information is permitted or required by law or regulation. If the protestor considers that the protest contains proprietary material, which should be withheld, a statement advising of this fact must be affixed to the front page of the protest documents and the alleged proprietary information must be so identified wherever it appears.

5. Response to the Protest

The City Manager, or his designee, will respond to the protest within ten working days after receipt of the protest by the City. The City's response shall address only the issues raised originally by the protestor.

6. Rebuttal to the City's Response

The protestor may submit a written rebuttal to the City's response, addressed to the City Manager or his designee, but must do so within five days after receipt of the original response from the City. New issues in the rebuttal will not be addressed by the City. After receipt of the protestor's rebuttal, the Concord City Manager or designee will review the protest and notify the protestor of his final decision.

7. Request for Additional Information

Failure of the protestor to comply expeditiously with a request for information as specified by the Concord City Manager or designee may result in determination of the protest without consideration of the additional information.

8. Request for Reconsideration

If data becomes available that was not previously known, or there has been an alleged error of law, a protestor may submit a request for reconsideration of the protest. The Concord City Manager or designee will again review the protest considering all currently available information. The City Manager or designee's determination will be made within a reasonable period of time, and his or her decision will be final.

9. Procurement Process Status

Upon timely receipt of a protest, the City will delay the receipt of proposals until after resolution of the protest for protests filed prior to the proposal due date, or withhold award until after resolution of the protest for protests filed after receipt of proposals. However, the City may receive proposals or award a contract whenever the City, at its sole discretion, determines that:

- a) The items or work to be procured are urgently required; or
- b) Delivery or performance will be unduly delayed by failure to make the award promptly; or
- c) Failure to make prompt award will otherwise cause undue harm to the City or the Federal Government.

10. FTA Involvement

In the case of FTA funded procurements, the protestor may protest to the FTA only where the protest alleges that the City failed to have or to adhere to its protest procedures. Any protest to the FTA must be filed in accordance with FTA Circular 4220.1F.

11. Definitions

- a) "Days" means working days.
- b) "File or Submit" means date of receipt by City's Purchasing Manager or designee.
- c) "Federal Law or Regulation" means any valid requirement imposed by Federal statute or regulation governing contracts awarded pursuant to a grant agreement between the City and the FTA. This includes but is not limited to the requirements as stated in the FTA Master Agreement (MA 18) & FTA Circular 4220.1F.
- d) "Interested Party" means all Proposers/offerors. It may also include a subcontractor or supplier provided they have a substantial economic interest in a portion of the Request for Proposals.
- e) "Potential Contractor" means the proposer recommended for award of the contract in the event that the protest is denied.

4. PROPOSAL FORMAT.

The City desires all Proposals to be identical in format in order to facilitate comparison. While the City's format may represent departure from the Service Provider's preference, the City requires strict adherence to the format. Each Proposal should be prepared simply and economically, avoiding the use of elaborate promotional materials beyond those sufficient to provide a complete, accurate and reliable presentation. The Proposal will be in the format described below:

- a. Cover Letter;
- b. Company Portfolio or Annual Report;
- c. Affidavit;
- d. Executive Summary;
- e. Background, Experience and Project Approach (format by responding to the questions in Section 7.3 and 7.4);
- f. Financial Information (as requested in Section Seven);
- g. The "Request for Proposal Acknowledgement Form" Section 10, **Form One**;
- h. The "Addenda Receipt Confirmation Form" set forth in Section 10, **Form Two**;
- i. The "Proposal Submission Form" set forth in Section 10, **Form Three**;
- j. The "Insurance Agent Statement" set forth in Section 10, **Form Four**;
- k. The "Project Functional Requirements Form" set forth in Section 10, **Form Five**;
- l. The "Cost Proposal Forms" set forth in Section 10, **Form Six**;
- m. Exceptions proposed to the remainder of the RFP

All Proposals shall be 8 1/2" x 11" format with all standard text no smaller than 11 points. All submissions should use two-sided printing and be bound in a three ring or spiral binder with tab dividers corresponding to the content requirements specified below.

Service Providers are required to organize the information requested in this RFP in accordance with the format outlined. Failure of the Proposer to organize the information required by this RFP as outlined may result in the City, at its sole discretion, deeming the Proposal non-responsive to the requirements of this RFP if the City is unable to accurately or fairly assess or evaluate the proposal in relation to others received. The Service

Providers, however, may reduce the repetition of identical information within several sections of the Proposal by marking the appropriate cross-references to other sections of their Proposal. Appendices may be used to facilitate Proposal preparation.

4.1. Use of Required Forms

The Cost Proposal Form (Section 10, **Form Six**) provided by the City shall be used and shall not be altered. **The alteration of the Cost Proposal Form by the Proposer may result in the City, at its sole discretion, deeming the Proposal non-responsive to the requirements of this RFP**

4.2. Proposal Content

The Scope of Work in Section 5 details the start-up and on-going tasks required of the Service Provider. Please respond to each of the tasks and responsibilities outlined in Section 5 in your Proposal and describe your plan to accomplish each. Include examples of procedures, policies and the approach your firm uses in other similar operations. The City has attempted to document all necessary tasks for implementation and on-going tasks, but we are receptive to changes that Service Providers may suggest.

4.2.1. Cover Letter.

The Proposal should contain a letter and introduction (limit to one page) and include the company name and address, and the name and telephone number of the persons who will be authorized to represent the Service Provider regarding all matters related to the Proposal and any Contract subsequently awarded to said Service Provider. This letter shall be signed by a person(s) authorized to bind the company to all commitments made in the Proposal. If the Service Provider is a partnership, a general partner must sign the Proposal in the name of the partnership thereof. If the Service Provider is a corporation, the proposal must be signed on behalf of the corporation by two authorized officers (a Chairman of the Board, President or Vice President, and a Secretary, Treasurer or Chief Financial Officer) or an officer authorized by the Board of Directors to execute such documents on behalf of the corporation. All signatures above must be original and in ink on a least one copy of the Proposal that will be submitted to the City. Every Proposal shall have thereon or attached hereto the affidavit of the Service Provider indicating that: such proposal is genuine, not sham or collusive, nor made in the interest of any person not therein named; that the bidder has not directly or indirectly induced or solicited any other Service Provider to submit a sham proposal or to refrain from proposing; and that the Service Provider has not in any manner

sought by collusion to secure for himself an advantage over any other Service Provider. Any Proposal made without such affidavit, or found to be in violation thereof, shall not be considered.

By submitting a Proposal pursuant to this RFP and executing the cover letter, the Service Provider acknowledges that he/she has read this RFP, understands it, and agrees to be bound by its terms and conditions. Proposals may be submitted by mail or express delivery or delivered in person.

Each Service Provider shall make the following representations and warranty in its Proposal Cover Letter, the falsity of which might result in rejection of its Proposal: *“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.”*

4.2.2. Company Portfolio or Annual Report.

The Service Provider should submit a detailed company portfolio including the company’s financial viability for the past three years, credit references, on-going projects, and all pending litigation in which the company may be directly or indirectly involved. Financial references including, name of primary financial institutions of the Service Provider, address of financial institution, name of a contact person, and telephone number for each financial institution identified shall be included.

4.2.3. Executive Summary.

The Service Provider shall submit an executive summary, which outlines its Proposal, including the proposed general management philosophy. The executive summary shall, at a minimum, include an identification of the facility to be owned or leased by the Company, and a summary of the proposed Services. This section should highlight aspects of this Proposal which make it superior or unique in addressing the needs of the City.

4.2.4. Background, Experience, and Project Approach.

The Proposal must provide a concise description of the proposing company, including origin, state of incorporation (if applicable), background, and current size. Include information concerning general organization and staffing as well as experience with Fixed-Route and Express Bus Services. The balance of the technical Proposal should be organized around answering the questions found in Section 7.

The Service Provider should demonstrate an awareness of difficulties in the completion of this undertaking, and a plan for surmounting them. Special attention should be given to issues that will be encountered in such a project.

4.2.5. Exceptions

Any alternative approaches, deviations or exceptions taken by the Service Provider must be itemized in the technical Proposal. Details concerning it must be clearly presented. Each will be considered by the City as to the degree of impact and total effect on the Proposal. The City assumes that silence to alternative approaches, deviations or exceptions indicate that the Service Provider will comply with the RFP as presented.

Wage or minimum pay hour requirements the Service Provider may have with its employees will not affect the City's ability to pay the Service Provider on an individual revenue vehicle hour basis. The City will not accept any restrictions or minimum servicing hour requirements either by day, or other time period or in any other way other than by individual Revenue Vehicle Hour.

5. SERVICE PROVISION SCOPE OF WORK.

5.A Purpose of Solicitation

In issuing this RFP, the City is seeking to contract with a Service Provider, whose proposal is the most responsive and advantageous to the City with cost and other factors considered to provide an easy to use and cost effective public transit solution both for the City and the passengers that use the Services. The City will provide fuel to be used for all described Service (See Section 5.D.5).

5.B General Description of Tasks to be Performed

Work associated with this RFP shall include but not be limited to the following tasks:

5.B.1 Startup

The Service Provider shall be responsible for all preparations necessary to begin operation of the Services including identification of an operations and vehicle maintenance facility within the Concord Kannapolis Area. The Service Provider shall have complete responsibility for identifying and securing a facility at a site which meets the requirements as stated in this RFP and must be approved by the City prior to the execution of any purchase or lease agreement by the Service Provider. ALL COSTS ASSOCIATED WITH LOCATING AN APPROPRIATE SITE SHALL BE BORNE BY THE SERVICE PROVIDER. ANY COSTS ASSOCIATED WITH FINDING ANOTHER SITE IF THE PROPOSED SITE IS NOT APPROVED SHALL BE BORNE BY THE SERVICE PROVIDER. All facility leasing or purchase expenses associated with this procurement effort shall be included in the Service Provider's cost proposal. Prior to start-up, all personnel shall be drug-tested in accordance with applicable laws, hired and trained; documented personnel and operating procedures shall be established; an aggressive safety program shall be developed; facilities and equipment prepared; and all other activities required for start-up. Routes and schedules are already defined. The Service Provider will be required to submit a detailed Start-Up Plan prior to the execution of a contract. An outline of the Start-Up Plan must be submitted as part of their proposal.

5.B.2 Operate Service

The Service Provider shall coordinate, manage, and control all necessary Service activities, which shall include but not be limited to:

- a. Operating all services to the levels and standards required as described throughout this RFP as well as any additional service added to this contract by the City;
- b. Providing drivers and maintenance, supervisory, and administrative personnel;
- c. Establishing all employment policies relative to Service Provider's personnel;
- d. Complying with established passenger complaint resolution procedures;
- e. Developing driver training and testing programs;
- f. Developing administrative, safety and security procedures, performance statistics, and financial records;
- g. Facility upkeep and maintenance;
- h. Developing methods to maximize service efficiency and reliability;
- i. Providing vehicle maintenance;
- j. Accident and incident investigation activities and procedures;
- k. Performing or assisting City staff in carrying out operational planning, scheduling, blocking, run-cutting, download of video surveillance files and other related functions, such as identifying running time and/or loading problems and recommending specific schedule and other adjustments to correct the problem;
- l. Providing adequate staffing levels at the Rider Transit Center;
- m. Maintain busway and bus parking area at the Rider Transit Center;
- n. Performing bus stop and amenities maintenance and upkeep;
- o. Executing data collection and gathering statistics as requested by the City;
- p. Implementing all local, state and federally required programs including, but not limited to FTA Drug and Alcohol Testing and ADA Compliance, OSHA, and FLSA Standards;
- q. Providing required insurance;
- r. Maintaining the financial integrity, record keeping, and security of the fare collection system including making deposits at a banking facility designated by the City;
- s. and any other reasonable services or tasks necessary to successfully operate service pursuant to this contract.

5.B.3 Equipment Maintenance

The Service Provider will perform all activities associated with the maintenance of equipment required for the operation of the system (See Section 6). This shall include maintenance of the City's buses, any other equipment provided by the City, office and computer equipment, non-revenue vehicles, and other equipment as needed.

5.B.4 Operations & Maintenance Facility

The Service Provider shall locate a bus maintenance facility in a mutually agreeable location within 10 miles of the Rider Transit Center located at 3600 Ridge Ave, Concord. The Service Provider may choose to separately locate operating and maintenance facilities or subcontract certain aspects of the service provision. The City must approve any subcontract with service contractors. The maintenance facility must either have a hydraulic lift, or the Service Provider may use the mobile lifting equipment provided by the City. The Service Provider is responsible for maintaining all of its facilities in good working order. Any repairs to any facilities/systems, or equipment related to the operating or maintenance of the vehicles shall be completed and paid for by the Service Provider.

5.B.5 Other Materials

The Service Provider will be required to obtain all parts, tools, equipment required for their duties. The Service Provider will be required to obtain all maintenance equipment necessary for the repair of the City's vehicles. The Service Provider will be responsible for obtaining and complying with all required building, occupancy, and other governmental permits.

5.C Description of Services

The City will require the Service Provider to provide Fixed-Route bus services within Concord and Kannapolis. The system includes seven routes that radiate from the Rider Transit Center located at 3600 Ridge Ave., Concord. Each route requires one hour to complete a round trip (75 minutes during afternoon peak hours). The City will provide the Service Provider with the vehicle fleet for the Fixed-Route transit system. This vehicle fleet will include ten (10) Gillig 35-foot heavy-duty buses for revenue service and two (2) Ford LTVs for supervisor use and service support functions. (See Appendix D).

The range of service hours identified below includes an anticipated number for the Service. As of the time of the issuance of the RFP, the City is scheduled to receive a CMAQ grant to begin operating Sunday service in the fall of 2013. The City reserves the right to increase or decrease service hours to meet the demand of the Service.

Estimated Hours of Service for the Contract

	Peak Vehicles	Start of Service	Estimated Annual Revenue Vehicle Hours				
			YEAR ONE	YEAR TWO	YEAR THREE	YEAR FOUR	YEAR FIVE
<i>Rider Transit</i>	7	7/1/2012	31,143	34,503	35,511	35,511	35,511
<i>Spares</i>	3						
Total	10						

As described within this RFP, the City reserves the right to increase, decrease or transfer the level of Services throughout the term of this contract. In no way does the City intend to guarantee the hours listed above through the issuance of this RFP.

5.C.1. Service Operations Plan

The City shall specify all Routes and Schedules – A compilation of the existing routes and schedules being operated under this contract are outlined in this RFP. Routes are subject to change and modification as specified by the City and new routes or services may be added in accordance with the requirements in this RFP.

- a. The City will provide the headway and service frequency to the Service Provider during the performance of this contract. The Service Provider shall be responsible for developing driver shifts from the schedule provided by the City. Drivers shall be trained and knowledgeable of all routes in the transit system. Drivers shall also have assigned routes to maintain consistent customer service and reliable route knowledge.

- b. The Service Provider shall perform all scheduled service subject to the City's operating standards for service performance. Service shall be provided as requested or according to any adjusted schedule established by the City, including route modifications required as a result of a declared emergency.
- c. The Service Provider shall not supply vehicle service hours when they are not scheduled, as such hours will not be paid for by the City. Relief drivers are the responsibility of the Service Provider and shall not disrupt the continuity of Service. If a major disruption in service occurs, the Service Provider shall notify the City immediately. If the Service Provider should be unable to provide alternative service, the City may then elect to secure the necessary services. Should the City elect to secure such service from other sources, the Service Provider shall be liable for all such costs incurred.
- d. All Services to be rendered by the Service Provider under this Agreement shall be as specified by the City. The Service Provider shall advise the City of matters of importance and make service adjustment recommendations when appropriate; however, final authorization concerning Service parameters shall rest with the City.
- e. Service Provider requirements include having a person available to answer the dispatch telephone and assist with the security and operation of the Rider Transit Center facility during all hours of operation, including opening the facility for service as well as securing the facility at the end of each service day. The Dispatcher must be able to relay information to the drivers during all hours when a vehicle is on the road, with no exceptions. In addition, at minimum of one (1) Road Supervisor must be deployed in the field at all times that Rider provides service. While infrequent, it will be expected that Supervisors (or other Service Provider staff) will back up and assist in Customer Service functions when City Customer Service staff are absent. Please refer to Dispatching/Road Supervision Section 5.C.5.
- f. The City provides and maintains the two-way radios on the buses, portable radios, and base station radio for dispatch as these are compatible with the city-wide system.
- g. The Service Provider is expected to begin service on July 1, 2012.
- h. The City reserves the right to revise and/or add any Service parameters similar to the parameters described in this RFP as needed, in order to meet Service needs and regulations. The Service Provider may propose ways to improve the use of the City's vehicles in revenue service.

5.C.2. Service Span

Fixed-Route Service will operate from 5:30AM to 8:30PM, Monday through Friday, and 8:30AM to 8:30PM on Saturday, approximately 307 days per year. The City is scheduled to add Sunday in the fall of 2013 mirroring the Saturday service schedule and ***would like alternate pricing models both as currently designed and with the additional Sunday service option.*** The City may add Express services at a later date during the Contract.

5.C.3. Holidays

Service shall not be operated on major holidays designated by the City if they fall on a regular service day (Monday-Saturday currently), which are: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. The City reserves the right to unilaterally amend the holiday schedule during the course of the Contract.

5.C.4. Special Service

The Service Provider shall perform special services as requested by the City. These services include but are not limited to seasonal routes, and special events assigned by the City. The Service Provider shall not schedule any Special Service.

The Service Provider shall make available to the City, buses and operators for these special services at no charge to the requesting agency, such costs having been included in the original revenue vehicle hour cost. Such activities may involve operation of the vehicle as well as stationary exhibitions. Such promotional activities shall not exceed 0.5 percent of the total annual revenue hours. Any Special Service requested by the City after the 0.5 percent threshold has been exceeded shall be compensable at the standard revenue service rate.

5.C.5. Dispatching/Road Supervision

The Service Provider will be responsible for all vehicle dispatching and management including sign-out/in of bus operators, vehicle route assignments, incident management both on route and at the Rider Transit Center, providing back up for Customer Service at the Rider Transit Center, and road calls.

5.C.6. Rodeos and Other Transit Industry Events

The City highly encourages the Service Provider to participate in transit "rodeos" and other industry events as a means of encouraging quality service and a spirit of enthusiasm, professionalism, and cooperation. Any City bus used for the practice or competition of "Rodeo" participation shall be approved

by the City. The selected service provider should also be an active member of state and national public transportation associations.

5.D Vehicle Provision

The City will provide 10 transit buses, 2 LTVs and one service truck for the operation of the transit system (see Appendix D of City supplied and City maintained equipment).

5.D.1. Service/Support Vehicles

The selected Service Provider must provide all other vehicles used to support the service such as supervisor's and bus operator relief vehicles. The Service Provider must provide a list of these vehicles to be approved by the City, which must be no more than 3 years old at the start of the contract, and must be in excellent condition as they will be representative of the Service when in use. The Service Provider may not use any City revenue buses for support functions, such as bus operator relief, without the express consent of the City. The Service Provider will furnish and maintain all necessary support vehicles in order to ensure field supervision mobility, bus operator field relief capability, road call maintenance, and vehicle towing throughout the service area at all times while the vehicles are operated. Towing and road call services may be handled by contractual agreement with local firms.

5.D.2. Vehicle Spare Ratio

The City shall endeavor to provide the Service Provider with a fleet, which includes a spare ratio of at least 15 percent.

5.D.3. Vehicle Replacement Program

All vehicle replacements will attempt to adhere to the City's vehicle replacement plan that follows federal and state regulations. Currently there is a plan to replace four (4) of the 2044 Gillig buses in 2013 and four (4) in 2014; however, the City makes no representation nor provides any assurance of a specific replacement plan. The Service Provider should not assume any plans for replacement of the vehicles during the life of the contract. ***Please submit alternate pricing options for both maintaining the current fleet, as well as an option taking into account the bus replacement schedule.***

5.D.4. Communications Systems

The City has provided a two-way communication system on all the revenue vehicles. This system allows for both vehicle-to-base and supervisor communication. The Service Provider shall be responsible for ensuring the communication systems is properly cared for, and that any maintenance issues are reported promptly. The City will be responsible for maintaining base stations, and

portable and mobile radios (see Appendix D of City owned and City maintained equipment). Rider Transit currently uses Nextel cell phones/PTT radios as a back up/alternate means of communication for the system and key City staff and the Service Provider will be expected to supply compatible technology to their key staff and supervisors.

5.D.5. Fuel

The City will be responsible for supplying all fuel for the buses. The Service Provider must provide necessary infrastructure to house and dispense the fuel. At a minimum, a 10,000 gallon tank must be used and will be maintained by the Service Provider. The Service Provider must follow all applicable federal, state, and local laws regarding the storage and dispensing of petroleum products. The transit buses will be operated with B-20 bio-diesel. The Service Provider will abide by the City's Idling Policy.

5.D.6 Technology

DRI Talking Bus & Control Center/OTvia CAD/AVL system – All buses and LTVs are equipped with DRI's talking bus voice announcer feature, which is tied in with their CAD/AVL. The Service Provider will be required to provide upkeep and maintenance and any follow-up training that may be required, and will update both the talking bus and CAD/AVL systems whenever route changes/stop changes warrant. All drivers/supervisors must be familiar with the Talking Bus and Control Center/OTvia CAD/AVL systems prior to the implementation of the contract.

Electronic Vehicle Inspection System (Zonar) – All buses and LTVs are equipped with Zonar electronic vehicle inspection devices. The Service Provider will be expected to ensure that all employees are trained and how to properly use the system and are expected to utilize it fully to assist with the maintenance and upkeep of the vehicle fleet. The Service Provider will be required to pay the monthly service fees for each unit, as well as provide upkeep, repair/replacement, maintenance and any follow-up training that may be required.

Bicycle Racks – All buses will initially be equipped with bicycle racks. The Service Provider will be required to provide upkeep, accident related replacement, maintenance and any follow-up training that may be required. All drivers/supervisors must be familiar with the bicycle racks prior to the implementation of the contract.

Video Surveillance – All buses are equipped with Mobileview digital video surveillance equipment. The Service Provider will be required to provide upkeep, repair/replacement, maintenance and

any follow-up training that may be required. All drivers/supervisors must be familiar with the video surveillance equipment prior to the implementation of the contract. The Service Provider will be required to download and provide to the City video recordings of any accidents or incidents that take place in or outside the buses. These recordings will be on a DVD and shall be accompanied by a completed City of Concord Accident Report.

5.E. Service Changes

5.E.1 General

The City reserves the right to adjust as necessary service levels during the term of this contract. This includes any adjustment necessary in vehicles allocated to perform this Service. The City shall have the option to implement new service, add or delete from the given schedule or to re-deploy the service to other areas based on demand or increase of service productivity. The Service Provider will provide Service subject to route changes, additions and deletions during the term of this Contract. The proposed revenue cost per hour or fraction of an hour, if less than one hour, will apply to any changes made according to this section.

5.E.2 Modifications

Modifications to the routes and schedules will be required from time-to-time. Service Provider shall provide field supervisory personnel at strategic locations whenever emergencies or other non-recurring events affecting normal service take place.

- a. **Minor Route and/or Schedule Changes** - While the City will in most cases provide notice of route and schedule changes at least one week in advance, as little as 24 hours notice may be given to respond to minor adjustments. Such changes will likely not require a re-bidding of the bus operator work runs by the Service Provider although they may occasionally “unhook” two pieces of work. Such changes will typically constitute not more than 5 percent of the existing revenue vehicle hours and/or miles. Minor adjustments, depending on the time frame allowed, may be given 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 the City.
- b. **Major Route and/or Schedule Changes** - Major route changes are those that exceed the 5 percent above for minor route changes and may cause the Service Provider to have to re-bid the bus operator work runs. Except for emergencies, the City 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, the City will give the Service Provider four weeks to respond to major changes requiring more drivers or major adjustments to work shifts. The Service Provider shall submit a proposed run cut within one week of receiving a major change announcement from the City. The City shall endeavor to review, approve, and/or and comment, if needed, within five working days. The City will give major changes to the Service Provider in writing. The City reserves the right to approve all run cuts, as they serve as the basis for determining Service Provider payment. The City may desire to expand the fixed route system and offer express route service to surrounding communities and destinations. This expansion may cause the Service Provider to have to re-bid the bus operator work runs.

- c. **Route and Service Modifications Caused by Non-Recurring Events** (e.g., freeway accidents, weather, etc.) are the responsibility of the Service Provider. In case of an emergency, the Service Provider shall respond to modifications to 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 at no additional cost to the City. The City must approve all service adjustments prior to implementation.
- d. **Contingency Plan** - The Service Provider is expected to take any necessary action to prevent or minimize inconvenience experienced by our passengers and make an effort to ensure their safety and comfort at no additional cost to the City. 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 is expected to respond accordingly with a contingency plan. Contingencies might include "bumping up" driver trips assignments and/or dispatching replacement vehicles to cover late or "missed" trips in order to alleviate potential overcrowding which would otherwise result on trips scheduled to follow a missed trip. It may also include 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 it may involve diverting other buses to pick-up transferring passengers. 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 they were assigned, or improper training.

- e. **State, Regional or City-Wide Emergencies** – Upon declaration of any emergency by the Governor of North Carolina, and/or the Mayors of Concord or Kannapolis; the Service Provider may be responsible for a number of 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 Concord City Manager as part of an Emergency Operations Transportation Services Plan. However, the City shall compensate the Service Provider for service that significantly exceeds the normal expense of operating the Service during such period of declared emergency.
- f. **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. The City reserves the right to establish additional criteria regarding reliability of response in the event of breakdowns. The failure to respond to a vehicle breakdown within the allotted time will subject the Service Provider to liquidated damages as described in Section 9.7.

5.E.3 Services Not Operated

The City will not compensate the Service Provider for services not operated.

5.F. PERSONNEL ORGANIZATION

5.F.1 Wages and Policies

Service Provider shall be obligated to pay wages and provide benefits for its employees, and shall cause the withholdings to be made as required in the performance of this contract. Without any additional expense to the City, the Service Provider shall comply with the requirements of employee liability, worker's compensation, unemployment insurance, social security and any other current and future legal requirements. The Service Provider must comply with the provisions of the FTA's Drug and Alcohol Testing Regulations. The Service Provider shall hold the City harmless from any liability, damages, claims, costs, and expenses of any nature arising from alleged violations of personnel practices.

5.F.2 13 (C) Agreement

The City will not become a signatory party to any Transit Employee Agreement between service providers and organized labor units,

pursuant to 49 SC Section 5333(b) (formerly Section 13 of the Urban Mass Transportation Act of 1964).

5.F.3 Removal/Reassignments/Absences

The City shall have the right to demand removal from the project, for reasonable cause, any personnel furnished by the Service Provider. The City must be notified of new hires or reassignments of project personnel. Further, the City must be notified of all extended absences of project management personnel and any position vacancies of more than one week. The Service Provider is required to fully staff those positions proposed in its submittal. Any change in the Project Manager, Operations Manager, Maintenance Manager, or other top-level management shall require written approval of the City.

5.F.4 Vehicle Operators

Vehicles shall be operated with due regard for the safety, security, comfort, and convenience of passengers and the general public. Vehicle operators must have a valid Commercial Driver's License (CDL) with appropriate endorsement, and each operator must submit to a DOT medical examination every two years from the startup of service. All drug testing and surveillance efforts on the part of the Service Provider shall be explained and provided in writing to vehicle operators. Vehicle operators must be trained in all operational procedures relating to the service. Training must include the City's instructed techniques for serving the public in a helpful and courteous manner.

The drivers must meet or exceed the following standards to perform under the City's transit program:

- a. The Service Provider shall conduct pre-employment Department of Motor Vehicle checks of all personnel and a Criminal Background Check satisfactory to the City, for all Independent Service Provider or subcontractor employees hired for service. The Service Provider must also adhere to any other random or reoccurring City testing policy in effect. DMV records shall be checked annually for accidents, tickets for vehicle code violations, and review for valid driver's licenses of its employees whose job requires them to operate vehicles for this project. Each operator must meet the following requirements:
 1. Must have a valid NC driver's license (CDL endorsement must be obtained prior to operating vehicle); and have no more than five points on driver's license at any given time;

2. No felony conviction or serious misdemeanor offenses within the last seven years;
 3. If license has ever been suspended, operator must have two full years with no violations; and
 4. No record of any drug or alcohol offense within the last seven years.
- b. Not be under the influence of alcohol, controlled substances, or prescription medication that impairs his/her ability to safely perform the Services.
 - c. Not have any outstanding warrants for arrest.
 - d. Be able to read, write, and speak English.
 - e. Be able to count money and understand the City's fare structure.
 - f. Have thorough knowledge of the City's routes and service area. Drivers must be supplied with appropriate, up-to-date street maps, and/or driver directional manuals.
 - g. Understand and maintain knowledge of the service system design.
 - h. Have a thorough understanding of customer relations or be trained in such matters.
 - i. Maintain a courteous attitude, answering to the best of their ability any passenger questions regarding the provision of Service.
 - j. Possess good character and reputation.

Employees of the Service Provider who normally and regularly come into direct contact with the public and/or City employees shall be clearly identifiable by, but not limited to, individual uniforms with name badges, name tags or identification cards approved by the City.

The Service Provider shall assure that its employees serve the public and/or City employees in a courteous, helpful, fair and impartial manner. All employees of the Service Provider in both field and office shall refrain from belligerent behavior and/or profanity. Correction of any such behavior and language shall be the responsibility of the Service Provider.

In the event a report is received alleging an employee(s) of the Company was discourteous, belligerent, profane or in any way intimidating, either physically or verbally, the Company shall, within 24 hours, submit a written report to the City's Transit Manager outlining the complete details of the incident. Said 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 taken.

Please note that Service Providers' ability to attract and retain an adequate number of qualified vehicle operators is essential to efficient and effective service delivery. The Service Provider's inability to maintain an adequate well-trained number of operators and extra board personnel may otherwise result in performance issues that will not be satisfactory to the City, such as excessive missed trips, late trips, under-trained operators, and work coverage by supervisors and other management personnel. Such conditions may subject the Service Provider to liquidated damages as provided in Section 9.7 or to termination of the contract for non-performance as stated in Section 9.10.

5.F.5 Management

In addition to drivers, the Service Provider shall employ and train such other persons as may be necessary in order to enable the Service Provider to perform the Services provided for hereunder. Service Providers shall cause such persons, whether employed directly by the Service Provider or made available through subcontractors, to perform all necessary supervision, management, and coordination of all aspects of such Services. In addition to on-site personnel, additional training and certain administrative activities may be provided by regional or national Service Provider personnel, so long as plans for these centralized functions are spelled out as a clear part of the Service Provider's Proposal. The Service Provider should supply the City with a job description for each proposed management or supervisory position dedicated to the project. The City reserves the right to approve each member of the Service Provider's management staff and to require the Service Provider to add or to eliminate management positions.

Personnel must also report all passenger complaints and operational problems to the City's Transit Manager within 24 hours of discovery.

Specific management positions required include:

- a. **Project Manager** – The Service Provider will designate a Project Manager/General Manager who will oversee the proper operation of the Service. Due to the critical role of the position of Project Manager, it is required that this person be identified and his/her resume included in each Service Providers Proposal. The City reserves the right to approve any change of the Project Manager for this Service, and will

consider the award of Contract to be probationary pending full-time assignment of the Project Manager for a term of 180 days. The Service Provider must receive the City's written approval prior to change of personnel of this position. The Project Manager will provide both on-line supervision and management of the project's accounts and operating records. If the Project Manager is dedicated or responsible for the management of and/or used as a resource for any other projects, the Service Provider must submit and support as part of this RFP this percentage and the time the Project Manager will be assigned to the management of services in this RFP. The Service Provider Project Manager must be accessible in person to the City at a minimum during regular working hours (Monday through Friday 8:00 AM to 5:00 PM) and via telephone or pager, 24 hours per day, seven days per week. The Project Manager must notify the City Project Manager whenever they will be absent for longer than a day.

On-line supervision shall include, but not be limited to the following duties:

- Training and scheduling of all regularly assigned project personnel;
- Arranging the assignment of backup personnel whenever necessary;
- Distribution and collection of operating reports; and
- Daily monitoring and security of the collection of all fares.
- Project Management shall include, but not be limited to the following:
 - Preparation of monthly summaries of operations data;
 - Maintenance of project accounts;
 - Preparation of a monthly invoice, which will document all charges;
 - Immediate responsibility for any operational problems and/or passenger complaints and accurately reporting these problems in a timely manner;
 - Resolution of issues and complaints reported by the City's Transit Manager;
 - Coordination with city and transit oversight boards and commissions;
 - Accident review and analysis and reviews for accident chargeability; and

- The hiring and discipline of personnel.
- b. **Supervisory Staff** – The Service Provider shall include in their Proposal the resumes of additional critical management staff for the following positions – Operations, Safety & Training, and Maintenance as these key positions play critical roles in the successful provision of the Service.

5.F.6 Maintenance Personnel

The Service Provider shall employ mechanics, shop and bus service attendants (cleaners), and other personnel to perform maintenance on the City's vehicles. The City will take into consideration the ASE certification of the maintenance personnel in the review of this RFP. All repair work must be performed by maintenance personnel who have demonstrated experience and skills in the work to be performed. The Service Provider's maintenance personnel will be knowledgeable of engines, transmissions, major vehicle HVAC systems, wheelchair lifts, braking systems, diagnostic procedures, electrical system, and related mechanical parts, methods, and procedures normally used in servicing mechanical equipment for heavy-duty buses.

The City reserves the right to approve or reject a subcontractor relationship for the maintenance of its equipment. If the Service Provider wishes to provide maintenance via subcontract, the City will require evidence of the maintenance subcontractor Provider's capability and experience with transit rolling stock.

5.G EMPLOYEE TRAINING

5.G.1 General Requirements

The Service Provider's requirements for Service orientation range from covering the completion of trip and vehicle reports to the operation of vehicle electronics & communication systems (i.e. radios, Talking Bus System, CAD/AVL, Zonar, electronic destination signs and electronic fareboxes, digital camera operations) to the safe operation of all vehicles in the City's fleet, to training in sensitivity to rider needs.

5.G.2 Vehicle Operation

The Service Provider shall provide a program of driver training in vehicle orientation, safe bus operation, passenger relations, fare collection, route and schedule orientation, and on-time performance prior to permitting any driver to operate any bus in revenue service. The Service Provider shall also provide an ongoing safety program and a defensive driving program to ensure a safe operating environment. Further, the Service Provider will retrain drivers in any of the above areas as required by changes in the Service, fares or

operating environment or as demonstrated by unsatisfactory performance. The Service Provider shall make such changes in its safety and training program as the City may, from time-to-time, reasonably request.

5.G.3 Safety, Security and Customer Service Training

The Service Provider must provide bus operators with training on the safe operation of the vehicles prior to operating in scheduled service, and the City must approve all training as to scope. The Service Provider will ensure the safety and security of passengers and adherence to system rules and regulations at all times, including but not limited to: driver training, retraining and monitoring; use of seat belts; use of child restraint systems; vehicle maintenance; maintaining order in and around vehicles; providing safety, security and emergency procedures, etc. All vehicles shall be equipped with an operational fire extinguisher, biohazard kits, child seats, seatbelt cutters, and appropriate first aid kits.

Violent or seriously disruptive behavior on Rider vehicles or at the Rider Transit Center is very rare and will not be tolerated.

Disruptive behavior includes, but is not limited to the following:

- carrying or brandishing weapons;
- loud, foul or abusive language;
- fighting with other Passengers;
- sexual or racial harassment of other Passengers and/or the Operator;
- throwing items or yelling out of the vehicle windows or doorway;
- vandalism;
- drunkenness or impairment from other substances;
- interfering with the Operator's ability to safely drive and operate the vehicle;
- the willful disregard for the safety of others; and/or
- playing portable electronic devices etc. without personal headphones that ensure that other Passengers are not disturbed.

As the City values all riders, the Service Provider must provide its drivers with customer relations/sensitivity training. The Service Provider's training personnel must be certified to conduct such training. This training should include understanding how to best assist riders who are disabled. Ongoing training in support of safe operations shall be an essential component of the operator's training program, and all operators shall be subject to review based on their performance record. All operators are expected to have a minimum of one (1) on board and one (1) trail check evaluation of

their driving, safety and customer service skills annually. In addition, the Service Provider will be required to provide all supervisory and management personnel with Safety & Security Management and Customer Service training on an ongoing basis. The City reserves the right to participate in training sessions to learn firsthand the level of instruction.

5.G.4 Statistical Counts and Counting Devices

The Service Provider will require its bus operating personnel to make manual and automated counts on their buses of operating statistics that the City shall deem 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, through the use of manually operated counting devices or with automated fareboxes whichever applies. The Service Provider shall provide training to all of its affected bus 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 the City daily, weekly and/or as otherwise specified in electronic format. Such information shall be formatted as specified by the City.

5.H. REPORTING REQUIREMENTS

The Service Provider shall be required to maintain all project records as requested by the City in approved formats. The Service Provider shall permit authorized representatives of the City to examine all data and records related to the project upon request by the City or according to the scheduled reporting periods. All project records prepared by the Service Provider shall be owned by the City and be made available to the City at no additional charge.

The City may elect to authorize representatives of other project funding partners to inspect, audit, and analyze the records of the Service Provider in operating this Service. The Service Provider shall maintain all records within the Area, and make them available to the City for four years following final payment. In addition to hard copies, records will be made available in a PC-compatible format to be specified. The Service Provider shall supply all needed computer equipment and peripherals and shall use software compatible with that used by the City (Microsoft Office). The Service Provider must have email capability in order to electronically communicate with City staff on a daily basis.

5.H.1 Financial Records

The Service Provider 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.

5.H.2 Invoices (Refer to Section 9.3)

The Company Project Manager shall submit monthly invoices to the City within ten calendar days of the following month for Services rendered during the reporting period. Due to the partnership of the two cities, the Service Provider shall maintain records for routes in Concord and routes in Kannapolis. The invoice shall detail the percentage of hours of revenue service provided in each city.

5.H.3 Management Information System (MIS)

The Service Provider shall be responsible for producing and maintaining a current and relevant MIS database for the City as required at no additional charge. The MIS will serve as a database for both the City and the Service Provider to monitor and evaluate the productivity of the service. As a minimum, the Service Provider's key management personnel and subcontractors' management personnel shall be required to have e-mail and electronic file transmission capabilities with the City at all times.

The following gives an indication of the general types of reports and submittal dates required. Because 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.

- a. **Daily Operations Report:** No later than 12 noon on the following business day, the Service Provider shall submit to the City Transit Manager a Daily Operations Report using the form found in Section 10, **Form Nine**, or an agreed upon equivalent. This report shall summarize the previous day's operations activities including a driver report, identified service loss and/or missed trips, road calls & vehicle breakdowns, additional/added miles and hours, number of vehicles in preventative maintenance status, number of on-time trips monitored, number of complaints/compliments received, vehicle accidents/incidents, personnel levels, and driver training status. All unusual circumstances regarding the daily operations should be noted on this form. Identifying a missed trip on this form shall constitute a proper report of such error and avoid the "Non-Reporting" liquidated damage amount.
- b. **Daily Trip Reports:** The daily portion of the MIS database shall be compiled on a trip-by-trip basis for each route operated by the Service Provider. Such reports shall be

made in the format approved by the City and submitted to the City daily.

- c. **Monthly Report:** The completed monthly MIS shall be made available to the City in a format approved by the City and submitted to the City no later than the tenth day of the following month.
- d. **Operator Reports:** The Service Provider shall cause each driver of each bus to collect data and prepare a daily report to provide all necessary information to update the MIS database. The Service Provider shall at all times maintain such reports.
- e. **Performance Reports:** The Service Provider shall from time-to-time be requested by the City to 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.

5.H.4 Passenger Comments/ Complaints

The Service Provider will be primarily responsible for receiving, investigating, addressing and reporting on comments, commendations, requests for service and complaints.

- a. **Comments/Complaints Received By The Service Provider:** Rider's customer service staff 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 and provide them to City Transit Staff. The failure to submit complaints will subject the Service Provider to liquidated damages outlined in Section 9.7.
- b. **Comments/Complaints Received By The City:** In some cases, the City will receive and document passenger comments/complaints, log them into its customer service database and forward the copies to the Service Provider for investigation and response via e-mail. Within two working days of receiving a documented customer comment, the Service Provider shall provide the City with all required information regarding the bus operator's name, bus number, and location via email. The Service Provider will document a response to the complaint noting any personnel actions such as discipline or retraining that will occur. The City places great importance upon the timely and thorough resolution of passenger complaints.

The Service Provider will be required to attach the same significance to each passenger complaint regardless of origin or circumstances.

5.H.5 Vehicle Records

The Service Provider shall maintain a complete vehicle history of every 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 oil 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 the City at the end of the contract. The City 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 for the duration of the Contract.

5.H.6 Vehicle Defect Reports

The Service Provider shall maintain records regarding any vehicle defect that occurs. Zonar electronic vehicle inspection devices shall be made available to drivers and staff on all buses and LTVs 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 the City by request and upon completion of the Contract. The Service Provider shall submit a summarized vehicle maintenance report to the City by the tenth day of each month. The report shall be in a form mutually agreed to by both parties.

5.H.7 Accident/Incident Report

The Service Provider shall be required to notify the City regarding any accidents or incidents in Service provision. Notification must be made by telephone within 15 minutes and via email within 24 hours on a City-approved accident or incident form.

The Service Provider shall notify the City of any of the following accident/incidents:

Collisions between a City 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 likely to result in the filing of claims against the Service Provider or the City;

Any passenger, driver, supervisor, and service complaint that arises from an accident. If the accident/incident involves injuries or extensive property damage, the City shall be notified immediately (regardless of hour or day); and

Accidents or incidents that occur at the operating and maintenance facility.

Failure to adhere to the above conditions will subject the Service Provider to liquidated damages outlined in Section 9.7.

5.H.8 Disaster Recovery Plan

The Service Provider must provide the City as part of their RFP response package a copy of its written disaster recovery plan to be used in the event of a computer hardware failure, fire or any other disaster. This disaster recovery plan should include off-site storage or backup information.

5.H.9 Other

In addition to the above-mentioned formal reports, the Service Provider shall keep up-to-date and accurate records of the following (at a minimum):

- a. Driver pre-trip inspection logs;
- b. Daily dispatcher report;
- c. Daily driver logs by run;
- d. Daily roadcall reports;
- e. Farebox information by driver run by day;

- f. Records for bus operating personnel as required to meet USDOT Commercial Driver Regulations; and
- g. Other information as deemed appropriate.

This information should not be submitted to the City on a regular basis, unless otherwise directed. These records will be made available to the City by the Service Provider at the City's request.

5.I. COORDINATION

5.I.1 Primary Contact

The Service Provider's designated Project Manager and/or his authorized representative shall be responsible for all day-to-day coordination efforts with the City. All correspondence from the Service Provider shall be directed to the City Transit Manager and/or his authorized representative's attention.

5.I.2 Service Coordination

Service Provider shall, as directed by the City, coordinate closely with affected municipal, county, state, and private representatives on all service matters that affect the daily operation of the City's bus Services, such as road closures or inclement weather and as they may affect the operation of bus Service.

5.I.3 Passenger Surveys

Documentation of the Services will be provided through passenger surveys. Drivers will administer these surveys. City staff or other authorized representatives of the City also may perform surveys. It is the responsibility of the Service Provider to ensure the cooperation of all personnel with any operational procedures pertaining to survey work, including the distribution of survey questionnaires, recording and analysis of data collected, and other such tasks.

5.I.4 Coordination Meetings

City staff/Service Provider meetings shall include at least one meeting every month. Upon mutual agreement these meetings may be scheduled more or less frequently. The Service Provider shall be available to attend public meetings at the City's request to discuss the status, performance and proposed improvements of the bus system. This requirement may be set less frequently upon mutual consent of both parties.

5.I.5 Citizen Meetings

The Service Provider shall, upon request of the City, attend citizen meetings to provide information concerning the transit system.

5.J USE OF VEHICLES/CITY ASSETS

5.J.1 Customer Service

Periodically, the City may conduct customer surveys of current and previous riders to ensure that the level of customer service is maintained to the City's satisfaction.

5.J.2 Advertising Sales Program

The City retains all rights to interior and exterior third party advertisement on any and all vehicle(s) for this Service. The City has sole responsibility for the generation of revenue by advertising on the interior and exterior of these vehicles or any leased/rented vehicles supplied by the Service Provider. The Service Provider will be required to place any and all transit related information, advertising signs and literature, provided to the Service Provider by the City, and to remove said advertising on removal dates indicated by the City. **The Service Provider is expected to adhere to the City's Advertisement Policy.**

5.J.3 Exclusive Use

The Service Provider shall not enter into an agreement with any other party for use of equipment and/or personnel dedicated to this Service without the approval of the City.

5.K MARKETING PUBLIC RELATIONS

All marketing and media relations are the responsibility of the City. Marketing activities include but are not limited to: all advertisement media, business contacts to promote the 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.

5.K.1 Schedules/Maps/Distribution

Schedules and route maps are to be designed and printed by the City. Distributions of maps are to be coordinated with the City to ensure that distribution locations can be frequently supplied. These costs shall not be included in the Proposal costs. The City may, from time-to-time, call upon the Service Provider to assist in delivering materials when drivers or supervisors will be passing distribution locations en route to or from the start or end of a route.

5.K.2 Bus Promotions

The Service Provider shall provide buses under the Contract as the City may from time-to-time specify for promotional appearances, uses, and photographs at no additional cost to the City.

5.K.3 Media Relations

The Service Provider shall refer all media requests to the City Transit Manager or City Public Information Officer and shall not provide any information without prior approval by the City.

5.K.4 Timetables

The Service Provider shall make timetables, maps and other City-prepared marketing materials available on all buses used for the provision of the Service. It is the Service Provider's responsibility to always have sufficient supply of printed timetables by coordinating restocking with the City Transit Manager.

5.K.5 Seat Notices/Rider Alerts

The Service Provider shall ensure that City-generated seat notices are properly distributed to passengers and posted in visible locations in each vehicle. Drivers may choose to place notices on each seat prior to the start of each run or hand them to riders as they board. Notices shall be removed on the stated removal date.

5.L UNIFORMS

5.L.1 Standard Uniform

The Service Provider shall provide standardized uniforms for all bus drivers and Street Supervisors. The design of said uniforms shall require concurrence of the City. The uniform for drivers and Supervisors shall consist of the following:

- a. **Uniform dress shirts** - Long sleeve (winter), short sleeve (summer) to be white and pressed, displaying the operator's name. Nothing on the shirt may identify the Service Provider's name or logo. Supervisory uniform shirts shall be non-white in order to aid in identification. The system logo and patches shall be present on all uniforms.
- b. **Dress trousers** - black or dark gray.
- c. **Necktie** - In colors that complement the other uniform attire (not required with short sleeves).
- d. **Shoes** - all drivers and Supervisors will be required to wear black shoes while on duty. Tennis/basketball shoes, cowboy boots, suede shoes, sandals, and open-toed shoes are not allowed for driving safety reasons.

- e. **Name Tag** - Each driver and Supervisor must wear a nametag bearing the driver's name and badge number on a lanyard, the left pocket of their shirt, jacket or belt.
- f. **Belts** - all belts are to be black.

5.L.2 Appearance

At all times while performing their duties, vehicle operators and Supervisors must maintain a clean and neat appearance, must be in the approved uniform listed above.

5.L.3 Personal Grooming and Hygiene

Each driver and supervisor must also adhere to a code of personal grooming and hygiene established by the Service Provider in conjunction with the City.

5.M FARES AND FARE COLLECTION

5.M.1 Fare Policy

The City will establish all fare structures, policies, media, promotions, and discounts, which may include passes, cash, coins, tickets, tokens, SMART cards and other electronically coded media, transfers, and coupons. All contract employees must be familiar with and adhere to all parts of the adopted fare structure. The Service Provider shall cooperate to ensure the sale and processing of all fare media. The Service Provider shall not utilize any tickets, transfers, tokens, passes, cards or other non-cash fare substitutes other than those specified by the City.

5.M.2 Fare Collection and Accountability

The Service Provider's drivers or other authorized personnel will collect from all passengers on each bus the amount of fare (including collection of, and/or notation of use, upon any passes, cards, tickets, tokens, vouchers, coupons, and transfers) determined in accordance with specifications and schedules specified by the City. Drivers shall record required information regarding the use of promotional fare media.

5.M.3 Procedure for Collecting Fares

All drivers shall inform passengers immediately upon boarding the bus to deposit the fare in the farebox.

5.M.4 Correlation of Fares and Passengers

The Service Provider should ensure that each passenger is depositing the correct fare in the farebox. The Service Provider shall ensure that the amount of fares collected is consistent with the number of passengers using the Service. Significant discrepancies between the number of reported passengers and the revenue

collected (more than 2-3%) shall constitute improper reporting and is subject to liquidated damages outlined in Section 9.7.

5.M.5 Security and Ownership of Fares

All fares collected in connection with all categories of bus Services shall be the property of the City and shall be deposited by passengers immediately upon boarding the buses in the fareboxes provided on each bus. The Service Provider shall maintain the security of such fareboxes and associated revenue collection system. The Service Provider shall be responsible for providing security over collected funds, equipment in service, and all inventoried fareboxes and associated equipment.

5.M.6 Written Security Procedures and Fare Collection Monitoring

The Service Provider must maintain adequate internal controls for all operations, specifically including revenue handling. The Service Provider must establish security procedures acceptable to the City and submit these procedures with the proposal. These procedures include methods to monitor fare collection and the utilization of controls and security devices that will prevent theft and expose pilferage. At least annually, the City will review Service Provider procedures and submit written findings of any deficiencies. The Service Provider is required to provide written responses to the City within 15 days and implement corrective actions within 30 days of any written findings from the City. Should there be any discrepancies between actual count and data count and an investigation proves failure to adequately protect the City's revenues by the Service Provider, then the Service Provider is responsible for reimbursement to the City.

5.M.7 Revenue Accounting and Reconciliation

The Service Provider must include a Revenue Handling Plan as part of the response to this RFP. Some of the requirements to be incorporated in this plan include:

- a. All passes, cash, coin, tickets, tokens, vouchers, coupons, other fare media and transfers must be stored in secure areas.
- b. The revenue room or any other area where the Service Provider is handling fares shall be subject to random inspections by City staff and/or external auditors.

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

- a. The Service Provider shall separate and retain all cash and/or coins for deposit. This includes strapping paper bills and rolling coins. The Service Provider will be responsible

for all equipment and supplies required. Passes, cards, tickets, tokens, vouchers, coupons, and transfers may be required to be returned to the City.

- b. Prepare daily reports that verify revenue collections match reported passengers.
- c. Submit the monthly revenue report to the City's Transit Manager (See sample of monthly report attached in Section 10, **Form Eight**).
- d. Perform weekly written reconciliation of revenue collected with ridership information. The format of the reconciliation must be reviewed and approved by the City. These weekly written reconciliations must be available for review at the City's request.

5.M.8 Farebox System

The City-provided buses and LTVs are equipped with GFI Odyssey electronic fare boxes. The Service Provider is responsible for the operation and maintenance of all fareboxes provided by the City. The City and the Service Provider will mutually agree on fare collection/fare handling procedures prior to the implementation of the Contract.

5.N SUBSTANCE ABUSE TESTING

The Service Provider must implement a written Drug and Alcohol Testing program that is in compliance with FTA Regulations found at 49 CFR Part 655. This Program must be submitted and approved by the City prior to implementation of the final Contract. 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, and whether the Service Provider's policy is zero tolerance or if they utilize a second chance policy for first time offenders. The following types of tests must be included in the Service Provider's program:

- a. Pre-Employment;
- b. Post-Accident;
- c. Random;
- d. Reasonable suspicion;
- e. Return to Duty;
- f. Follow-Up; and
- g. Retesting (alcohol only).

The Service Provider's Drug and Alcohol Testing Program must be project specific to the City's 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 City project. This includes identifying specific contact people, testing centers, and resources. The Service Provider's Policy shall not contradict any requirements of the City's Drug and Alcohol Testing Policy.

- a. **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.
- b. **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 City project from the previous calendar year. The Service Provider must fill out separate MIS Report forms for each subcontractor as well.
- c. **Proper Licensing** – The Service Provider must secure the services of a Department of Health and Human Resources certified Testing Laboratory and use 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 Part 655. 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 the City. At any time should any of the individuals or firms listed above be changed, the Service Provider shall immediately notify the City.
- d. **Confidentiality** – To the extent permitted by law, the City Manager and the City's Transit Manager should be documented in the Service Provider's Policy to have access to test results and other documentation that the Service Provider's Project Manager has access to. All City employees shall have access to the names of the Testing Laboratory, Medical Review Officer (MRO), Blood-Alcohol Technician (BAT), and Substance Abuse Professional (SAP).

5.0 Environmental Sustainability

- Environmentally sustainable practices are very important to Rider Transit. The new Rider Transit Center is in the process of becoming

the first LEED certified government building in Cabarrus County. The Service Provider selected will be expected to use environmentally sustainable business practices wherever possible. Please provide a detailed description of your plans for environmentally sustainable operations of the Rider Transit system, including employee training and maintenance practices geared towards this goal. In addition, the selected Service Provider will be expected to provide sustainable development assistance and guidance to Rider Transit to help Rider Transit become more environmentally sensitive & sustainable in the future.

6. MAINTENANCE SCOPE OF WORK.

6.A GENERAL REQUIREMENTS

The Service Provider shall maintain the vehicles in the highest state of repair and conform to the maintenance requirements listed below.

6.A.1 Vehicle Condition

The Service Provider shall maintain all vehicles and vehicle equipment required by this RFP in proper repair and condition satisfactory to the City. 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 City compliance with necessary warranty requirements. If the Service Provider receives an unsatisfactory rating in regard to these standards, the Service Provider shall notify the City immediately and state what is being done to correct the deficiency.

6.A.2 Variations and OEM

No variation or vehicle system modifications will be allowed without written authorization from the City. Only original equipment manufacturer (OEM) parts and supplies may be used unless the Service Provider submits a written request to the City, with all relevant documentation, for a specific case-by-case waiver from this requirement and is granted that request. 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. This includes, but is not limited to, the wiring configuration and clamping and body assembly.

6.B APPLICABLE CODES AND REGULATIONS

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

6.B.1 Inspections

Each vehicle is required to be inspected annually by the appropriate regulatory agency. The City shall be notified of inspections performed by any other governmental agency other than the City. The results of those inspections shall be transmitted to the City, 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 liquidated damages will be applied.

6.B.2 Quality Assurance and Audits

The City shall have immediate and unrestricted access to all vehicle maintenance records during planned or unannounced visits or inspections to vehicles and Service Provider's facility for the duration of the Contract. The City shall be entitled, at all times, to conduct inspections of any bus in order to determine compliance with the provisions hereof. The Service Provider shall, upon request by the City, immediately remove from operation any bus which is determined by the City to be in non-compliance and shall repair, clean or take any other actions reasonably requested by the City in order to cause such bus to be in compliance. Nothing in this provision or in any inspection or approval by the City of any bus shall relieve the Service Provider of its obligation to maintain and operate each bus in strict compliance with the provisions hereof.

6.B.3 Permit and Fee Structure

All drivers and vehicles operating in the State of North Carolina may be subject to State fees, which should be included in the Service Provider's base cost. Other vehicle licensing fees from other governmental entities for vehicles operated in this service will also be paid for by the Service Provider. All vehicles must have applicable vehicle permits, system decals or paint scheme, and all drivers must have current CDL driver's licenses with all proper endorsements. The Service Provider must also have all applicable City (Concord and Kannapolis), County, and State business licenses.

6.C PREVENTIVE MAINTENANCE (PM)

Through an approved PM Program, the Service Provider shall cause 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 the response to this RFP, the Service Provider shall submit to the City a complete and comprehensive PM program. The PM program submitted by the Service Provider to the City will meet or exceed

the standard manufacturers recommended or specified guidelines, including all add-on equipment installed by the second stage manufacturer. When two service categories are provided by the manufacturer such as “normal service” and “severe service”, the severe service category guidelines will be used in establishing the PM program by the Service Provider. In addition, all maintenance work shall conform, but not be limited to, the requirements of the manufacturer’s warranties. To the extent available, the City will provide a copy of the maintenance requirements of the bus manufacturers.

The Service Provider will collect oil samples at mutually acceptable intervals as part of its PM program. The Service Provider will use the results of these tests to adjust the PM program and also submit oil sample reports to the City’s Fleet Maintenance Division for review.

6.C.1 Preventive Maintenance of Heating and Air Conditioning Systems

The 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. This PM program shall be submitted within the response of 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.

6.D VEHICLE DAMAGE

The Service Provider shall repair as required all vehicle damage that occurs through the performance of this Contract. The Service Provider shall institute repairs of any significant damage to vehicles prior to return to service in a reasonable time. 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 vehicle damage repairs in excess of \$1,000.00 should be photographed and reported to the City prior to initiating the repair.

If vehicles are damaged as a result of poor maintenance by the Service Provider, then the City may choose to have all required vehicle repair performed by a company of the City's choosing and subsequently invoice the Service Provider for the cost of repairs. This amount will be deducted from current monies owed to the Service Provider. Failure to comply with these provisions will result in the City's having all required vehicle repairs performed by a company of City's choosing and subsequent deduction of the cost of the repairs from current monies owed to the Service Provider. In addition, the Service Provider will be liable for relevant liquidated damage assessments.

6.E RESPONSIBILITY

In no event shall the City be required to repair, replace or maintain any bus.

6.F FUEL

The City shall be responsible for supplying fuel for all buses.

6.G PARTS LUBRICANTS SUPPLIES

Service Provider, at its sole cost and expense, shall maintain stores of and provide lubricants, repairs, parts, and supplies required for the maintenance and operation of all buses and service vehicles utilized in providing the Fixed-Route bus Services. Once installed, tires, parts, and other supplies that are ordered for the operation and maintenance of City vehicles would become City assets.

6.G.1 Tires

The Service Provider shall be responsible for providing replacement tires for the transportation of all revenue vehicles without additional cost to the City. The utilization of any re-tread tires must be approved by the City.

6.G.2 Inventories

The Service Provider shall maintain reasonable inventory levels to assure timely repair of vehicles/equipment. The Service Provider-supplied parts inventory shall remain the property of the Service Provider upon completion of the term of this contract. The City may, at its discretion, choose to purchase said inventory at a mutually agreed upon fair market cost upon termination of the contract.

6.H PAINTING OF VEHICLES

The City will have a distinctively painted fleet of buses. At the start of the Contract, all vehicles will be provided by the City with the proper paint and decals. Any needed decals or paint after the start of the Contract will be the responsibility of the Service Provider. If any vehicle cannot be used to perform Services due to physical damage or needed repairs, it will be the responsibility of the Service Provider to locate and acquire a replacement vehicle approved by the City to perform the Services at no additional cost to the City.

All buses in Revenue Service must have the appropriate decals, paint, and system logo.

6.I VEHICLE CLEANING

The Service Provider shall be responsible for maintaining the cleanliness of all vehicles used in the provision of the service in order to provide a positive public image and appearance. In response to this RFP, the Service Provider shall submit to the City a complete Vehicle Cleaning Program. The Service Provider shall be assessed liquidated damages for any vehicle deemed unclean by the City.

6.I.1 Vehicle Exteriors

The exteriors shall be washed every three days, unless circumstances warrant a more frequent service, or, in the case of water restrictions, the Service Provider may opt to contract exterior cleaning to a vendor that recycles wash water. The exterior of each vehicle shall be kept clean from road dust, mud, tar, grime and graffiti. The Service Provider shall remove all graffiti from the exterior and interior of the vehicles as soon as it is found or as soon as it is practical at the end of the day or before it goes in Service the next day. If the graffiti is offensive or vulgar and cannot be removed, that vehicle shall be taken out of service immediately. If graffiti is etched or scratched into the surface of the glass rather than paint, that piece of glass must be replaced as soon as possible. Any glass or other graffiti that is not offensive or vulgar

but cannot be removed immediately must be identified to the City prior to being returned to revenue service. Replacement shall take no longer than one week unless parts are unavailable.

6.1.2 Vehicle Interiors

At a minimum, but more often as needed, interiors shall be swept, cleaned of trash, windows washed, dusted and spot-mopped once daily. Weekly, each vehicle shall be deep cleaned, which includes, but is not limited to ceiling, walls, floors, seats, driver area and dash, and ancillary equipment. The Service Provider shall provide upholstery cleaner to clean each seat once a week during this deep cleaning process. Additionally, the Service Provider will be required to remove all noticeable trash, such as newspapers and litter from each vehicle after each run. If any area of a vehicle shall become defaced with graffiti that is vulgar or offensive, the vehicle shall be removed from service until the graffiti is removed.

6.1.3 Interior Pest Control

The interior passenger compartment of each vehicle shall be free of roaches and other insects or vermin as well as noxious odors from cleaning products, pest control products, and exhaust fumes emitted by the engine of such vehicle. The Service Provider is expressly prohibited from using any pest control product, or application procedure for such product, that would be hazardous to the health and well being of the passengers and driver of such vehicle.

6.1.4 Unclean Buses

Any vehicle found by the City to not be in compliance with these vehicle appearance provisions will be removed from service immediately without limiting the Service Provider's service obligations. In addition, the Service Provider shall be subject to the liquidated damage provisions concerning vehicle appearance and/or deficient vehicle condition. Once all required actions have been completed by the Service Provider to correct any deficiencies found within this provision, the City must inspect and approve all actions taken prior to the vehicle being eligible for use in scheduled service.

6.J FACILITY CLEANING

The Service Provider shall maintain the interior and exterior of its facilities, including kitchens, bathrooms, and lounges in neat and clean conditions, free of trash and debris at all times. This includes the employee parking areas, bus yard and all other areas clean and clear of debris. The Service Provider is completely responsible for all custodial trash removal and waste handling inside the maintenance building. Shop floors shall be

swept once a day, and oil spills shall be cleaned immediately, in accordance with OSHA regulations. In addition, the Service Provider will be responsible for maintaining the cleanliness of the busway and parking area for the buses at the Rider Transit Center.

6.K SHELTER AND BUS STOP MAINTENANCE (*optional service*)

As Rider continues to grow it's infrastructure over the next 3-5 years, the time and personnel requirements to maintain the bus shelters (10 currently) and bus stops (246) throughout the system will become increasingly burdensome for City's staffs to maintain. ***Please submit optional/alternative pricing options*** that would provide for the proper care and maintenance of system shelters, stops and stop amenities including but not limited to graffiti removal, infrastructure repair and landscape maintenance.

6.L MODIFICATION AND REPAIR OF DESTINATION SIGNS/ANNUNCIATORS * CAD/AVL SYSTEMS

In the event of route changes that affect the destination sign and/or AVL readings & triggers, the City will specify the change in writing and the Service Provider will revise the CAD/AVL, destination sign and annunciator systems to reflect that change. The Service Provider shall perform any required maintenance to ensure constant display operation of all CAD/AVL & revenue vehicle destination signs and annunciators.

6.M Vehicle Status Board

The Service Provider shall maintain a status board in the shop where vehicles are maintained. The status board shall contain, but not be limited to the following:

- Vehicle Number;
- Vehicle Mileage;
- Current Mileage;
- Date and Mileage of last P.M.;
- Date and Mileage of last safety inspection;
- Date and Mileage of next P.M.;
- Date and Mileage of next safety inspection;
- Vehicles not fit for revenue service;

6.N MAINTENANCE AUDITING PROGRAM

During the term of the Contract, the City or an independent maintenance consultant will provide expert review of the Service Provider's maintenance practices and audit the condition of the City's vehicles at time intervals no less than quarterly.

1. **Cooperation** - These fleet audits will include extensive vehicle inspections, utilizing the pits and lifts of the facility, and also involve inspection of maintenance documentation and Service Provider's procedures. Road testing and oil/fluid analysis will be involved. The Service Provider must provide full cooperation to the City or consultant and arrange for efficient use of their time through facility and vehicle access.
2. **Access to Reports** – The City intends for these audits to act not only as an independent monitoring of the Service Provider's maintenance efforts but also as a method for the Service Provider to demonstrate constant improvement. Audit reports will be available to the Service Provider, and the City or consultant will provide follow-up meetings and suggestions.
3. **Fluid Analysis** – Prior to the collection of oil or other fluids for analysis, the City shall notify the Service Provider in advance. The Service Provider must inform the City 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 by the Service Provider at no additional cost to the City. Within ten days after notification of such deficiencies, the Service Provider shall present a written repair schedule/timeline to the City for approval. Failure to submit such a schedule or to complete the repairs according to an approved schedule will permit the City to procure a third party to complete such work at the Service Provider's expense. This failure also subjects the Service Provider to liquidated damages outlined in Section 9.7.

7. PROPOSING ORGANIZATION'S BACKGROUND AND EXPERIENCE.

Please provide the following information by inserting your answers beneath the text to which it applies. **If you wish to add supplemental information, it shall be labeled "Supplemental Information."**

7.1. Official Name

Provide the legal name and address of the company and state of incorporation submitting the Proposal. Also identify all subcontractors or joint venture partners.

7.2. Proposed Project Team

If the Service Provider's Proposal submission will be from a team composed of more than one company or if any subcontractor will provide more than 15 percent of the Services, all participating companies must be identified. Provide a description, which includes the teaming relationships, form of partnership, each team member's contribution, and the experience of each team member, which qualifies them to fulfill their responsibility. Provide descriptions and references for the projects on which team members have previously collaborated.

7.3. Proposal Response Items

Please organize your Proposal by responding to the following items:

7.3.1 Qualifications of Proposing Firm.

- a. Explain the general character of work performed by your firm.
- b. Describe your firm's qualifications and experience to perform the work described in this RFP. Information about experience should include direct experience with the specific subject-matter area.
- c. Describe the performance standards your firm has established for its contract operations.
- d. How is the performance of your managers and other contract management personnel evaluated?
- e. What would be your initial response to a request by the client to remove the project manager?

- f. Does your firm have an Equal Employment Opportunity and Affirmative Action Program? If yes, explain your firm's program and accomplishments in detail.
- g. List at least five state, municipal, federal government, and/or commercial references that your firm has had contracts with within the past five years where services were similar in scope, size or discipline to the City-required services described in this RFP. Include information regarding improvement in ridership, on-time performance, safety record, cost containment, and productivity. Provide a contact name and telephone number of a person that can discuss your firm's performance under the contract.
- h. Does your firm have established relationships with bus manufacturers and other suppliers to the public transit industry? If yes, please explain.
- i. Can your firm meet the proposed start date as indicated in Section 3.1?
- j. Describe how your firm will meet the stated insurance requirements and provide proof of insurability by a qualified insurance provider.
- k. Has your firm ever had a contract terminated by a client? How did your firm respond to problems identified by the client during the period allowed for corrective actions?
- l. Has a client ever asked you to reduce your rate for services during the course of a contract? Have you ever requested an increase in the rate of compensation during the course of a contract? Discuss the situation(s) and elaborate on the circumstances and rationale for the request(s).

7.3.2 Proposed Staff Qualifications and Organization of the Operation

- a. Who will be the Project/General Manager for this project? What percent of the Project Manager's time will be devoted to this project? Explain this person's background and experience, and include a resume.
- b. Who will be the Operations Manager for this project? What percentage of their time will be devoted to this project? Explain this person's background, experience, and include a resume.

- c. Who will be the Maintenance Manager? What percentage of their time will be devoted to this project? Explain this person's background, experience, and include a resume.
- d. Who will be the Safety & Training Manager? What percentage of their time will be devoted to this project? Explain this person's background, experience, and include a resume.
- e. Who will be in charge of data reporting required by the City? Explain this person's background and include a resume if not one of the position listed above.
- f. Explain the nature of the Project Manager's relationship with Corporate Management and how and with whom the City would interact with regarding Corporate Support. Provide an organization chart and staffing plan, which describe the Service Provider's proposed on-site staff distribution to accomplish this work. The staffing plan should indicate a chart, which partitions the time commitment of each professional staff member across the proposed tasks. This section should also quantify a listing of the number of full-time equivalent personnel by title proposed for the on-going management and operation of the system including:
- Drivers;
 - Maintenance Personnel (by title);
 - Dispatchers;
 - Road/Street Supervisors; and
 - Administrative/Clerical (by title).
- g. Provide a complete listing and description of all the ASE certifications held by your maintenance staff. Include the staff persons' name, the date of that they obtained the certification, and the expiration date of their certifications.
- h. Who in your management team will have responsibility for the hiring and training of bus operators? Explain and provide a resume if this person is different from the proposed team member(s) described above.
- i. Provide a Start-Up plan including a timeline. Provide a list of personnel that will be available the first two weeks of service and include the duties of each person.

- j. Identify any additional personnel, if any, who will be required for full-time employment on a subcontract or consultant basis. The technical areas, character and extent of subcontract or consultant activity will be indicated and the anticipated sources will be specified and qualified. Special mention shall be made of direct technical supervisors and key technical personnel, and approximate percentage of the total time each will be available for this project.
- k. Provide a list of all joint venture agreements that may provide service to the Service Provider under this agreement with the City. One party in a joint venture must be identified as the lead Service Provider whom the City holds responsible for the performance of the subcontractors. This applies to a prime Service Provider with subcontractors and will be considered a submittal requirement.
- l. Provide a narrative summary describing how the organization will ensure quality service by investing in its employees. Include the organization's plans to retain quality employees.
- m. Identify if any of your personnel are members of a labor union. Indicate if your firm has ever been involved in a work stoppage and what steps were taken to resume service and in what timeframe.

7.4 Operation and Maintenance Methodology

- a. Provide a written understanding of the Service and a description of all major activities to be performed during the course of the contract.
- b. Provide the location, address, size, and detailed description of all facilities that will be used in conjunction with the Service.
- c. How many support vehicles will the Service Provider provide for the Service? Please explain. List the make, model year, mileage and condition of each support vehicle proposed.
- d. Include a detailed description of driver hiring, training, retraining, and evaluation processes including minimum driver qualifications and pre-employment criteria. Describe how drivers will be assigned to specific routes to insure continuity and local knowledge to riders. Also include a detailed description of mechanic hiring, training, and retraining processes including minimum mechanic qualifications and trade certifications.

- e. Describe your firm's ongoing Safety and Security program for the Service, including safety or other incentive programs for employees, and the estimated annual cost of the program(s).
- f. Describe your firm's Customer Service program for the Service, including training, data collection and how you will resolve customer complaints.
- g. As appearance is important to the passenger, tell us how your firm will maintain the appearance of its uniformed personnel, including supervisors.
- h. As reporting requirements in the proposed Contract are quite extensive, please explain how your firm intends to meet these requirements.
- i. Describe in detail your firm's plan to comply with the City's requirements regarding fare collection, security, reconciliation, and on-board security as described in Section 5.M.
- j. Describe your firm's drug testing policy and program for this Contract.
- k. Describe how your firm will respond to service disruptions & vehicle breakdowns including your plan for on-street supervision and staging of extra vehicles and drivers.
- l. Describe in detail your firm's plan regarding preventive maintenance of revenue vehicles.
- m. Describe the heating and air conditioning program to be followed under this Contract.
- n. Describe internal (on-site) and corporate quality control programs designed to ensure that Service performance standards are met.
- o. Provide a detailed description of your company's vehicle cleaning program.

7.5 Proposed Costs

Complete Section 10, **Form Six**, Cost Proposal, or equivalent and include it in your response under title Proposed Costs. To ensure a standardized basis for the comparison of various proposals, all proposed costs must be specified in Section 10, **Form Six**. **Form Six** is broken out into two schedules:

1. Revenue Vehicle Hour Costs;
2. Cost Schedule Breakdown for Years 1, 2, 3, 4 & 5 of Revenue Vehicle Hours

Each Proposer shall submit a copy of their policies and procedures for implementing, documenting and reporting on their program for cost containment and improvement activities that will ensure the lowest possible operating costs while still providing the required level of services.

Wage or minimum pay hour requirements the Service Provider may have with its employees will not affect the City's ability to pay the Service Provider on an individual revenue vehicle hour basis. The City will not accept any restrictions or minimum servicing hour requirements either by day, or other time period or in any other way other than by individual Revenue Vehicle Hour.

7.6 Proposing Organization's Financial Qualifications

Please respond to the following items as completely as possible, placing your answer immediately after the item to which it applies.

7.6.1 Analytical Approach.

The evaluation of the financial viability of the Service Providers for the Fixed-Route Bus Service RFP was developed with one primary goal in mind: to protect the City from risk of default by a selected Service Provider due to financial instability. Various analytical techniques will be used to assess the financial strength and stability of each Service Provider, focusing on profitability, solvency, and efficiency.

The analysis will include an evaluation of specific financial indices and ratios in an effort to maximize objectivity and provide measures that are more directly comparable among Service Providers. Other factors which may impact the financial position of a Service Provider, or which provide additional evidence of the financial strength of a Service Provider, will also be assessed. These factors include years of experience in providing similar services, and demonstration of the ability to provide an adequate performance bond and to obtain sufficient levels of liability insurance. Relevant information regarding recent litigation and bankruptcy filings, which may materially affect a Service Provider's 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 Service Provider.

7.6.2 Performance Bond.

Within 15 days after Contract award by Concord City Council, the Service Provider shall furnish to the City a Performance Bond with a corporate surety in the amount equal to 100 percent of the annual contract sum or \$1,500,000, whichever is less; which shall be conditioned upon the faithful performance of every term, condition, and provision of the Contract, and must be approved by the City. The Service Provider will pay any and all costs associated with the performance bond.

Each Service Provider must show evidence of their ability to obtain the bond requirements above and include such evidence in their RFP.

7.6.3 Guarantor.

Service Providers may elect to enhance their financial ability standing by proposing a guarantor. The nature of the relationship between the Service Provider and its guarantor is critical to protect the City in the event that the contracting Service Provider defaults on its obligations. If the parent company of a proposing Service Provider is serving as the guarantor, then the parent company **must indicate in a letter its willingness to guarantee all contractual obligations of the Service Provider**. If your organization is proposing a guarantor that has a relationship with the Service Provider other than a parent/subsidiary relationship, then a detailed explanation of all past and present relationships between the Service Provider and its guarantor must be provided, in addition to a letter from the guarantor indicating its willingness to guarantee all contractual obligations of the Service Provider.

Any financial information requested of the Service Provider in the following section must similarly be provided for the guarantor. In the event of a joint submission or Statement of Qualifications (SOQ), all proposing entities must provide statements specifying the extent to which each entity will act as guarantor and provide all relevant financial documents for all entities involved in the joint venture. Additionally, if there is more than one guarantor, then the guarantors must be jointly and severally obligated.

7.6.4 Requests for Financial Information.

Please furnish the following financial information in a separate and sealed envelope for the proposing Service Provider, guarantor(s), and any subcontractor included as having a significant role (defined as providing more than 15 percent of the services) in providing Services to the City:

- a. Evidence that demonstrates the ability to obtain the insurance as required in Section 9.23. Such evidence may take the form of certificates of insurance showing that the Service Provider already has such insurance policies, or letters from qualified insurance companies

evidencing a commitment to provide such insurance for the Service Provider;

- b. Annual audited financial reports for each of the past five fiscal years, prepared in accordance with Generally Accepted Accounting Principles (GAAP), and all relevant notes;
- c. The most recent Form 10-K and Form 10-Q filed with the SEC; or if the Service Provider is not regulated by the SEC, then the most recent quarterly financial report;
- d. Description of any material adverse changes in financial position within the past five years; any material changes in the mode of conducting business; any bankruptcy proceedings, mergers, acquisitions, takeovers, joint ventures, and/or divestitures within the past five years. In addition, provide a clear and definitive statement of the following:
 - Years of providing bus services by the Service Provider and/or predecessor organization, and
 - Whether or not the Service Provider (and/or predecessor and guarantor) has declared bankruptcy within the last five years.
 1. Description of the financial impact of any past or pending legal proceedings and judgments, that could materially affect the Service Provider's financial position or ability to provide Services to the City;
 2. All credit reports, credit bulletins, and any other published statements by the most recognized agencies (Standard & Poors Rating Group, Moody, Investor Services, Dun & Bradstreet, and Value Line) that have been issued or published within the past five years regarding the Service Provider and any guarantors;
 3. The prospectus or offering statement for the Service Provider's latest security or equity offering, if applicable;
 4. The company name, contact person, telephone number, and fax number of at least two references from bank or institutional lenders which have extended credit to the Service Provider in the past five years; or if the Service Provider has not applied for credit in the past

five years, the contact person's name, telephone number, and fax number of at least two references from banks with which the Service Provider conducts business;

5. The company name, contact person, telephone number, and fax number of at least two credit references from major suppliers/vendors;
6. Completion of the Financial Resources Data Form found as Exhibit A;

- m. Any additional information, which the Service Provider believes, is appropriate to fully reflect the financial strength of the Service Provider or guarantor.

Failure to provide such information is cause for rejection of the Service Provider's Proposal at the sole discretion of the City. For any subcontractor providing more than 15 percent of the Services, the City reserves the right, at its sole discretion, to reject the subcontractor if it fails to meet minimum financial requirements. In the event the City rejects the subcontractor, the Contractor must assume the responsibilities of the subcontractor or find a replacement satisfactory to the City.

7.6.5 Litigation.

Answer the following questions for the Service Provider and each subcontractor providing more than 15 percent of the Services for the Service Provider, as well as for each joint venture partner and guarantor:

- a. Is there, or within the latest five years has there been, any litigation or governmental or regulatory action pending or threatened against the organization that might have a bearing on its ability to provide bus services to the City in accordance with this RFP, or to satisfy the obligations that it proposes to guarantee? If so, identify and describe each such lawsuit or proceeding.
- b. Identify all lawsuits filed during the past five years in which a claim was made that the organization or any person or entity that owns a greater than 5 percent interest in the organization: (a) failed to properly provide bus services; (b) engaged in theft, fraud or other willful misconduct, or negligently hired employees who allegedly engaged in such conduct; or (c) failed to pay a debt or contractual obligation when due.
- c. Submit declarations of the current status of all pending criminal, civil, or administrative litigation that commenced within the past ten years in North America involving the Service Provider, guarantor, or current officers of either company. Current officers being defined to include those individuals

who are presently serving or have served within the last two years as an officer of the Service Provider.

7.7 Other Considerations

- (a) For each entity identified in Section 7.1, specify the entity's total revenue, number of employees, products and services, affiliated companies, and other descriptive information.
- (b) For each entity identified in Section 7.1, provide relevant documents that describe the entity's financial status, such as audited financial statements, annual reports, or 10-K reports, and the DUNS number.
- (c) If your Service Provider does not have the audited financial statements requested above, it is the responsibility of the Company to provide the City with information of sufficient quantity and with verifiable sources to ascertain that the Company is financially capable of performing the Services described in this RFP. Failure to provide adequate financial information may result in the exclusion of your proposal from the procurement process.

7.8 Financial Qualifications

This evaluation will take into account the financial strength of the Service Provider and its guarantors, joint ventures and subcontractors, and their ability to meet the short and long-term financial requirements of the Agreement, including but not limited to the information provided in response to Section 7.6 of this RFP. The City will issue a pass/fail finding on the financial strength of each Service Provider based on the data submitted in the Company proposal. The City reserves the right to deem a proposal non-responsive, if the City issues a "fail" finding. The City reserves the sole right to reject any and all proposals found non-responsive.

8. PROPOSAL EVALUATION CRITERIA

The City is interested in cost effectiveness rather than low bid, and will evaluate proposed costs in relation to the quality and level of service to be provided. The qualifications of the Proposers and the proposed staff, the proposed operating methodology and the proposed cost component will be considered in evaluating cost effectiveness. Proposals will be evaluated based on an assessment of the completeness of each proposal and the respective Service Provider's ability to meet the requirements of this RFP. This section provides a description of the evaluation criteria that will be used to help evaluate the Proposals. To be deemed responsive, it is important for the Service Provider to provide appropriate detail to demonstrate satisfaction of each criterion and compliance with the performance provisions outlined in this RFP. Proposals must contain information specifically related to the proposed Services and specifically requested herein. Failure of any Service Provider to submit information requested may result in the elimination of the Proposal from further evaluation.

Financial Qualifications

This evaluation will take into account the financial strength of the Service Provider and its guarantors, joint ventures and subcontractors, and their ability to meet the short and long-term financial requirements of the Agreement, including but not limited to the information provided in response to Section 7.6 of this RFP. The City will issue a pass/fail finding on the financial strength of each Service Provider based on the data submitted in the Company proposal.

Proposal Quality and Completeness

The City will evaluate the Proposals for quality and completeness and compliance with the terms, conditions, requirements, and specifications stated in this RFP. Regardless of exceptions taken, Service Provider(s) shall provide pricing based on the terms set forth in this RFP. Exceptions shall be identified in accordance with Section 2.6.14 of this RFP. The quality and completeness of the Proposal will not be scored but will be considered in the overall determination of a Service Provider's responsiveness. The City reserves the right to reject any Proposal that is deemed to have excessive exceptions or exceptions that serve to limit the Service Provider's requirement to indemnify, and hold harmless the City.

Technical Proposal

Each Proposal will consist of a technical proposal and a cost proposal. The technical proposal will account for 700 points (70 percent) of the total evaluation. Assessment of the cost per individual Revenue Vehicle Hour will account for 300 points (30 percent) of the total evaluation. The technical and cost proposals will be evaluated as described below. The purpose of this scoring system is to provide the evaluation committee with a

tool to help compare and contrast each proposal prior to the optional interview phase. The committee is not bound by the score results outlined below when making their final recommendation. If needed, the interview process will assist the City in determining which Service Provider's proposal offers the best value to the City taking into consideration cost and other factors.

The Technical Proposals will be evaluated using the following criteria. The criteria will be rated on the responses to the identified questions and request for information from Section 7.

Qualifications & Service Capability of Proposing Firm **200 points**

Background and qualifications
Performance Standards and Personnel Evaluations
EEO & Affirmative Action Programs
References
Supplier Relationships
Start Date (Y/N)
Insurance Requirements
Contract Issues

Proposed Staff & Organization of the Operation **300 points**

Local Management Team
Corporate Support
Local Staff
Start Up/Implementation Plan
Consultants/Subcontractors
Employee Development and Retention
Labor Issues

Operation and Maintenance Methodology **200 points**

Scope of Service Summary
Operations & Maintenance Facility
Support Vehicles
Employee Recruitment & Training
Safety & Security Program
Customer Service Program
Uniforms & Appearance
Reporting Requirements
Fare Collection Procedures
Drug & Alcohol Program
Service Disruptions/Vehicle Breakdown
Preventative Maintenance
HVAC Program
Vehicle Cleaning Program

Quality Control Programs

Cost Proposal

Under this criterion, Cost Proposals will be compared in terms of the proposed individual revenue vehicle hour rates, and shall be evaluated and scored to determine the most fair and reasonable price. In evaluating the proposals, the City may communicate with one or more of the Proposer's for the purpose of obtaining additional clarifying information. In submitting additional information, a Proposer is not permitted to embellish or change the original price proposal unless so directed by the City. Cost Proposals submitted shall be firm for a period of 180 calendar days from the deadline date of this RFP. Proposers must detail the cost for services for initial three (3) year contract period, including alternate pricing for optional services. Proposers must also submit the detailed cost for the two (2) one-year options for all services.

Financial Qualifications	Pass/Fail
Operations Costs	100 points
Personnel – Management Personnel – Supervisors Personnel – Operators Personnel – Maintenance Recruitment & Training Employee Development Equipment Supplies Insurance Facilities – Purchase/Lease Cost Facility – Utilities Facility – Maintenance/Upfit Other	
Maintenance Costs	100 points
Equipment Preventative Maintenance Parts Tires Supplies Repairs Subcontracted services (if applicable) Other	
Overhead Costs	75 points

Corporate Support
Profit

Cost Control Procedures

25 points

Interviews, Meetings and Negotiations with Service Providers

Proposers may be required to appear before the City and/or its representatives for an interview. During such interview, the Proposer may be required to orally and otherwise present information about its proposal and to respond in detail to any questions posed. Each firm granted an interview will be provided with up to 60 minutes for presentation, with an additional 30 minutes for questions by the interview committee.

Additional meetings may be held to clarify issues or to address comments, as the City deems appropriate. Proposers will be notified in advance of the time and format of such meetings.

9. CITY CONTRACTING REQUIREMENTS

The City will enter into a Contract with the successful Service Provider that contains the terms and conditions set forth in this RFP. Service Providers must submit a proposal based on these terms and conditions. In addition to the proposal based on the terms and conditions set forth in this RFP, Service Providers may also submit an alternative proposal in which any exceptions to the terms and conditions included in this RFP, and any proposed additional terms or conditions deemed important by the Service Provider are specifically stated. The City will take any such exceptions and proposed additions into account during the evaluation and selection process. Notwithstanding the foregoing, the City reserves the right to change the proposed contractual terms and conditions prior to or during contract negotiations if it is in the City's best interest to do so.

The terms and conditions set forth in this section are not all inclusive. Contractual Services will be competitively negotiated in compliance with the terms of the FTA's Master Agreement. Since federal funds could be used, any additional federal requirements will also apply. The City reserves the right to reject any and all Proposals received, although the City also reserves the right to waive irregularities.

The City may propose additional terms and conditions based on the responses to this RFP and the City's analysis of the successful Service Provider's proposal.

As used in this Section of the RFP, the term "Agreement" shall refer to the Contract entered into between the City and the successful Service Provider, and the term "Company" shall refer to the successful Service Provider. The term "Services" shall mean operation of Fixed-Route Bus Services in the Concord Kannapolis Area to be performed by the Company under the Contract.

9.1. Description of Services

The Agreement will set forth the Services to be provided in detail. The Services will include those described in this RFP and the successful Proposal, and any modifications agreed to by the parties.

The Service Provider shall be responsible for all other functions necessary for the safe, reliable, and efficient operation of the Service that are not specifically discussed herein.

9.2. Term

The initial term of the Agreement will be three years with the City retaining the unilateral right of renewal for two, one-year terms or any part thereof with the same terms and conditions of the original Contract. Pricing should be provided for all five possible years of service.

Notwithstanding the above, continued performance of this Agreement is conditioned on the availability of City funding. If such funding appropriations are not granted or if no funds remain for performance, then the affected multi-year Agreement will be terminated.

9.3. **Invoices to the City**

By the tenth day of the month, the Service Provider shall submit a monthly invoice to the City for Services performed the previous month. Invoices must be accompanied by the Monthly Ridership and Vehicle Maintenance Reports as outlined in Section 5.H. The invoices shall also be organized by hours of revenue service provided in the city limits of Kannapolis hours of revenue service provided in the city limits of Concord. Failure to submit these reports will prevent approval of the invoice. The City will pay the Service Provider within 30 days of receipt of an accurate, properly submitted, uncontested invoice. Payment shall be based on the total number of Revenue Vehicle Hours provided. The City will deduct any assessments due from the payment owed the Service Provider. The City will not be penalized for late payments.

The multiplication of the scheduled vehicle revenue hours actually operated each month times the Service Provider's proposed rate per vehicle revenue hour shall equal the monthly payment (less any liquidated damages or other justified withholdings). The revenue hourly costs proposed shall remain firm and shall include all charges that may be incurred in fulfilling the terms of this Agreement. The Agreement amount may vary according to the number of revenue hours of service identified by the City.

Any wage or minimum pay hour requirements that the Service Provider may have with its employees will not affect the City's ability to pay an individual Revenue Vehicle Hour basis. The City will not accept any restrictions or minimum servicing hour requirements either by day, or other time period, or in any other way other than by individual Revenue Vehicle Hour.

Copies of invoices and payrolls that support monthly invoices, and other documents as may be required by the City, may be required to establish that the amounts are allowable. Expenses and Vehicle Revenue Hours for the Bus Services shall be shown separately on the invoice. The Service Provider must also provide a monthly mileage and fuel usage statistics by vehicle and type of bus service. Samples of a Service Provider's invoice are included in Appendix C and a monthly mileage/fuel usage report is attached as **Form Seven**. All invoices and related records are subject to audit by the City or representatives of other funding partners.

9.4. **Company Personnel Removal or Replacement**

The City will have the right to require the removal and replacement of any “Key Personnel” of the Company or the Company’s subcontractor Providers who are assigned to provide Services to the City. As used in this Agreement, the term “Key Personnel” shall mean the Company Project Manager and any other personnel of the Company or its subcontractor Providers fulfilling a key role in the Services, whom the City designates to the Company as “Key Personnel.” Any temporary or permanent replacement personnel recommended by the Service Provider will have to be approved in writing by the City prior to their placement in service.

9.5. **General Warranties**

Company represents and warrants that:

- 9.5.1. It is a corporation duly incorporated, validly existing and in good standing under the laws of the state of its incorporation, and is qualified to do business in North Carolina;
- 9.5.2. It has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- 9.5.3. The execution, delivery, and performance of this Agreement have been duly authorized by Company;
- 9.5.4. No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Agreement;
- 9.5.5. In connection with its obligations under this Agreement, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses; and
- 9.5.6. The Company shall not violate any agreement with any third party by entering into or performing this Agreement.

9.6. **Additional Representations and Warranties**

Company represents, warrants and covenants that:

- 9.6.1. The Services shall satisfy all requirements set forth in this Agreement, including but not limited to the attached Exhibits;
- 9.6.2. For the Term of the Agreement, the Company will perform in conformity with the Specifications and Requirements defined in this RFP; and

9.6.3. All work performed by the Company and/or its subcontractor Providers pursuant to this Agreement shall meet industry accepted standards, and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge.

9.7. **Liquidated Damages**

The City and the Company acknowledge and agree that the City will incur damages if the Company fails to meet the requirements set forth in the RFP. The parties further acknowledge and agree that the damages, which might be reasonably anticipated to accrue as a result of failure to meet one or more of the above, are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the Company agrees to pay liquidated damages at the rates set forth below.

The City shall monitor its bus Services in order to assess the performance of the Service Provider in delivering the Service. The monitoring activities shall include but not be limited to vehicle cleanliness, schedule adherence, completed vehicle trips, the on-time and accurate submission of reports, heating and air conditioning system performance, and unsatisfactory/unsafe performance by a driver. The City shall maintain the right to assess liquidated damages against the Service Provider, as set forth herein, based on the Service Provider's failure to meet the established standards. These standards and liquidated damages applicable thereto shall include the following performance criteria and be assessed on the basis of spot checks or the specified number of verifiable passenger complaints in each category.

NOTE: With the exception of inadequate staffing infractions (Section 9.7.6.8.), liquidated damages shall be waived for the first 45 days of in-service operation, assuming the Service Provider has made a good faith effort to effect a smooth transition and start-up.

9.7.1. **Waiving Damages** – The City reserves the right to waive the imposition of liquidated damages at its discretion. Waiver or failure to assess liquidated damages in any circumstance does not negate or abridge the City's right to assess such damages in the future for the same infraction or infractions of the Agreement for which the City previously waived or failed to assess such damages. This provision shall not abridge or affect any other remedy, which the City may have for any damages that the City may incur in consequence of the failure of the Service Provider to perform in accordance with agreement specifications.

9.7.2. **Earnback of Liquidated Damages** – If liquidated damages are imposed by the City, then the Service Provider may have the right

to recover, at the discretion of the City, any sums assessed against it as liquidated damages by demonstrating either:

9.7.2.1. **Incorrect Assessment** - The Service Provider had met the applicable service standard and/or that the Service had been delivered in accordance with the Agreement.

9.7.2.2. **Beyond Service Provider's Control** – The event that resulted in a liquidated damage assessment was caused by or attributable to mitigating circumstances beyond the Service Provider's control. The Service Provider shall not be held responsible for failure to provide on-time service due to accidents, unusual weather or traffic conditions, unavoidable vehicle malfunctions (such as flat tires due to unavoidable road hazards), or naturally occurring disasters, if sufficient documentation is provided to the City.

9.7.3. **Concerns** – Service Provider shall cooperate with the City to fully explore any concerns regarding the Services and performance standards. In its evaluation of liquidated damage assessment, the City will consider the Service Provider's efforts to complete the following:

9.7.3.1. **Correction Plans** – The Service Provider may complete a written corrective plan for corrective action. Deadlines for corrective action will be established based on what is considered by the City to be an acceptable amount of time.

9.7.3.2. **Dispute** - In the event of a dispute over the assessment of liquidated damages, any amount of the monthly billing not in dispute shall be made according to normal payment terms.

9.7.4. **Liquidated Damage Basis** - Notwithstanding the above, the City shall impose liquidated damages on the following basis:

All liquidated damage assessments will be made based upon either (1) City staff or agent observation or (2) reports/complaints regarding the same infraction by riders, the general public or Service Provider notification.

9.7.5. **Adherence to Schedule** - The Service Provider shall strive to maintain on-time performance and every reasonable effort made by the Service Provider to operate all Services on schedule. Operational difficulties that result in missed trips or vehicles not operating as required by the RFP must be reported to the City.

The City recognizes that the Service Provider at times has little control over traffic conditions. The City will focus schedule adherence monitoring efforts on the following:

- a. Beginning routes/runs on time; and
- b. Not leaving scheduled stops (pick up points) early.

However, for all Services, liquidated damages will be assessed for other schedule adherence performance failures due to:

- a. Drivers being inadequately trained (resulting in unnecessarily slow operation or getting lost);
- b. Vehicles being improperly maintained (resulting in breakdowns);
- c. Vehicles being refueled while in service;
- d. Relief driver tardiness.

It is expected that the Service Provider's drivers, dispatchers and other supervisory personnel will set their watches using a readily available time that is agreed upon with the City.

Liquidated damages shall be imposed if the Service Provider does not meet the following general schedule adherence standards.

9.7.5.1. **Early Trip** - If a service trip departs in advance of the scheduled departure time at any designated time point, or any scheduled bus stop (boarding location) the liquidated damages shall be \$300 per occurrence.

9.7.5.2. **Late Trip >5 Minutes, <15 Minutes** - If a service trip departs more than five minutes, but less than 15 minutes following the scheduled departure time at any designated time point or the bus storage yard, the liquidated damages shall be \$50 per occurrence.

9.7.5.3. **Late Trip >15 Minutes** - If a service trip departs more than 15 minutes following the scheduled departure time at any designated time point or the bus storage yard the liquidated damages shall be \$150 per occurrence.

9.7.5.4. **Incomplete Trips** - If a service trip is not completed in its entirety, the trip shall be considered a Missed Trip and subject to liquidated damages of \$300.

9.7.5.5. **Missed Trip** - If the Service Provider fails to operate a trip, liquidated damages will be assessed in the amount of \$300 per occurrence. The scheduled Revenue Vehicle Hour time for that trip will also be deducted and not paid to the Service Provider. Missed trips also include, interlined, passed, or combined trips.

9.7.5.6. **Failure to Report Missed Trips** – If the Service Provider fails to report any Missed Trips on the Daily Operations Report submitted to the City, then all liquidated damages assessed above shall be doubled in amount.

9.7.5.7. **Vehicle Breakdown** - If a replacement vehicle is not provided within 25 minutes of a reported breakdown, a liquidated damage of \$300 for the Missed Trip will be assessed. Service revenue vehicle hours not completed will also be deducted.

9.7.6. **Personnel/Duties**

9.7.6.1. **Uniforms/Grooming** - If any Service Provider employee fails to comply with the City's policies regarding appearance, uniforms or grooming, the liquidated damages will be \$50 per occurrence.

9.7.6.2. **Collecting Correct Fares** - If any Service Provider employee fails to collect the correct fare or does not correctly record the fare collected, the liquidated damages will be \$50 per occurrence. Liquidated damages for incorrect fare collection may only be invoked on the second or later documented occurrence with any one operator.

9.7.6.3. **Proper Destination Signs** – For failing to show the proper vehicle message sign(s), including front, side, and rear signs, the liquidated damages will be \$100 per occurrence.

9.7.6.4. **Driver Unsafe Operation of Vehicles** - Unsafe operation of a vehicle will result in \$300 in liquidated damages per occurrence.

9.7.6.5. **Seat Notice/Rider Alert Distribution and/or Timetables Posting** – Failure to post City seat notices or have timetables on board in highly visible places and distribute such notices on each passenger seat or hand to each boarding passenger shall result in a penalty of \$25 per occurrence.

9.7.6.6. **Driver Training/Records** – If the Service Provider uses inadequately or improperly trained vehicle operators in Revenue Service (except during training when accompanied by a supervisor or trainer) a liquidated damage assessment of \$300 shall be imposed per occurrence. Failure to initially check or monitor vehicle operators' driving records or using vehicle operators with unacceptable driving records in revenue service shall also result in liquidated damages of three hundred dollars \$300 per occurrence.

9.7.6.7. **Driver Customer Service Complaints** – If within any thirty (30) day period a driver is reported by two (2) verifiable complaints and/or observations made by City staff, that will result in \$150 in liquidated damages per occurrence. If complaints are related to unsafe vehicle operations, those liquidated damages outlined in Section 9.7.6.4 above will apply as well in addition to those outlined in this section.

9.7.6.8. **Inadequate Management/Administrative Staffing** As described in Section 5.F, the Service Provider is responsible for maintaining key personnel administrative positions filled and immediately notifying the City of any absences or vacancies. Failure to have key personnel on staff for this Service at least six weeks prior to the first day of Service of the project, or failure to replace vacancies in key personnel within 60 days with approved replacements will result in the City deducting one and a half times (1.5X) the daily prorated amount of that position's salary and fringe benefits from current monies owed to the Service Provider.

9.7.7. **Reporting**

9.7.7.1. **Late/Inaccurate Reports** - If the Service Provider fails to comply with the City reporting requirements either by submitting reports after the due date and time or by submitting inaccurate reports, the liquidated damages will be \$50 for each day the report is overdue.

9.7.7.2. **Accident/Incident Reporting** - If Service Provider fails to report an accident or incident according to the City's requirements the liquidated damages will be \$50 for the first occurrence, \$100 for the second occurrence, and \$250 for each occurrence thereafter during the Agreement term.

9.7.7.3. **Complaint/Customer Comment Reporting** –

If the Service Provider fails to maintain the required Passenger Comment Database, or if the Service Provider fails to report customer comments to the City as required in Section 5.H.4, the liquidated damages will be \$50 for the first occurrence, and \$100 for the second and subsequent occurrences.

9.8. **Maintenance**

Observation of vehicle maintenance-related infractions may be made by City staff, through two verifiable passenger complaints, by an agent of the City, or by a regulatory/inspection agency:

9.8.1. **Vehicle Cleaning** - If any bus fails to comply with the requirements regarding vehicle cleaning, the liquidated damages will be \$150 per occurrence.

9.8.2. **Preventive Maintenance Intervals** – Preventive maintenance shall be performed according to Service Provider’s preventive maintenance program. The Service Provider’s Preventative Maintenance Plan shall be submitted as part of this RFP, which must be approved by the City prior to start of the Agreement. Failure to complete preventive maintenance at the approved intervals shall result in a liquidated damage assessment of \$300 per occurrence and a \$50 liquidated damage assessment for each day such preventive maintenance is overdue.

9.8.3. **Vehicles Taken Out of Service** – The Service Provider shall meet or exceed the standards set forth for the operation of all vehicles. The Service Provider shall maintain the vehicles so as to pass an inspection, and all vehicles must be in compliance with North Carolina Standards. If any Service vehicle becomes unavailable for Service as a result of a failed inspection by any regulatory agency, by the City, or by an agent of the City acting on its behalf, liquidated damages will be \$300 per day per vehicle during the period of non-availability. If the North Carolina Department of Motor Vehicles, the USDOT, or other 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 a \$300 per vehicle per day penalty shall be assessed until a satisfactory inspection report is obtained.

9.8.4. **Deficient Vehicle Condition** - In the event any revenue vehicle is rejected temporarily by the City as a result of deficient vehicle condition or appearance, \$300/day/vehicle in liquidated damages will be assessed until the condition is satisfactory to the City.

- 9.8.5. **Heating and Air Conditioning Performance** -If a vehicle is reported to operate without heating or air conditioning or is otherwise in violation of the heating and air conditioning standards, \$100 in liquidated damages will be assessed per incident.
- 9.8.6. **Vehicle Records** – The Service Provider shall maintain a complete and up to date vehicle file. Failure to do so shall result in liquidated damages of \$50 for each day the records are not available or updated.
- 9.8.7. **Safety Related Items** – Vehicles inspected by the City or its agent which are found to have serious safety defects shall result in that vehicle being pulled out of Service immediately and liquidated damages of \$500 per vehicle shall be imposed on the Service Provider. If that vehicle is found in Service with the same problem or the same problem is found at the next inspection by the City or its agent, the liquidated damage assessment shall be \$750 for the second offense and ensuing offenses.
- 9.8.8. **Wheelchair Ramps** – The Service Provider shall ensure that all vehicles in service have operating ramps to safely load and unload passengers with mobility devices. Failure to do so shall result in a liquidated damage assessment of \$300 per occurrence. Failure to inspect a wheelchair ramp as part of each vehicle's pre-trip inspection shall result in a liquidated damage assessment of \$100 per occurrence.
- 9.8.9. **Graffiti** – Failure to remove graffiti from vehicles according to the City's standards, whether interior or exterior, shall result in an assessment of liquidated damages of \$300 per occurrence.

The imposition and payment of Liquidated Damages, as provided herein, shall not preclude the City from seeking to litigate or recover other damages, which the City may be entitled to including monies paid to third parties as necessary to ensure uninterrupted service continuation and of internal staff time.

9.9. **Non-Appropriation of Funds**

If funding needed by the City to make payments under this Agreement for a given fiscal year is not available, the City will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the City will promptly notify the Company of the non-appropriation, and this Agreement will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by the City, which is attributable to non-appropriation of funds, shall constitute a breach of or default under this Agreement.

9.10. Termination

9.10.1. Termination Without Cause.

The City may terminate the Agreement for any reason after determining that termination is in the City's best interest. Any such termination shall be effected by the delivery to the Service Provider of a written notice of termination at least 45 days before the date of termination, specifying the date upon which such termination becomes effective.

In the event of a termination without cause, the City shall negotiate an equitable settlement of termination costs. Such costs shall not include (a) non-project-specific overhead; (b) punitive, exemplary, special, indirect, consequential or incidental damages; or (c) loss of anticipatory profit.

9.10.2. Termination for Default by Either Party.

By giving written notice to the other party, either party may terminate this Agreement upon the occurrence of one or more of the following events:

- (a) The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Agreement, provided that, unless otherwise stated in this Agreement, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within 30 days of receipt of written notice of default from the non-defaulting party; or
- (b) The other party attempts to assign, terminate or cancel this Agreement contrary to the terms hereof; or
- (c) The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Agreement shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.

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

9.10.3. Additional Grounds for Default Termination by the City.

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

- (a) The Company makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Agreement, Company's proposal, or any covenant, agreement, obligation, term or condition contained in this Agreement; or
- (b) The Company takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Agreement, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Agreement, or failure to provide the proof of insurance as required by this Agreement; or
- (c) Fails to fulfill or maintain in a timely and proper manner any obligations, duties or provisions of or under this agreement.
- (d) The City may terminate this Agreement upon the Company's default of any material duty or obligation of the Company under this Agreement and the Service Provider's failure to cure such default within 30 calendar days of the City's written notice to the Service Provider of such default. If the default is not capable of cure within said 30 calendar days, the Service Provider shall provide written notice to the City together with a schedule of cure within 15 calendar days of the City's notice of default, shall begin action to cure the default within said 30 calendar days, and shall diligently proceed to cure the default. The City may accept the Service Provider's schedule of cure, may make a written demand that the Service Provider cure the default within a time period set by the City, or may terminate this Agreement at the end of the 30-day default period.
- (e) The Company fails to consistently meet the Service response time requirements for transporting passengers or the reporting requirements of the RFP.
- (f) In the event of a strike by employees of the Service Provider that causes a disruption in the provision of Service as outlined in the Agreement, the City may, at its discretion, terminate the Agreement without penalty, provided the City shall comply with the terms and conditions of any transit

employee protection requirements applicable to this Agreement as determined by the United States Department of Labor.

9.10.4. Obligations Upon Expiration or Termination.

Upon expiration or termination of this Agreement, the Company shall promptly (a) return to the City all vehicles, vehicle maintenance records, employee files, computer programs, other files, documentation, data, media, related material and any other material and equipment that is owned by the City; and (b) allow the City or a new Service Provider access to the data, systems, software, infrastructure, or processes of the Company that are necessary to complete the Services.

9.10.5. Substitute Performance.

The parties acknowledge that time is of the essence in performing the Services, and that if the Company fails to meet response times as set forth in the RFP, the City may take any of the following actions with or without terminating this Agreement, and in addition to and without limiting any other remedies it may have. If the Service Provider fails to provide the service as described in this agreement on any day (or days) for which this agreement calls for service to be provided, the Service Provider will be in default, and the City may take any of the following actions:

- (a) Employ such means as it may deem advisable and appropriate to obtain alternative Services until the matter is resolved and the Company is again able to perform its obligations under this Agreement; and
- (b) Deduct any and all expenses incurred by the City in obtaining alternative Services from another Service Provider from any money then due or to become due to the Company and, should the City's cost of continuing the operation exceed the amount due the Company, collect the amount due from the Company and also to assert a lien on all real and personal properties of the Company.

9.10.6. Cancellation of Orders and Subcontracts.

In the event this Agreement is terminated by the City for any reason prior to the end of the term, the Company shall upon termination immediately discontinue all Services in connection with this Agreement and promptly cancel all existing orders and subcontracts, which are chargeable to this Agreement.

9.10.7. Authority to Terminate.

The City Manager or the City Manager's Designee is authorized to terminate this Agreement on behalf of the City.

9.10.8. No Effect on Taxes, Fees, Charges, or Reports.

Any termination of this Agreement shall not relieve the Company of the obligation to pay any fees, taxes or other charges then due to the City, nor relieve the Company of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve the Company from any claim for damages previously accrued or then accruing against the Company.

9.10.9. Specific Performance and Injunctive Relief.

The Company agrees that the Services are important to the City's operation and that monetary damages are not an adequate remedy for the Company's failure to provide Services as required by this Agreement, nor could monetary damages be the equivalent of the performance of such obligation. Accordingly, the Company hereby consents to an order granting specific performance of such obligations of the Company in a court of competent jurisdiction within the State of North Carolina. The Company further agrees that a failure by it to perform the Services in the manner required by this Agreement will entitle the City to injunctive relief.

9.10.10. Other Remedies.

Upon termination of this Agreement, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedies.

9.11. **Publicity or Statements to the Press**

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

As a condition of entering into this Agreement, the Company further agrees to refrain from the following absent the City's prior written approval: (1) making any statement to the media regarding the subject matter of this Agreement or the City's position on any issue relating to this Agreement;

or (2) making any statement to the media on any issue which is in the City's judgment 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 Agreement, or cast doubt on the competence or integrity of the City.

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

9.12. **Transition Services Upon Termination**

Upon termination or expiration of this Agreement, 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 Agreement, 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 itself as described below (the "Transition Services"). Transition Services may include but shall not be limited to the following:

- (a) Pre-Migration Services.
 - i. Working with the City to jointly develop a mutually agreed upon Transition Services Plan to facilitate the termination of the Services; and
 - ii. Notifying all affected Service Providers and subcontractors of the Company.
- (b) Migration Services.
 - i. Performing the Transition Service Plan activities.
- (c) Throughout Process and Post-Migration Services.
 - i. Answering questions regarding the Services on an as-needed basis; and
 - ii. Providing such other reasonable Services needed to effectuate an orderly transition to a new Service Provider.

Transition Services will include but not be limited to the following:

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

Data - The Service Provider shall share (to the extent permitted by law) with the new service provider wage, benefit, employee records and other

relevant information relating to any Service Provider employees who at any time engaged in providing the City's Services.

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

Substance Testing - The Service Provider 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 FTA-OH-26-0001-94-1, or subsequent revision.

Maintenance - The Service Provider shall provide the City all records associated with the Agreement including all FTA-required maintenance documentation.

Record Retention - The Service Provider shall retain all records associated with this Service, not provided to the City at the transition, in its possession for a minimum of three years.

9.13. **Vehicles**

The Service Provider shall return to the City all vehicles in sound mechanical and operating condition less normal wear and tear, in accordance with the standards of the Agreement. The condition of the City's vehicles shall be determined by a fleet inspection conducted by an independent maintenance consultant (the "Independent Inspector") selected by the City. The Independent Inspector shall not be a competitor of the Service Provider in provision of transportation services. The Independent Inspector shall, after examining the vehicle fleet, prepare and submit to the parties:

1. A written report identifying any corrective work necessary to return the City's vehicles to sound mechanical and operating condition, less ordinary wear and tear; and
2. An estimate of the cost of any repairs necessary to meet the standard set forth above.

The Service Provider at its sole cost and expense shall do such identified repairs or the Service Provider shall, at its election, pay the City the sums set forth in the inspection report for such repairs. The Service Provider shall notify the City within 30 days of the date it receives the Independent Inspector's report whether it intends to complete the repair work itself or whether it intends to pay the City for the cost of said work. In the event the Service Provider elects to do the work itself, the Service Provider shall, within five days of such election, post a letter of credit or other security acceptable to the City in an amount equal to the estimated repair costs, to be payable to the City if the repairs are not completed by the conclusion of the Agreement. In the event the Service Provider elects to pay the City for

the cost of the repairs, the Service Provider shall do so in full within five days of such election.

The parties together with the Independent Inspector shall conduct a final acceptance of the City's vehicles on or about the date the Agreement expires to determine that the repair work required to be done pursuant to the inspection report is in fact complete. If the Service Provider elects to complete the repair work itself and any repair work remains incomplete as of the date the City's vehicles are returned, then the Service Provider shall pay the City on that date an amount equal to the cost of the remaining repair work as determined by the Independent Inspector or the City shall use the security posted by the Service Provider.

Provided the Service Provider either posts security acceptable to the City or pays the City any payments required to complete the repair work as stated in this subparagraph, the City shall not withhold or deduct any sums otherwise due to the Service Provider pursuant to the invoices rendered by it for Services completed up to and including the date the Agreement terminates, and all such invoices shall be paid in accordance with the Agreement.

9.14. **Audit**

During the term of this Agreement and for a period of three years after termination or expiration of this Agreement for any reason, the City shall have the right to audit, either itself or through a third party, the books and records (including but not limited to the technical records) of the Company to ensure the Company's compliance with all the terms and conditions of this Agreement, including but not limited to the terms of this Section 9.

9.15. **Licensing**

The Company shall provide notarized copies of all valid licenses and certificates required for performance of the work. The notarized copies shall be delivered to the City's Project Manager no later than ten days after the Service Provider receives the notice of award from the City. Current notarized copies of licenses and certificates shall be provided to the City within 24 hours of demand at any time during the agreement term. Licenses and certificates required for this agreement include, by way of illustration and not limitation, the following: 1) a business license valid in North Carolina; 2) any additional licenses pertaining to or that may be required to be held by field professionals participating in the contract work.

9.16. **Compliance with Laws and Codes**

The Company shall ensure that the Services are in compliance with all local, state and federal laws and regulations, including but not limited to any and all applicable regulations or requirements of the United States Department of Transportation. In performing the Services, the Company

shall stay abreast of all current laws and amendments and comply with all local, state and federal laws and regulations.

The Service Provider shall at a minimum apply risk management practices accepted by the transit industry.

9.17. **Relationship of the Parties**

The relationship of the parties established by this Agreement is solely that of independent Service Providers, and nothing contained in this Agreement shall be construed to (i) give any party the power to direct or control the day-to-day activities of the other; or (ii) constitute such parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking; or (iii) make either party an agent of the other for any purpose whatsoever. Neither party nor its agents or employees is the representative of the other for any purpose, and neither has power or authority to act as agent or employee to represent, to act for, bind, or otherwise create or assume any obligation on behalf of the other. The Company shall be fully and solely responsible for its own acts and omissions and those of its employees, officers, agents and subcontractor. All personnel supplied by Company subcontractor shall be considered employees or agents of Company. The Company shall be responsible for the payment of all salaries, withholding taxes, worker's compensation, disability benefits and other compensation and related taxes for such persons.

9.18. **Right To Approve Equipment**

The Service Provider agrees to allow the City to inspect and approve all equipment to be used to perform the Services. The City reserves the right to inspect all vehicles to make sure that they meet or exceed the City's expectations with regard to appearance, operation, and any other physical aspect of the vehicle that the City may deem appropriate. At any time, the City may require vehicles to be pulled from active Service until such time as the Service Provider resolves such problems with vehicle as determined by the City. The City reserves the right to inspect all vehicles before Services begin and randomly throughout the length of the Agreement without notice. Failure to comply will result in the City's requiring that the vehicle be removed from Service. The City may assess fines as referenced above or consider the Service Contractor's actions a breach of the Agreement.

9.19. **Assignment**

The obligations of the Company pursuant to this Agreement are not to be transferred, sub-contracted or assigned to any person or organization without the express written consent of the City.

In the event of any such assignment, the assignee shall comply with any conditions that the City may reasonably require for assignment of the Agreement, and shall accept such assignment and perform all work and other obligations of the Service Provider as fully as if the Agreement were originally made by assignee. Any such assignment shall not relieve or excuse the Service Provider from responsibility for performance to the City in the event the assignee does not fully perform all work and other obligations of the Service Provider under this Agreement.

9.20. **Successors and Assigns**

This Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto; provided, however, this provision shall not be deemed to authorize the assignment or other transfer of this Agreement which may only be accomplished as expressly provided in this Agreement.

9.21. **Indemnification**

The Company shall indemnify, defend and hold harmless the City and the City's officers, employees and agents from and against any and all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations and other liabilities (including settlement amounts) that arise directly or indirectly from:

9.21.1. Any infringement of any copyright, trademark, patent, or other proprietary rights, or any misappropriation of any trade secrets, in connection with any software, documentation, services or other products supplied directly or indirectly by the Company in connection with this Agreement, or any allegation of any of the foregoing (collectively referred to as "Infringement Claims");

9.21.2. Any act(s) of negligence or willful misconduct by the Company or any of its agents, employees or subcontractor Providers (or any allegations of any of the foregoing), 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;

9.21.3. Lawsuits resulting from criminal misbehavior by any Company employee;

9.21.4. Lawsuits resulting from the violent or criminal behavior of passengers while in performance of the Services;

9.21.5. The City's refusal to produce any item of "Confidential Information" (as defined in the Confidentiality and Non-Disclosure Agreement) of the Company after receiving a request for such item and after being instructed by the Company not to produce it; or

9.21.6. Any claims by any persons or entities supplying labor or material to the Company in connection with the performance of the Company's obligations under this Agreement.

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 Services or any component thereof shall not be adversely affected by such replacement or modification.

The Service Provider agrees to assume complete and absolute liability and to indemnify and save harmless the City, its agents and employees from and against any and all claims, demands, suits, judgments, and settlements for sums of money for or on account of any matter or issue pertaining to or arising from or in any way connected with the performance of the Services described in this RFP unless due to the negligence or intentional wrongdoing of the City.

The Service Provider shall remain liable for complying with North Carolina General Statute 44A, Article 1, including North Carolina General Statute 44A-7(g), 44A, Article 1, unless due to negligence or wrongdoing by the City.

9.22. **Subcontracting**

Should the Company choose to subcontract, the Company shall be the prime Service Provider and shall remain fully responsible for performance of all obligations, which it is required to perform under this Agreement. Any subcontract entered into by Company shall be subject to the approval of the City and shall name the City as a third party beneficiary.

9.23. **Insurance**

9.23.1. Types of Insurance.

The Company shall obtain and maintain during the life of the Agreement, with an insurance company rated not less than A by A.M. Best, authorized to do business in the State of North Carolina the following insurance:

9.23.1.1. Automobile Liability.

Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$10,000,000 bodily injury each person, each accident and \$10,000,000 property damage, or \$10,000,000 combined single limit - bodily injury and property damage.

9.23.1.2. Automobile Collision and Comprehensive Coverage.

The Service Provider agrees to maintain automobile collision and comprehensive coverage equal to the full replacement value of all revenue and non-revenue vehicles with a \$5,000 deductible. Said deductible shall be the responsibility of the Service Provider.

9.23.1.3. Commercial General Liability.

Bodily injury and property damage liability as shall protect the Company and any subcontractor Provider performing work under this Agreement, from claims of bodily injury or property damage which arise from operation of this Agreement, whether such operations are performed by the Company, any subcontractor Provider, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$10,000,000 bodily injury each occurrence/aggregate and \$10,000,000 property damage each occurrence/aggregate, or \$10,000,000 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 Agreement. Completed operations liability endorsement shall continue in force for three years following completion of the agreement.

9.23.1.4. Fidelity Bond.

Providing blanket employee dishonesty, including faithful performance covering the Service Provider, its agents and all employees, officers, directors and any independent Service Providers in an amount of not less than \$100,000.

9.23.1.5. Workers Compensation and Employers Liability.

The Company shall meet the statutory requirements for workers compensation coverage of the State of North Carolina. The Company shall maintain a minimum of \$500,000 per employee/ \$500,000 per disease/ \$500,000 policy limit for employers liability coverage.

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

9.23.2. Liability Limits.

Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.

9.23.3. Other Insurance Requirements.

9.23.3.1. The City shall be exempt from, and in no way liable for any sums of money, which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Company and/or subcontractor providing such insurance.

The Service Provider is advised that if any part of the work under this agreement is sublet, the subcontractor shall be required to meet all insurance requirements as listed above. However, this will in no way relieve the Service Provider from meeting all insurance requirements or otherwise being responsible for the subcontractor.

9.23.3.2. The City shall be named as an additional insured for operations or services rendered under the general liability coverage. The Company's insurance shall be primary of any self-funding and/or insurance otherwise carried by the City for all loss or damages arising from the Company operations under this Agreement.

9.23.3.3. Certificates of such insurance will be furnished to the City and shall contain the provision that the City be given 30 days written notice of any intent to amend or terminate by either the insured or the insuring company.

9.23.3.4. Should any or all of the required insurance coverage be self-funded/self-insured, a copy of the Certificate of Self-Insurance or other documentation from the North Carolina Department of Insurance shall be furnished.

9.24. **Notices**

Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by fax to the intended recipient at the address set forth below:

For The Company:

To Be Determined

For The City:

City of Concord
City Manager
26 Union Street
P.O. Box 308
Concord, NC 28026
Phone: 704.920.5209
Fax: 704.795.0815
Email: hiattb@concordnc.gov

With Copy To:

City Attorney
City of Concord
26 Union Street South
P.O. Box 308
Concord, NC 28026
Phone: 704.920.5115

Transit Manager
Rider Transit Center
3600 South Ridge Avenue
Concord, NC 28025
Phone: 704.920.5878
Fax: 704.920.6900
Email: weslowlj@concordnc.gov

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

9.25. **Non-Discrimination**

The City is committed to promoting equal opportunities for all and to eliminating prohibited discrimination in all forms. For purposes of this section, *prohibited discrimination* means discrimination in the solicitation, selection, and / or treatment of any subcontractor, vendor, supplier or commercial customer on the basis of race, ethnicity, gender, age, religion, national origin, disability or other unlawful form of discrimination. Without limiting the foregoing, *prohibited discrimination* also includes retaliating against any person, business or other entity for reporting any incident of prohibited discrimination. It is understood and agreed that not only is prohibited discrimination improper for legal and moral reasons, prohibited discrimination is also an anti-competitive practice that tends to increase the cost of goods and services to the City and others. As a condition of entering into this Agreement, the Company represents, warrants and agrees that it does not and will not engage in or condone prohibited discrimination. Without limiting any rights the City may have at law or under any other provision of this Agreement, it is understood and agreed that a violation of this provision constitutes grounds for the City to terminate this Agreement.

As a condition of entering into this Agreement, the Company further agrees to: (a) 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; and (b) provide to the City within 60 days after completion of performance under this Agreement a Final Payment Affidavit in the form attached to this Agreement as Exhibit B. Failure to maintain or failure to provide such information constitutes grounds for the City to terminate or withhold payment under this Agreement.

9.26. **Drug-Free Workplace**

The City is a drug-free workplace employer. The Concord City Council has adopted a policy requiring City Service Providers to provide a drug-free workplace in the performance of any City agreement.

In order to be eligible to submit a Proposal for a City service agreement, a prospective Service Provider must certify that it will, if awarded the Agreement, provide a drug-free workplace and comply with the rules and regulations set forth by the FTA during the performance of the Agreement. In addition, it is required that the selected Service Provider has a Zero Tolerance policy for any project personnel that have a positive drug test result. The Service Provider shall dismiss from duty immediately any project personnel testing positive for use of a controlled substance. The Company hereby certifies that it has, or it will within 30 days after execution of this Agreement:

- 9.26.1. Notify employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace and specifying actions that will be taken for violations of such prohibition;
- 9.26.2. Establish a drug-free awareness program to inform employees about (i) the dangers of drug abuse in the workplace, (ii) the Company's policy of maintaining a drug-free workplace, (iii) any available drug counseling, rehabilitation, and employee assistance programs, and (iv) the penalties that may be imposed upon employees for drug abuse violations;
- 9.26.3. Notify each employee that as a condition of employment, the employee will (i) abide by the terms of the prohibition outlined in 9.26.1, and (ii) notify the Company of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction;
- 9.26.4. Impose a sanction on, or requiring the satisfactory participation in a drug counseling, rehabilitation or abuse program by, an employee convicted of a drug crime;
- 9.26.5. Make a good faith effort to continue to maintain a drug-free workplace for employees; and
- 9.26.6. Require any party to which it subcontracts any portion of the work under the Agreement to comply with the above provisions.

By submitting a Proposal, a prospective Service Provider certifies that it will comply with the City of Concord's drug-free workplace requirement. A false certification or the failure to comply with the above drug-free workplace requirements during the performance of this Agreement shall be grounds for suspension, termination or debarment.

If the prospective Service Provider is an individual, the drug-free workplace requirement is met by not engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the Agreement.

9.27. **Miscellaneous**

- 9.27.1. Entire Agreement.
This RFP and the Agreement Documents, including all Exhibits, and Attachments, all of which are hereby incorporated herein by reference, constitute 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 Agreement supersedes all prior agreements, negotiations, representations and proposals, written or oral.

9.27.2. Changes in Responsibility

Mutually agreed upon changes in the division of responsibilities between the City and the Service Provider shall require a change in either the base and/or marginal agreement rates.

9.27.3. Governing Law and Jurisdiction.

The parties acknowledge that any Agreement entered into pursuant to this RFP, is made and entered into in Cabarrus County, North Carolina, and will be performed in Cabarrus and Southern Rowan County, North Carolina. The parties further acknowledge and agree that North Carolina law shall govern all the rights, obligations, duties and liabilities of the parties under any Agreement entered into pursuant to this RFP, and that North Carolina law shall govern the interpretation and enforcement of this Agreement and any other matters relating to this Agreement (all without regard to North Carolina conflicts of law principles).

The parties further agree that any and all legal actions or proceedings relating to this Agreement shall be brought in a state or federal court sitting in Cabarrus or Rowan County, North Carolina. By execution of this Agreement, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections, which they may have with respect to venue in any court sitting in Cabarrus or Rowan County, North Carolina.

9.27.4 Binding Nature and Assignment.

Any Agreement entered into pursuant to this RFP, shall bind the parties and their successors and permitted assigns. Neither party may assign this Agreement without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void.

9.27.5 Amendments To the Agreement.

Any changes in any Agreement entered into pursuant to this RFP, must be mutually agreed upon by the parties and must be incorporated by written amendments to the Agreement and will not be valid unless signed by both parties.

9.27.6 City Not Liable for Delays.

It is agreed that the City shall not be liable to the Company, its agents or representatives or any subcontractor for or on account of any stoppages or delay in the performance of any obligations of the City or any other party hereunder.

9.27.7 Force Majeure.

The Company shall not be excused from performance under this Agreement by virtue of force majeure events. The Company shall

take precautions sufficient to ensure that force majeure events (including but not limited to fire, flood, earthquake, hurricane, elements of nature, strikes, labor disputes, and acts of God) do not result in any failure or delay in the performance of the Company's obligations pursuant to this Agreement. Failure to comply with this provision will constitute a default under this Agreement, and grounds for immediate termination.

The Company shall not be liable for any failure or delay in the performance of its obligations pursuant to this Agreement and such failure or delay shall not be deemed a default of this Agreement or grounds for termination hereunder if all of the following conditions are satisfied:

- (a) If such failure or delay:
 - 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.
- (b) An event, which satisfies all of the conditions set forth above, shall be referred to as a "Force Majeure Event." Upon the occurrence of a Force Majeure Event, the Company shall be excused from any further performance of those of its obligations which are affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) the Company continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.
- (c) Upon the occurrence of a Force Majeure Event, the Company shall immediately notify the City by telephone (to be confirmed by written notice within two days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents Company from performing its obligations for more than five days, the City shall have the right to terminate this Agreement by written notice to 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 Agreement.

9.27.8 Severability.

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

9.27.9 Approvals.

All approvals or consents required under this Agreement must be in writing.

9.27.10 Waiver.

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

9.27.11 Survival of Provisions.

Those Sections of this Agreement and the Exhibits which by their nature would reasonably be expected to continue after the termination of this Agreement shall survive the termination of this Agreement, including but not limited to all definitions and, a list of surviving Sections which will be included in the final Agreement.

9.27.12 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 Agreement.

9.27.13 No Bribery.

The Company certifies that neither it, any of its affiliates or subcontractor Providers, nor any employees of any of the forgoing has bribed or attempted to bribe or offer gratuities to an officer or employee of the City in connection with this Agreement.

9.27.14 Change in Control.

In the event of a change in "Control" of the Company (as defined below), the City shall have the option of terminating this Agreement for default by written notice to the Company. The Company shall notify the City within ten days after it becomes aware that a change in Control will occur. As used in this Agreement, the term "Control" shall mean the possession, direct or indirect, of either:

9.27.14.1 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 Company; or

9.27.14.2 The power to direct or cause the direction of the management and policies of Company whether through the ownership of voting securities, by agreement or otherwise.

9.27.15 Familiarity and Compliance with Laws and Ordinances.

The Company agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Services. Company further agrees that it will at all times during the term of this Agreement be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all Occupational Safety and Health Administration (OSHA) regulations applicable to the work.

9.27.16 Agreement Monitoring.

The City shall have the right to audit the Company's compliance with the terms and conditions of this Agreement, including but not limited all provisions related to payment and performance. 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 forgoing, in the event an audit reveals an overcharge to the City in excess of \$5,000 or a failure to perform services that has cost the City more than \$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 Service Provider in any way pertaining to the provisions of the Services described in this RFP shall be made available to the City for audit. Such records shall be clearly identified, readily accessible and be retained by the Service Provider for at least three years after the termination of the Agreement.

9.27.17 Harassment.

The Company agrees to make itself aware of and comply with the City's Harassment Policy. The City will not tolerate or condone acts of harassment based upon race, sex, religion, national origin, color, age, or disability. Violators of this policy will be subject to Agreement termination.

9.27.18 Taxes.

The Company shall pay all applicable federal, state and local taxes, which may be chargeable against the performance of the Services.

9.27.19 Waiver of Right to Jury Trial.

The City and Company waive and will waive all rights to have a trial by jury in any action, proceeding, claim or counterclaim brought by either of them against the other on any matter whatsoever arising out of or in any way related to or connected with this Agreement.

Section 10

Required Forms - Form One

REQUEST FOR PROPOSALS ACKNOWLEDGEMENT FORM

The Service Provider hereby certifies receipt of the Request for Proposals package for the City of Concord, North Carolina, "Solicitation of the Contract Provider for Concord Kannapolis Transit System Services". This form should be completed upon receipt of the City's Request for Proposals package and faxed, emailed or mailed to the City. Please fax or mail the completed Request for Proposals Acknowledgement Form to the attention of:

L.J. Weslowski
City of Concord
3600 South Ridge Avenue
Concord, NC 28025
Email: weslowlj@concordnc.gov
Fax: 704.920.6900.

Date: _____

Authorized
Signature: _____
Title: _____
Company
Name: _____

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

We plan to submit a Proposal in response to "Cabarrus / Rowan Urban Area Bus Services"

Primary Contact Name: _____

Contact E-mail address: _____

Contact phone: _____ Fax number: _____

Secondary Contact Name: _____

Contact E-mail address: _____

Contact phone: _____ Fax number: _____

We do not plan to submit a Proposal in response to "Cabarrus / Rowan Urban Area Bus Services."

Reason: _____

Section 10

Required Forms - Form Two

ADDENDA RECEIPT CONFIRMATION FORM

Solicitation of the Contract Provider for Concord Kannapolis Transit System Services

ADDENDUM #:

DATE:

I certify that this proposal complies with the General and Specific Specifications and Conditions issued by the City except as clearly marked in the attached copy of all addenda for this RFP. It is the responsibility of the Service Provider to be sure they have reviewed all the addenda associated with this RFP.

(Please Print Name)

Date

Authorized Signature

Title

Company Name

Section 10

Required Forms - Form Three

PROPOSAL SUBMISSION FORM

Solicitation of the Contract Provider for Concord Kannapolis Transit System Services

This Proposal is submitted by:

Service Provider: _____

Signed: _____

Name: (Typed) _____

Address: _____

City/State/Zip: _____

Telephone: _____

(Area Code) Telephone Number

Facsimile: _____

(Area Code) Telephone Number

It is understood by the Service Provider 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 rebid this RFP. Proposals will be considered valid for one-hundred and eighty (180) calendar days from the date of Proposal submission.

Service Provider

Date

Name (Please type or print name)

Authorized Signature

Section 10

Required Forms - Form Four

SERVICE PROVIDER AND INSURANCE AGENT STATEMENT FORM

Solicitation of the Contract Provider for Concord Kannapolis Transit System Services

We, the Company's insurance provider, understand the insurance requirements of these Specifications. Evidence of the insurability of the Company shall be provided to the City prior to Contract execution. If our client is awarded this Contract, we agree to provide the City with a thirty (30) day written notice of any intent to amend, terminate, or non-renew coverage by the insuring company.

Service Provider:

Insurance Agency:

Signature of Service Provider

Signature of Service Provider's

Agent: _____

Agent's Errors and Omission
Policy: _____

Signature of N.C. Resident
Agent: _____

Amount of Coverage	Number	Date	Coverage
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Name and Location of Agency

Address of Agency

(Area Code) Telephone Number

Section 10

Required Forms - Form Five

Project Functional Requirements

The City has created a matrix to help the Proposers understand the expectations of the City and to aid in the comparison of the Proposals.

Each Proposal must include the matrix in this Exhibit with the appropriate code denoted by the Proposer for each requirement of the Services.

The inability of a Proposer to successfully meet all of the functional requirements listed in this Exhibit will not invalidate the Proposal, although those Proposals, which do meet all of the functional requirements, will be given priority.

Service Providers are to provide their response under each and every subsection with one of the following response codes:

Code	Functional Requirement of Proposed Proposal Requirements
"N"	Proposer cannot meet the requirement.
"Y"	Proposer currently meets this requirement.
"F"	This requirement will be met if awarded a contract. (Explanation Required)
"X"	The requirement will be met by the proposed solution in some other way. (Explanation Required)

If the Proposer does not completely comply with a requirement, then state the reason why on an attached sheet. Service Providers should clearly identify any inability to meet defined requirements. For the clauses requiring detailed information or description, provide as much information as is necessary to adequately answer the question. If additional response space is needed, the Service Provider must provide the response on a separate page and reference the attached response by section number.

Section 10

Required Forms - Form Five

Feature Code

Will the Service Provider be able to comply with the following:

1. General tasks - Section 5.B.1
 2. General tasks - Section 5.B.2
 3. General tasks - Section 5.B.3
 4. General tasks - Section 5.B.4
 5. General tasks - Section 5.B.5
 6. Services - Section 5.C
 7. Technology – Section 5.D.6
 8. Personnel – Section 5.F
 9. Employee training - Section 5.G
 10. Reporting - Section 5.H
 11. Coordination - Section 5.I
 12. Use of assets - Section 5.J
 13. Uniforms - Section 5.L
 14. Fares and fare collection - Section 5.M
 15. Substance Abuse Testing - Section 5.N
 16. Environmental Sustainability - Section 5.O
 17. Maintenance scope of work - Section 6.A (Attach Preventative Maintenance Program)
 18. Preventative maintenance - Section 6.C
 19. Vehicle damage - Section 6.D
 20. Responsibility – Section 6.E
 21. Parts, lubricants, and supplies – Section 6.G
-

Section 10

Required Forms - Form Five

- 22. Vehicle cleaning – Section 6.I (Attach Vehicle Cleaning Program)
 - 23. Maintenance auditing – 6.N
 - 24. Maintenance – Section 9.8
 - 25. Vehicles – Section 9.13
-

Required Forms – Form Six

**ATTACHMENT A
COST PROPOSAL FORM**

1. REVENUE HOUR COSTS

Please complete the following forms to indicate scheduled revenue hour charge. Fill out all tables.

For Contract Years One, Two, and Three, the City will pay the rate for each hour of service operated as proposed in the table below. Should the City decide to extend the Agreement for part or all of Years Four and Five, the City will pay the rate for each hour of service operated as proposed in the table below. There will not be separate pay rates for weekday versus weekend service or special trip requests or for any other service.

The calculation of total cost will include the cost to the City, as well as any indirect costs of the City associated with monitoring the Contract.

<u>Year 1</u>	<u>Projected Annual Revenue Hours</u>	<u>Proposed Rate</u>
	31,143	
<u>Year 2</u>	<u>Projected Annual Revenue Hours</u>	<u>Proposed Rate</u>
	34,503	
<u>Year 3</u>	<u>Projected Annual Revenue Hours</u>	<u>Proposed Rate</u>
	35,511	
<u>Year 4</u>	<u>Projected Annual Revenue Hours</u>	<u>Proposed Rate</u>
	35,511	
<u>Year 5</u>	<u>Projected Annual Revenue Hours</u>	<u>Proposed Rate</u>
	35,511	

*These are estimated hours only. Actual payment will be made on the actual service hours provided.

Section 10

Required Forms - Form Six

2. COST SCHEDULE BREAKDOWN FOR REVENUE HOURS

Complete the attached forms detailing unit and total costs for key items in each of your proposals. Your total costs, divided by the annual revenue hours, should total to the fixed revenue hourly rate you specified in the Revenue Hour Cost Table.

COST SCHEDULE FOR REVENUE HOURS

Personnel	No.	Hourly Wage or Starting Salary	Fringe & Health Benefits	Total Annual Cost
Full-Time Drivers		Per Hour:	Per Hour:	
		Annual Cost:	Annual Cost:	
Part-Time Drivers		Per Hour:	Per Hour:	
		Annual Cost:	Annual Cost:	
Street Supervisors				
Dispatchers				
Lead Mechanic				
Mechanics				
Fleet Servicing Attendants				
Administrative/Clerical				
a.				
b.				
c.				
Other				
a.				
b.				
c.				
Subtotal				

Section 10

Required Forms - Form Six

COST SCHEDULE FOR REVENUE HOURS (Cont.)

Note: Assume the Daily Scheduled Revenue Hours.

Maintenance	Number				Total Cost
Facility					
a. Lease or acquisition cost					
b. Utilities					
c. Maintenance / Upkeep					
d.					
e.					
Description of Major Shop Equipment					
a.					
b.					
c.					
d.					
e.					
Description of Subcontracted Services					
a.					
b.					
c.					
Tires					
Parts & Supplies					
Other Equipment & Service Vehicles					
Bus Wash Supplies & Other Consumables					
Fuel					
Oil & Lubricants					

Section 10 Required Forms - Form Six

Other				
a.				
b.				
c.				
Subtotal				

Section 10

Required Forms - Form Six

ATTACHMENT A COST SCHEDULE FOR REVENUE HOURS (Cont.)

Note: Assume the Daily Scheduled Revenue Hours.

Administrative Expenses	<u>NUMBER</u>	Unit Costs	Total Costs
Office Equipment			
a.			
b.			
c.			
d.			
Subcontracted Services			
a.			
b.			
c.			
Telephone			
Insurance			
Printing			
Office Supplies			
Permits/Licenses			
Profit			
Other Costs			
a.			
b.			
c.			
<u>TOTAL</u>			

Section 10

Required Forms – Form Seven

SAMPLE MONTHLY MILEAGE/FUEL USAGE REPORT

MONTH ENDED XX/XX/0X

	BUS #	START ODOMETER	END ODOMETER	TOTAL MILES	TOTAL GALLONS	AVERAGE MILES PER GALLON
Gilligs TOTAL						
TOTAL BUS SERVICE						

Section 10

Required Forms - Form Eight

MONTHLY REVENUE REPORT

DATA REVENUE GENERATED	COINS	BILLS	Transfers	Passes	Fare	Free	Other	Total
XX/XX/0X								
XX/XX/0X								
XX/XX/0X								
XX/XX/0X								
XX/XX/0X								
XX/XX/0X								
XX/XX/0X								
XX/XX/0X								
WEEKLY TOTAL	\$	\$	\$	\$	\$	\$	\$	\$

Section 10

Required Forms – Form Nine

DAILY REPORT OF OPERATIONS								
WEATHER: _____				Monday Thru Friday				
SPECIAL EVENTS: _____				Date: _____				
OPERATIONS EXCEPTIONS TO NORMAL SCHEDULE								
BUS NO.	BUS TIME	ROUTE	DESCRIPTION	PAX HELD.	TIME HELD.	ACTION TAKEN	INTLS	
SERVICE REPORT				SERVICE REPORT				
LOG #	DESCRIPTION			LOG #	DESCRIPTION			
VEHICLES USED		SCHEDULED SERVICE			ACCIDENTS		PM INSPECTIONS	
	AM	PM		Miles	Hours	Collision	Due	
PEAK (sched)			Regular			Passenger	Actual	
Actual						On-the-Job	Op. Reported	
			Lost/added			Incidents	Defects	
Sp. Movements							SHOPPED	BUS#
Shopped			TOTAL				Over 2 days	
Spare			SP MOVEMENTS/CONTRACTED TRANS				Past 5 p.m.	
TOTAL			Description	Miles	Hours	Pax	SERVICE COM	
Personnel	OPS						Lost/added service by route	
TOTAL								
Trainees								
Comp								
Day Off								
Vacation								
Sick/Rep.								
Missout								
Suspended								
Excused								
Holiday			Wheelchair				Late	
Empls. Work			Boardings:				Buses:	
SIGNATURES:		OPERATIONS: AM: _____			MAINTENANCE: _____			
		PM: _____						

Appendix C

Sample Invoice Summary

Sample of Service Provider's Invoice

SERVICE		TOTAL
Base Revenue Hrs. _____ Multiplied by		_____ Other Reimbursable Expenses \$ _____
		TOTAL \$ _____

Appendix D

Vehicle Specifications and Asset List

The vehicle specifications for the Gillig low-floor buses will be distributed during the pre-proposal meeting. The City will fax or email the specification by request. Request must be made via email at Weslowlj@concordnc.gov.

<u>Asset List</u>			
Fleet ID #	Description of asset	Purchase Date	VIN/Serial Number
T-101	2004 FORD F250 4X2	11/7/2003	1FDNF20LX4EB25294
T-401	GILLIG 35' LOW FLOOR BUS	3/4/2004	15GGB291241072620
T-402	GILLIG 35' LOW FLOOR BUS	3/4/2004	15GGB291441072621
T-403	GILLIG 35' LOW FLOOR BUS	3/4/2004	15GGB291641072622
T-404	GILLIG 35' LOW FLOOR BUS	3/4/2004	15GGB291841072623
T-405	GILLIG 35' LOW FLOOR BUS	3/4/2004	15GGB291X41072624
T-406	GILLIG 35' LOW FLOOR BUS	3/4/2004	15GGB291141072625
T-407	GILLIG 35' LOW FLOOR BUS	3/4/2004	15GGB291341072626
T-408	GILLIG 35' LOW FLOOR BUS	3/4/2004	15GGB291541072627
T-409	GILLIG 35' LOW FLOOR BUS	6/30/2008	15GGB271381078869
T-410	GILLIG 35' LOW FLOOR BUS	6/30/2008	15GGB271X81078870
T-411	2010 ELDORADO LTV VAN	1/13/2010	1FDFE4FP4ADA09720
T-412	2010 ELDORADO LTV VAN	1/13/2010	1FDFE4FP6ADA09721
	GFI AUTOMATED FAREBOX	6/30/2010	Serial # OD029574
	GFI AUTOMATED FAREBOX	6/30/2010	Serial # OD029566
	GFI AUTOMATED FAREBOX	6/30/2010	Serial # OD029572
	GFI AUTOMATED FAREBOX	6/30/2010	Serial # OD029569
	GFI AUTOMATED FAREBOX	6/30/2010	Serial # OD029567
	GFI AUTOMATED FAREBOX	6/30/2010	Serial # OD029578
	GFI AUTOMATED FAREBOX	6/30/2010	Serial # OD029573
	GFI AUTOMATED FAREBOX	6/30/2010	Serial # OD029571
	GFI AUTOMATED FAREBOX	6/30/2010	Serial # OD029570
	GFI AUTOMATED FAREBOX	6/30/2010	Serial # OD029577
	GFI AUTOMATED FAREBOX	6/30/2010	Serial # OD029576
	GFI AUTOMATED FAREBOX	6/30/2010	Serial # OD029575
	GFI AUTOMATED FAREBOX	6/30/2010	Serial # OD029568
	KONI-STERTIL MOBILE LIFTING COLUMNS	3/10/2004	Serial # TN100855
	KONI-STERTIL MOBILE LIFTING COLUMNS	3/11/2004	Serial # TN100854
	KONI-STERTIL MOBILE LIFTING COLUMNS	3/12/2004	Serial # TN100862
	KONI-STERTIL MOBILE LIFTING COLUMNS	3/10/2004	Serial # TN100850

Exhibit A Financial Resources Data Form

		1	2	3	4	5
		2006	2007	2008	2009	2010
A.	Total Revenues					
B.	Net Income					
C.	Total Assets					
D.	Current Assets					
E.	Total Liabilities					
F.	Current Liabilities					
G.	Equity					

Using the information provided in the table, calculate:

A. Revenue Growth Percentages.

2007: $(A2-A1)/A1$ _____ %
 2008: $(A3-A2)/A2$ _____ %
 2009: $(A4-A3)/A3$ _____ %
 2010: $(A5-A4)/A4$ _____ %

B. Profitability Percentages.

Return on Revenue

2007: $B2/A2$ _____ %
 2008: $B3/A3$ _____ %
 2009: $B4/A4$ _____ %
 2010: $B5/A5$ _____ %

Exhibit A

Financial Resources Data Form

C. Return on Assets

2006: B2/C2 _____ %
2007: B3/C3 _____ %
2008: B4/C4 _____ %
2009: B5/C5 _____ %

D. Leverage Ratio

2007: E2/G2 _____ %
2008: E3/G3 _____ %
2009: E4/G4 _____ %
2010: E5/G5 _____ %

E. Net Worth

2007: C2 - E2 \$ _____
2008: C3 - E3 \$ _____
2009: C4 - E4 \$ _____
2010: C5 - E5 \$ _____

F. Revenue to Working Capital

2007: A2/(D2 - F2) _____ %
2008: A3/(D3 - F3) _____ %
2009: A4/(D4 - F4) _____ %
2010: A5/(D5 - F5) _____ %

G. Working Capital

2007: D2 - F2 \$ _____
2008: D3 - F3 \$ _____
2009: D4 - F4 \$ _____
2010: D5 - F5 \$ _____

H. Liquidity Ratio

2007: D2/F2 _____ %
2008: D3/F3 _____ %
2009: D4/F4 _____ %
2010: D5/F5 _____ %

Exhibit A Financial Resources Data Form

NON-DISCRIMINATION CERTIFICATION

CONTRACT TITLE: Concord Kannapolis Transit System Service Contract

PROPOSER: _____

The undersigned Proposer hereby certifies and agrees that the following information is correct:

1. In preparing its proposal, the Proposer 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 certification, *prohibited discrimination* means discrimination in the solicitation, selection, and / or treatment of any subcontractor, vendor, supplier or commercial customer on the basis of race, ethnicity, gender, age, religion, national origin, disability or other unlawful form of discrimination. Without limiting the foregoing, *prohibited discrimination* also includes retaliating against any person, business or other entity for reporting any incident of prohibited 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 Proposer on this Project and terminate any contract awarded based on such proposal.
4. As a condition of contracting with the City, the Proposer 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 Proposer and terminate any contract awarded on such bid.

NAME OF FIRM

BY: _____(SEAL)

SIGNATURE OF AUTHORIZED OFFICIAL

TITLE

ATTEST/WITNESS:

Secretary/Name of Witness (AFFIX CORPORATE SEAL)

Exhibit B

REQUIRED FEDERAL THIRD PARTY CONTRACT PROVISIONS FOR FTA FUNDED CONTRACTS

FTA THIRD PARTY CONTRACT PROVISIONS

OPERATIONS and MANAGEMENT CONTRACTS

1. **General**

The work performed under this contract will be financed, in part, by grants provided under programs of the Federal Transit Administration. Compliance with and citations to federal law, regulation, and guidance references include, but are not limited to, the Master Agreement FTA MA (17), dated October 1, 2011; FTA Circular 4220.1F, dated November, 2008, updated February 2011; "Best Practices Procurement Manual", updated March 13, 1999 with revisions through October 2005; 49 CFR Part 18 (State and Local Governments) and 49 CFR Part 19 (Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations) and any subsequent amendments or revisions thereto.

THE FOLLOWING MAY BE USED SYNONYMOUSLY:

"BIDDER" AND "CONTRACTOR"

"PURCHASER", "PROCURING AGENCY" AND "OWNER"

2. **Federal Changes**

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

3. **Conflict of Interest**

No employee, officer, board member, or agent of the Owner shall participate in the selection, award, or administration of a contract supported by Federal Transit Administration (FTA) funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, board member, or agent, any member of his or her immediate family, his or

Exhibit B

REQUIRED FEDERAL THIRD PARTY CONTRACT PROVISIONS FOR FTA FUNDED CONTRACTS

her partner, or an organization that employs, or is about to employ any of the above, has a financial or other interest in the firm selected for award.

4. Lobbying

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. §1601, et seq.). Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall comply with Federal statutory provisions to the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence Congress or a State legislature on legislation or appropriations, except through proper official channels. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

The requisite "Lobbying Certification" is included as ATTACHMENT A (attach Standard Form-LLL if necessary) and must be executed for contracts of \$100,000 or more and prior to the award of the contract.

5. Civil Rights

(1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any business, employee or applicant from participation, program benefits, business opportunities or employment because of race, color, creed, national origin, sex, age, or disability. In addition, the

Exhibit B

REQUIRED FEDERAL THIRD PARTY CONTRACT PROVISIONS FOR FTA FUNDED CONTRACTS

Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(a) The third party contractor and all lower tiers shall comply with all provisions of FTA Circular 4701.1A, "Title VI and Title VI Dependent Guidelines for Federal Transit Administration recipients", May 13, 2007.

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

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

(b) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Contractor agrees to comply and assures the compliance of each subcontractor at any tier of the Project, with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs,

Exhibit B

REQUIRED FEDERAL THIRD PARTY CONTRACT PROVISIONS FOR FTA FUNDED CONTRACTS

Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000(e) note, and also with any Federal laws, regulations, and directives affecting construction undertaken as part of the Project.

(3) **Nondiscrimination on the Basis of Age** – The Contractor agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance, 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age.

The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625, which prohibits discrimination against individuals on the basis of age.

(4) **Nondiscrimination on the Basis of Sex** - The Contractor agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, and with implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, that prohibit discrimination on the basis of sex.

(5) **Access for Individuals with Disabilities** - The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as

Exhibit B

REQUIRED FEDERAL THIRD PARTY CONTRACT PROVISIONS FOR FTA FUNDED CONTRACTS

amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities. In addition, the Contractor agrees to comply with applicable Federal regulations and directives and any subsequent amendments thereto, except to the extent the Federal Government determines otherwise in writing, as follows:

- (1) U.S. DOT regulations “Transportation Services for Individuals with Disabilities (ADA)” 49 C.F.R. Part 37;
- (2) U.S. DOT regulations “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) U.S. DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. Part 1192 and 49 C.F. R. Part 38;
- (4) U.S. DOJ regulations “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities.” 28 C.F.R. Part 36;
- (6) U.S. GSA regulations “Accommodations for the Physically Handicapped,” 41 C.F.R. Subpart 101-19;
- (7) U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations “Telecommunications Relay Services and Related Customer Premises

Exhibit B

REQUIRED FEDERAL THIRD PARTY CONTRACT PROVISIONS FOR FTA FUNDED CONTRACTS

Equipment for the Hearing and Speech Disabled,” 49 C.F.R. Part 64, Subpart F;

(9) U.S. Architectural and Transportation Barriers Compliance Board regulations, “Electronic and Information Technology Accessibility Standards.” 36 C.F.R. Part 1194;

(10) FTA regulations, "Transportation of Elderly and Handicapped Persons," 49 C.F.R. part 609; and

(11) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

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

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

(8) **Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections.** To the extent applicable, the Contractor agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq.*, with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq.*, and

Exhibit B

REQUIRED FEDERAL THIRD PARTY CONTRACT PROVISIONS FOR FTA FUNDED CONTRACTS

with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.

(9) **Other Nondiscrimination Laws**. The Contractor agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable directives prohibiting discrimination, except to the extent that the Federal Government determines otherwise in writing.

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

6. **Contracting with Disadvantaged Business Enterprises**

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective October 1, 2004.

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs* and with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101.

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

The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

c. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than

Exhibit B

REQUIRED FEDERAL THIRD PARTY CONTRACT PROVISIONS FOR FTA FUNDED CONTRACTS

30 days after the contractor's receipt of payment for that work from the Procuring Agency. In addition, these may apply:

- the contractor may not hold retainage from its subcontractors; or
- is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed; or
- is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the Procuring Agency and contractor's receipt of the partial retainage payment related to the subcontractor's work.

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

7. Clean Air Act

(a) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to Section 306 of the Clean Air Act as amended, 42 U.S.C. § 7606, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. The Contractor agrees to report any violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to the State and/or FTA and the appropriate EPA Regional Office.

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

Exhibit B

**REQUIRED FEDERAL THIRD PARTY CONTRACT
PROVISIONS FOR FTA FUNDED CONTRACTS**

8. Clean Water

(a) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377, The Contractor agrees to report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

9. Environmental Protection

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, (NEPA) 42 U.S.C. §§ 4321 through 4335 (as restricted by 42 U.S. C. § 5159, if applicable); Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5324(b); U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508; and joint FHWA FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622; and other applicable Federal environmental protection regulations that may be promulgated at a later date. The Contractor agrees to comply with the applicable provisions of 23 U.S.C. § 139 pertaining to environmental procedures, and 23 U.S.C. § 326, pertaining to Purchaser's responsibility for categorical exclusions, in accordance with the provisions of joint FHWA/FTA final guidance, "SAFETEA-LU Environmental Review Process (Public Law 109-59)," 71 Fed. Reg. 66576 *et seq.* November 15, 2006 and any applicable Federal directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing.

10. Energy Conservation

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy

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conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. Sect. 6321 et seq.

11. Buy America

If the Contractor is providing vehicles as part of the operations or service agreement, the vehicles must meet Buy America. The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, to the extent those regulations are consistent with SAFETEA-LU provisions, and subsequent amendments to those regulations that may be promulgated. The Contractor also agrees to comply with FTA directives to the extent those directives are consistent with SAFETEA-LU provisions, except to the extent that FTA determines otherwise in writing. Buy America requirements state that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waiver requirements are listed in 49 CFR 661.7. Appendix A grants a general public interest waiver from the Buy America requirements that apply to microprocessors, computers, microcomputers, or software, or other such devices, which are used solely for the purpose of processing or storing data. This general waiver does not extend to a product or device, which merely contains a microprocessor or microcomputer and is not used solely for the purpose of processing or storing data. Small purchases (currently less than \$100,000) made with capital, operating, or planning funds are also exempt from the Buy America requirements.

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11, which provide that Federal funds may not be obligated unless rolling stock is manufactured in the United States and have a sixty (60%) percent domestic content. Rolling stock that is not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content. ***Rolling stock includes:*** buses, other vehicles used in

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transportation, train control equipment, communication equipment, and traction power equipment.

Effective July 24, 1995 small purchases (under the \$100,000 threshold) made with FTA funds, will not be subject to the Buy America requirement. The value of small purchases should be determined by using "contract price" and not "unit price".

These regulations require, as a matter of responsiveness, that the Bidder or Contractor submit to the purchaser the appropriate Buy America certification (Attachment C or D) with all bids where FTA funds are provided, except those subject to a general waiver or less than \$100,000.

BIDS OR OFFERS THAT ARE SUBMITTED WITHOUT THE COMPLETED BUY AMERICA CERTIFICATION MUST BE REJECTED AS NONRESPONSIVE. BIDDERS ARE ADVISED THAT SUBMISSION OF BOTH CERTIFICATIONS WITH THE BID IS ALSO CONSIDERED NONRESPONSIVE AND WILL RESULT IN REJECTION OF THE BID; ONLY ONE CERTIFICATION (either C or D) SHALL BE SUBMITTED.
The certification requirement does not apply to lower tier subcontractors.

12. Pre-Award and Post-Delivery Audits of Rolling Stock Purchases

If the Contractor is providing vehicles as part of the operations or service agreement, the vehicles must meet the requirements of the Pre-Award and Post-Delivery Audits for Rolling Stock. 49 U.S.C. Section 5323(m) and FTA's implementing regulation 49 CFR Part 663, dated September 24, 1991, and, when promulgated, any amendments to those regulations, require all recipients purchasing vehicles carrying passengers to conduct pre-award and post-delivery audits. If the provisions of 49 U.S.C. Section 5323(m), as amended by SAFETEA-LU conflict with FTA's implementing regulations as currently promulgated the provisions of 49 U.S.C. Section 5323(m), as amended, prevail.

Pre-Award Audit:

Pre-award information may also be submitted with the bid.

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(1) Buy America Requirements: (for contracts of \$100,000 and more)

The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America (see Section 14. Buy America). If the Contractor certifies compliance with Buy America, it shall provide supporting documentation that indicates that 60% of the cost of all components are manufactured in the United States and that final assembly takes place in the United States. The documentation shall include:

- a) the component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs;
- b) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of the final assembly; and
- c) a copy of the letter from FTA granting a waiver on the vehicle(s) for all or part of the Buy America requirement under section 165(b)(1), (b)(2), or (b)(4) of the Surface Transportation Assistance Act (STAA) of 1982, as amended;

(2) Federal Motor Vehicle Safety Standards (FMVSS) Certification: (must be completed for all purchases)

The Contractor shall submit:

- a) the manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS regulations; or
- b) the manufacturer's certified statement that the contracted vehicles will not be subject to the FMVSS regulations.

(3) Solicitation Specification Requirements:

The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

Post-Delivery Audit:

Upon completion of the vehicle(s), and prior to filing of the title, the successful bidder shall provide the information indicated in 1-3 above. This post-delivery audit is required to ensure that the vehicle(s) were manufactured as intended. Failure to comply with this requirement or

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inability to certify Buy America compliance shall be cause for rejection of the vehicle(s).

Upon delivery and acceptance of the equipment, the vehicle(s) shall undergo a thorough visual inspection and road test to assure compliance to contract specifications.

*Note - The term "manufacturer" shall include, but not be limited to, the chassis manufacturer; the secondary manufacturer; a second party providing additions or modifications to the vehicle, and/or the bidder.

Please refer to EXHIBIT I regarding computation of component and subcomponent parts.

The Contractor shall require the lowest bidders, determined at bid opening, to submit the Pre-Audit information within three (3) working days of the request. This information may also be submitted with the bid. **This pre-award audit information is required to be eligible for award of the bid.** Failure to comply with this requirement shall be cause for rejection of the bid.

Certifications of Pre-Award and Post-Delivery Audits should be presented with documentation from contractor. Additional documentation should be made available upon request.

13. **Fly America**

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a

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certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

14. Recycled Products

The Recycled Products requirement applies to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000. These requirements flow down to all contractor and subcontractor tiers.

To the extent possible the contractor agrees to comply with U. S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guidelines for Products Containing Recovered Materials," 40 CFR Part 247, which implements section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6962. The contractor agrees to provide competitive preference for products and services that conserve natural resources, protect the environment and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.

15. Debarment and Suspensions

This contract is a covered transaction for purposes of 2 CFR Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.940, 180.935 and 180.945.

The contractor is required to comply with 2 CFR 180, Subpart C and must

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include the requirement to comply with 2 CFR 180, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the **Procuring Agency**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **Procuring Agency**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 CFR 180, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

The Procuring Agency agrees and assures that its third party contractors and lessees will review the “Excluded Parties Listing System” at <http://epls.gov/> before entering into any subagreement, lease or third party contract.

The Procuring Agency will be reviewing all third party contractors under the Excluded Parties Listing System at <http://epls.gov/> before entering into any contracts.

The requisite Debarment and Suspension Certification is included as ATTACHMENT B (attach additional statement if necessary) and must be executed for contracts of \$25,000 or more and prior to the award of the contract.

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16. Termination or Cancellation of Contract

The Contractor agrees:

- (1) To comply with the requirements of 49 U.S.C. chapter 53 and other applicable Federal laws and regulations now in effect or later that affect its third party procurements,
- (2) To comply with U.S. DOT third party procurement regulations, specifically 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 – 19.48, and other applicable Federal regulations that affect its third party procurements as may be later amended,
- (3) To follow the most recent edition and any revisions of FTA Circular 4220.1F, “Third Party Contracting Guidance,” except as FTA determines otherwise in writing, and
- (4) That although the FTA “Best Practices Procurement Manual” provides additional third party contracting guidance, the Manual may lack the necessary information for compliance.

The Owner, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the project. If this contract is terminated, the Owner shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

The Owner may terminate this contract in whole or in part, for the Owner's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Owner shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Owner all equipment (property of Owner), data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Owner shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

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If the termination is for failure of the Contractor to fulfill the contract obligations, the Owner may complete the work by issuing another contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Owner.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Owner.

17. No Federal Government Obligations to Third Parties

The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

18. False or Fraudulent Statements or Claims

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its activities in connection with this Project. Accordingly, upon execution of the underlying contract or agreement the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may apply, the Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Federal Government

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reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement involving a project authorized under 49 U.S.C. chapter 53 or any other Federal statute, the Federal Government reserves the right to impose on the Contractor the penalties of 18 U.S.C. § 1001 or other applicable Federal statute to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

19. Access to Records and Reports

The Contractor agrees to permit, and require its subcontractors to permit, the U.S. Secretary of Transportation, and the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Contractor and its subcontractors pertaining to the Project, as required by 49 U.S.C. § 5325(g).

Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S. D. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5303, 5307, 5309, 5310, 5311, 5316, or 5317.

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

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after that date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 C.F.R. 18.39 (i)(11).

The State of North Carolina, Office of the State Auditor, now requires that all records now be retained for five (5) years after that date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto.

20. Contract Work Hours and Safety Standards Act (applies to non-transportation services)

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, et seq. The Act applies to grantee contracts and subcontracts “financed at least in part by loans or grants from ... the [Federal] Government.” 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6). Although the original Act required its application in any construction contract over \$2,000 or non-construction contract to which the Act applied over \$2,500 (and language to that effect is still found in 49 CFR 18.36(i)(6)), the Act no longer applies to any “contract in an amount that is not greater than \$100,000.” 40 USC 3701(b)(3)(A)(iii).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ “laborers or mechanics on a public work.” These non-construction applications do not generally apply to transit

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procurements because transit procurements (to include rail cars and buses) are deemed “commercial items.” 40 USC 3707, 41 USC 403 (12). A grantee that contemplates entering into a contract to procure a developmental or unique item should consult counsel to determine if the Act applies to that procurement and that additional language required by 29 CFR 5.5(c) must be added to the basic clause below.

The clause language is drawn directly from 29 CFR 5.5(b) and any deviation from the model clause below should be coordinated with counsel to ensure the Act’s requirements are satisfied.

Clause Language:

Contract Work Hours and Safety Standards

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** - The (write in the name of the grantee) shall upon its own action or upon written request of

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an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

21. Transit Employee Protective Agreements

The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.) These provisions are applicable to all contracts and subcontracts at every tier.

Transit Employee Protective Provisions.

(1) The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. § 5333(b), and U.S. DOL guidelines

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at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees to implement the Project in accordance with the conditions stated in that U.S. DOL certification. That certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The requirements of this Subsection of the Master Agreement do not apply to Projects for elderly individuals or individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2) or subsection 3012(b) of SAFETEA-LU, Projects for nonurbanized areas authorized by 49 U.S.C. § 5311; or Projects for the over-the-road bus accessibility program authorized by section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, 49 U.S.C. § 5310 note. Separate requirements for those Projects are set forth in Subsections (b), (c), and (d), respectively, below. *[Amendments to U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, were published at 73 Fed. Reg. 47046 et seq., August 13, 2008.]*

(b) Public Transportation Employee Protective Arrangements for Elderly Individuals and Individuals with Disabilities for the Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program. To the extent that the U.S. Secretary of Transportation has determined or determines in the future that employee protective arrangements required by 49 U.S.C. § 5333(b) are necessary or appropriate for a governmental authority subrecipient participating a Project authorized by 49 U.S.C. § 5310(b)(2) or subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, the Recipient agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor necessary

to comply with the requirements of 49 U.S.C. § 5333(b), in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions, if any, are identified in the U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement. The Recipient agrees to implement the Project in compliance with the conditions stated in that U.S. DOL certification, to the extent that certification is required. Any U.S.

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DOL certification that may be provided and any documents cited therein are incorporated by reference and made part of the Grant Agreement. *[New amendments to U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, were published at 73 Fed. Reg. 47046 et seq., August 13, 2008.]*

(c) Public Transportation Employee Protective Arrangements for Projects in Nonurbanized Areas Authorized by 49 U.S.C. § 5311. The Recipient agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program that is most current as of the date of execution of the Grant Agreement or Cooperative Agreement for the Project, and any alternative comparable arrangements specified by U.S. DOL for application to the Recipient's project, in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, and any revisions thereto. *[New amendments to U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, were published at 73 Fed. Reg. 47046 et seq., August 13, 2008.]*

(d) Employee Protective Arrangements for Projects Financed by the Over-the-Road Bus Accessibility Program. The Recipient agrees to comply with the terms and conditions of the Special Warranty for the Over-the-Road Bus Accessibility Program that is most current as of the date of execution of the Grant Agreement or Cooperative Agreement for the Project, and any alternative comparable arrangements specified by U.S. DOL for application to the Recipient's project, in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, and any revisions thereto. *[New amendments to U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, were published at 73 Fed. Reg. 47046 et seq., August 13, 2008.]*

(2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

22. Federal Motor Carrier Safety Administration

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The Contractor and its subcontractors, lessees or third party contractors will comply to the applicable provisions of the following promulgated U.S. FMCSA regulations.

Financial Responsibility.

1. To extent that the Contractor or its subcontractor, lessee or third party is engaged in interstate commerce and not within a defined commercial zone, the Contractor agrees to comply with U.S. FMCSA regulations, “Minimum Level of Financial Responsibility for Motor Carriers”, 49 U.S.C. Part 387, Dealing with economic registration and insurance requirements.

a) The amount of insurance required of Federal assistance recipients (5307, 5310 and 5311) is reduced to the highest amount of any state in which the transit provider operates.

2. To extent that the Contractor or its subcontractor, lessee or third party is engaged in interstate commerce and not within a defined commercial zone, and the grant recipient is not a unit of government (defined as Federal Government, a state, any political subdivision of a state or any agency established under a compact between states), the Contractor agrees to comply with U.S. FMCSA regulations, Subpart B, “Federal Motor Carrier Safety Regulation”, at 49 CFR Parts 390 through 396.

Driver Qualifications.

1. The Contractor or its subcontractor, lessee or third party agree to comply with U.S. FMCSA’s regulations, “Commercial Driver’s License Standards, Requirements, and Penalties”, 49 CFR Part 383.

Substance Abuse Rules for Motor Carriers

1. The Contractor or its subcontractor, lessee or third party agree to comply with U.S. FMCSA’s regulations, “Drug and Alcohol Use and Testing Requirements” 49 CFR Part 382, which apply to transit providers that operate a commercial motor vehicle that has a gross vehicle weight rating over 26,000 pounds or is designed to transport sixteen (16) or more passengers, including the driver.

23. National Intelligent Transportation Systems Architecture and Standards

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To the extent applicable, the Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and follow the provisions of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 *Fed. Reg.* 1455 *et seq.*, January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing. (*applicable to ITS projects*)

24. Charter Service

The Charter Bus requirements apply to all Operational Service Contracts. The Charter Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

The contractor agrees that no project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142, will engage in charter service operations, except as authorized by 49 U.S.C. § 5323(d) and FTA regulations, "Charter Service," 49 C.F.R. Part 604, and any Charter Service regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. The Charter Service Agreement the Grant Recipient has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project and part of this procurement. The following FTA's Charter Service regulations, apply: (1) the requirements of FTA's Charter Service regulations and any amendments thereto will apply to any charter service it or its subrecipients, lessees, third party contractors, or other participants in the Project provide; (2) the definitions of FTA's Charter Service regulations will apply to the Recipient's charter operations, and (3) a pattern of violations of FTA's Charter Service regulations may require corrective measures and imposition of remedies, including barring the Recipient, subrecipient, lessee, third party contractor, or other participant in the Project operating public transportation under the Project from receiving Federal financial assistance from FTA, or withholding an amount of Federal assistance as set forth in Appendix D to those regulations. [*Amendments to FTA regulations, "Charter Service," 49 C.F.R. Part 604, were published at 73 Fed. Reg. 2325 et seq., January 14, 2008, and amended at 73 Fed. Reg. 44927 et seq., August 1, 2008, and at 73 Fed. Reg. 46554 et seq., August 11 2008.*]

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REQUIRED FEDERAL THIRD PARTY CONTRACT PROVISIONS FOR FTA FUNDED CONTRACTS

25. School Bus Operations

The School Bus requirements apply to all Operational Service Contracts. The School Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

26. Drug Free Work Place & Drug and Alcohol Testing

The Contractor agrees to (1) Comply with the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. 8103 et seq., (2) Facilitate compliance with U.S. OMB guidance, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 2 C.F.R. Part 182, and (3) Comply with U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 49 C.F.R. Part 32, and any amendments to those regulations when they are issued. The Contractor also agrees to comply with the FTA Drug and Alcohol Regulation, 49 CFR 655, revised October 1, 2005, that implemented 49 U.S.C. § 5331, and any subsequent revisions or amendments thereto, in establishing and implementing a drug use and alcohol misuse testing program. This program is to be strictly applied to all safety sensitive employees of the Contractor for pre-employment, random, reasonable suspicion, post-accident, and return-to-duty testing. This program takes effect immediately upon the execution of the contract.

27. Geographic Preference

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Procurements shall be conducted in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in evaluation or award of bids or proposals, except where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws.

28. Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, updated February 2011 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

29. Safe Operation of Motor Vehicles

a. Seat Belt Use.

Pursuant to Executive Order No. 13043, April 16, 1997, 23 U. S. C. § 402, the Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned, rented, or personally-operated vehicles and include this provision in any third party subcontracts, leases or similar documents in connection with this project.

b. Distracted Driving, Including Texting While Driving.

Consistent with Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. Section 402 note, and DOT Order 3902.10, "Text Messaging While Driving, December 30, 2009, FTA encourages each third party contractor to promote policies and initiatives for its employees and other personnel that adopt and

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promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to include this provision in any third party subcontract leases or similar documents in connection with this project.

c. Safety. The Contractor is encouraged to:

- (a) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving—

Company-owned or rented vehicles; Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or any vehicle, on or off duty, and using an electronic device.

- (b) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

d. Definitions

- (1) “Driving” means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. “Driving” does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.
- (2) “Text Messaging” means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

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30. Sensitive Security Information

Each third party contractor must protect, and take measures to ensure that its subcontractors at each tier protect, “sensitive security information” made available during the administration of a third party contract or subcontract to ensure compliance with 49 U.S.C. Section 40119(b) and implementing DOT regulations, “Protection of Sensitive Security Information,” 49 CFR Part 15, and with 49 U.S.C. Section 114(r) and implementing Department of Homeland Security regulations, “Protection of Sensitive Security Information,” 49 CFR Part 1520.

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ATTACHMENT A

CERTIFICATION REGARDING LOBBYING

***(To be submitted with all bids or offers exceeding \$100,000; must be
executed prior to Award)***

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding to any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transactions

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**REQUIRED FEDERAL THIRD PARTY CONTRACT
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imposed 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.

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

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

Date

Signature of Contractor's Authorized
Official

Name and Title of Contractors Authorized
Official

Subscribed and sworn to before me this ___ day of _____, 20___, in the State of _____; and the County of _____.

Notary Public _____

My Appointment Expires _____

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**REQUIRED FEDERAL THIRD PARTY CONTRACT
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ATTACHMENT B

CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY and VOLUNTARY EXCLUSION
LOWER TIER COVERED TRANSACTION

(To be submitted with all bids or offers exceeding \$25,000.)

- (1) The prospective lower tier participant (Bidder/Contractor) certifies, by submission of this bid or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

- (2) The prospective Bidder/Contractor also certifies by submission of this bid or proposal that all subcontractors and suppliers (this requirement flows down to all subcontracts at all levels) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

- (3) Where the prospective lower tier participant (Bidder/Contractor) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid or proposal.

The lower tier participant (Bidder/Contractor), _____, certifies or affirms the truthfulness and accuracy of this statement of its certification and disclosure, if any.

SIGNATURE _____

TITLE _____

COMPANY _____

DATE _____

Exhibit B

**REQUIRED FEDERAL THIRD PARTY CONTRACT
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State of _____

County of _____

Subscribed and sworn to before me this ____ day of _____, 20____.

Notary Public _____

My Appointment Expires _____

Exhibit B

**REQUIRED FEDERAL THIRD PARTY CONTRACT
PROVISIONS FOR FTA FUNDED CONTRACTS**

ATTACHMENT C

**CERTIFICATE OF COMPLIANCE
WITH BUY AMERICA ROLLING STOCK REQUIREMENTS**

(To be submitted with all bids exceeding \$100,000. A bid, which does not include this certification or the certification under Attachment D, will not be eligible for award.)

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j), and the regulations in 49 CFR Part 661.11.

DATE _____

SIGNATURE _____

TITLE _____

COMPANY _____

State of _____

County of _____

Subscribed and sworn to before me this ____ day of _____, 20__.

Notary Public _____

My Appointment Expires _____

Exhibit B

**REQUIRED FEDERAL THIRD PARTY CONTRACT
PROVISIONS FOR FTA FUNDED CONTRACTS**

ATTACHMENT D

**CERTIFICATE OF NON-COMPLIANCE
WITH BUY AMERICA ROLLING STOCK REQUIREMENTS**

(To be submitted with all bids exceeding \$100,000. A bid, which does not include this certification or the certification under Attachment C, will not be eligible for award.)

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j), but may qualify for an exception to the requirement consistent with 49 U.S.C. Section 5323(j)(2)(C), and regulations in 49 CFR 661.7.

DATE _____

SIGNATURE _____

TITLE _____

COMPANY _____

State of _____

County of _____

Subscribed and sworn to before me this ____ day of _____, 20__.

Notary Public _____

My Appointment Expires _____