

## 22. Fuel Supplies, Fleet Cards and Related Services

- Action:**
- A. Award the low bid unit price contract to FleetCor Technologies Operating Company, LLC d.b.a Fuelman of GA for the purchase of fuel supplies, fleet cards, and related services for a period of five years at an estimated annual amount of \$13,260,000, and**
  - B. Authorize the City Manager to extend the contracts for two additional two-year terms with possible price adjustments at the time of renewal as authorized by the contract.**

**Staff Resource:** Charles Robinson, Business Support Services

### Explanation

- The City and County currently use various contractors for the provision of fuel supplies, fleet cards, and related services through various means, including gasoline, diesel, auxiliary fuels and motor oils at retail fueling stations, and through bulk and consignment fuel deliveries to onsite fueling locations.
- Fleet fuel credit cards are assigned to approximately 6,500 City vehicles and 1,100 County vehicles to ensure access to the discounted pricing schedule. The Fuelman invoices will provide comprehensive reporting of total fuel expenditures and activities.
- Business Support Services collaborated with the Fleet Management Advisory Team (FMAT) and more than 40 stakeholders across City Key Business Units and County Departments in order to finalize a solicitation for these commodities.
- The FMAT assisted in developing specifications and criteria for a consolidated fuel supplies, fleet cards, and related services agreement to maximize volume pricing discounts, standardize services and support, and facilitate reporting needs to document total fuel related purchases made by the City.
- The current contract for fleet cards also includes limited consignment fuel deliveries to onsite fueling locations at five City owned facilities and two County owned facilities. The new contract will expand this service to include consignment fueling through the use of vendor provided and maintained card readers at approximately 19 total locations.
- FleetCor will use a subcontractor, Mansfield Oil Company, to facilitate the delivery of bulk and consignment fuel to onsite fueling locations.

### Contract Terms

- This contract is for the term of five years with two, two-year renewal terms.
- The Vendor shall supply the City and County each with an Oil Price Information Services (OPIS) subscription in order to compare the weekly OPIS Rack pricing with invoices.
- In addition to being low bid, FleetCor will provide 199 retail fueling locations within Mecklenburg County.
- FleetCor committed to maintain the current OPIS Rack + Margin pricing from the previous agreement for all fuel types for the term of the agreement, except for diesel fuel purchased on a consignment basis.
- The price of diesel fuel has been lowered by \$0.02 per gallon, which should result in an anticipated savings of approximately \$4,199 annually.

- FleetCor agreed to participate in the Charlotte Cooperative Purchasing Alliance Program and to provide a rebate of \$0.005 per gallon to the City for all purchases made by participating public agencies.
- In the past year, the City and County combined purchased 4.7 million gallons of gas. Similar volumes would generate a rebate of \$23,959 annually for City and County purchases.

**Small Business Opportunity**

No SBE goals are established for purchases of goods and equipment (Appendix Section 18 of the SBO Policy).

**Funding**

Key Business Unit Operating Budgets

**STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG**

**AGREEMENT TO PROVIDE  
FUEL SUPPLIES, FLEET CARDS, AND RELATED SERVICES**

THIS PROFESSIONAL SERVICES CONTRACT (the "Contract") is made and entered into as of this 1<sup>st</sup> day of November 2011 (the "Effective Date"), by and between FleetCor Technologies Operating Company, LLC, a company doing business in North Carolina (the "Company"), and the City of Charlotte, a North Carolina municipal corporation (the "City").

**RECITALS**

**WHEREAS**, The City of Charlotte, NC on behalf of itself and any city, county, local government, school district, private K-12 school, technical or vocational school, higher education institution (including community colleges, colleges and universities, both private and public), state, other government agencies or nonprofit organizations that elect to access this Contract (herein "Participating Public Agency") through the Charlotte Cooperative Purchasing Alliance (CCPA) issued An Invitation to Bid (ITB # 269-2011-011) dated May 6, 2011 requesting bids from qualified firms to provide the City with Fuel Supplies, Fleet Cards, and Related Services hereafter referred to as ("Products" or "Services"). This Invitation to Bid, together with all attachments and any amendments, is referred to herein as the "ITB", and

**WHEREAS**, the City desires that the Company provide certain Fuel Supply Products, Fuel Cards, and Related Services, and the Company desires to provide such Services; and

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

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

**CONTRACT**

**1. EXHIBITS.**

The Exhibits below are hereby incorporated into and made a part of this Contract. In interpreting this Contract and resolving any ambiguities, the main body of this Contract will take precedence over the Exhibits, and any inconsistency between the Exhibits will be resolved in the order in which the Exhibits appear below. Each reference to COMPANY NAME in the Exhibits and Appendices shall be deemed to mean the Company.

- 1.1. EXHIBIT A: SCOPE OF SERVICES
- 1.2. EXHIBIT B: PRICING SCHEDULE
- 1.3. APPENDIX A: GENERAL TERMS AND CONDITIONS FOR USE OF FLEET CARDS
- 1.4. APPENDIX B: MASTER INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT
- 1.5. APPENDIX C: CITY FUEL TRANSACTION LAYOUT

**2. DEFINITIONS.**

*Acceptance:* Refers to receipt and approval by the City of a Deliverable or Service in accordance with the acceptance process and criteria set forth in the Contract.

*Addenda:* Refers to any and all modifications or additions to this Invitation to Bid that are issued in writing by the City's Procurement Services Division.

*Affiliates:* Refers to all departments or units of the City and County and to all other governmental units, towns, boards, committees or municipalities for which the City processes data or performs services that involve the Deliverables or Services.

<i>Authorized User:</i>	Refers to a representative of a City cost center who is established as an administrator for their cost center or org number.
<i>Bulk Fueling Location:</i>	Refers to any City or County location where Bulk Fuel is stored in a tank or tanks without a card reader. Bulk Fueling Locations may include generators, tanks that service a combination of generator(s) and direct dispensing to Vehicles and/or Equipment, or any other location specified by the City and/or County as a Bulk Fueling Location.
<i>CCPA:</i>	The Charlotte Cooperative Purchasing Alliance.
<i>City:</i>	Refers to the City of Charlotte, North Carolina.
<i>City Project Manager:</i>	Refers to a specified City employee representing the best interests of the City for this Project.
<i>Company:</i>	Refers to a Service Provider that has been selected by the City to provide the Services required by this Contract.
<i>Company Project Manager:</i>	Refers to a specified Company employee representing the best interests of the Company for this Project.
<i>Consigned Fuel / Consignment Fuel:</i>	Refers to any Fuel provided by the Service Provider, pumped into City owned tanks at Onsite Fueling Locations, and available for purchase by City Fleet Card users. The Service Provider retains ownership of this Fuel until such time that the City purchases it through the use of a Fleet Card and Card Reader System associated with the Fuel tank.
<i>County:</i>	Refers to Mecklenburg County, North Carolina.
<i>Deliverables:</i>	Refers to all tasks, reports, information, designs, plans and other items, which the Company is required to complete and deliver to the City in connection with the Contract.
<i>Documentation:</i>	Refers to all written, electronic, or recorded works, that describe the use, functions, features, or purpose of the Deliverables or Services or any component thereof, and which are published or provided to the City by the Company or its subcontractors, including without limitation all end user manuals, training manuals, guides, program listings, data models, flow charts, logic diagrams, and other materials related to or for use with the Deliverables or Services.
<i>Environmentally Preferable Products:</i>	Refers to products that have a lesser or reduced effect on human health and the environment when compared with competing products that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.
<i>EMD:</i>	Refers to the City of Charlotte's Equipment Management Division.
<i>Equipment Company:</i>	Refers to a specific group of City and/or County Vehicles and equipment as defined by the City's Equipment Management Division, in order to differentiate between City/County/other contracted fleets or towns. Equipment Companies are subject to change at the City's discretion. A list of current Equipment Companies is provided in Section 4.
<i>Fleet Card / Fuel Credit Card:</i>	Refers to the Credit card issues to City employees for Fuel Purchases under the Scope of Services detailed in this Contract.

<i>Fleet Card Management System:</i>	Refers to the Service Provider's system, as requested in this Contract.
<i>Gallon:</i>	Refers to a liquid measure of product equating to 128 fluid ounces.
<i>GGE:</i>	Refers to the Gasoline Gallon Equivalent, as used in this Contract relative to Compressed Natural Gas (CNG). A GGE is the amount of alternative fuel it takes to equal the energy content of one liquid gallon of gasoline.
<i>Lead Public Agency:</i>	Refers to the Charlotte-Mecklenburg Procurement Services Division.
<i>MICPA:</i>	Refers to the Master Intergovernmental Cooperative Purchasing Agreement, entered into by any Participating Public Agency, which outlines the terms and conditions allowing access to the Lead Public Agencies' Master Agreements. A copy of the MICPA is provided herein as Appendix B.
<i>Onsite Fueling Location:</i>	Refers to any City or County Location where Consigned Fuel is stored.
<i>OPIS:</i>	Refers to the Oil Price Information Service
<i>Participating Public Agency:</i>	Refers to a public entity, county, city, special district, local government, school district, private K-12 school, technical or vocational school, higher education institution (including community colleges, colleges and universities, both public and private), state, other government agency or nonprofit organization.
<i>Pound(s)/PPG:</i>	Refers to pounds per gallon, as used in this Contract relative to Propane. The PPG is the actual weight of the product per gallon.
<i>Post-Consumer Recycled Material:</i>	Refers to material and by-products which have served their intended end-use by a consumer and have been recovered or diverted from solid waste. It does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.
<i>Project Plan:</i>	Refers to the detailed plan for implementation of the Services as described in Exhibit A in accordance with the terms of this Contract.
<i>Rack:</i>	Refers to Charlotte Area Rack Price, based on fuel type, as provided by OPIS at the City Specified scheduled intervals, per Section 4.
<i>Recyclability:</i>	Refers to products or materials that can be collected, separated or otherwise recovered from the solid waste stream for reuse, or used in the manufacture or assembly of another package or product, through an established recycling program. For products that are made of both recyclable and non-recyclable components, the recyclable claim should be adequately qualified to avoid consumer deception about which portions or components are recyclable.
<i>Recycled Material:</i>	Refers to material and by-products which have been recovered or diverted from solid waste for the purpose of recycling. It does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.
<i>Retail Fueling Location:</i>	Refers to a Retail Fueling Location associated with the Service Provider that sells Fuel and Fuel Supplies to the public and/or Service Provider's clients.
<i>Services:</i>	Refers to the Fuel Supply Products, Fuel Cards, and Related Services as requested in this Contract.
<i>Specifications and Requirements:</i>	Refers to all definitions, descriptions, requirements, criteria, warranties and performance standards relating to the Deliverables and Services

which are set forth or referenced in: (i) this Contract; (ii) the Documentation; and (iii) any functional and/or technical specifications which are published or provided by the Company or its licensors or suppliers from time to time with respect to all or any part of the Deliverables or Services.

*Work Product:*

Refers to the Deliverables and all other programs, algorithms, reports, information, designs, plans and other items developed by the Service Provider in connection with this Contract, and all partial, intermediate or preliminary versions of any of the foregoing.

**3. DESCRIPTION OF SERVICES.**

- 3.1. The Company shall be responsible for providing the Services described in Exhibit A attached to this Contract and incorporated herein by reference (the "Services"). Without limiting the foregoing, the Company will perform the Services and meet the requirements as set forth in Exhibit A. However, the Company shall not be responsible for tasks specifically assigned to the City in this Contract or in Exhibit A.
- 3.2. The Company shall perform the Services on site at the City's facilities in Charlotte, North Carolina, and at the Company's facilities or at Retail Merchant Sites, except as mutually agreed upon in writing in specific instances by the City.

**4. COMPENSATION.**

- 4.1. **TOTAL FEES AND CHARGES.**  
City agree to pay the Company for the Goods and Services at the rate structures set forth in Exhibit B, which shall remain firm for the duration of this Contract. No modifications to the rates structures defined in Exhibit B shall be allowed except those agreed to and defined by a written instrument duly executed by both parties.
- 4.2. **NO EXPENSES CHARGEABLE.**  
The Company shall not be entitled to charge the City for any travel, mileage, meals, materials or other costs or expenses associated with this Contract.
- 4.3. **EMPLOYMENT TAXES AND EMPLOYEE BENEFITS.**  
The Company represents and warrants that the Consultants provided by the Company to perform the Services are actual employees of the Company, and that the Company shall be responsible for providing all salary and other applicable benefits to each Consultant. The Company further represents, warrants and covenants that it will pay all withholding tax, social security, Medicare, unemployment tax, worker's compensation and other payments and deductions which are required by law for each Consultant. The Company agrees that the Consultants are not employees of the City.
- 4.4. **INVOICES.**
  - 4.4.1. Each invoice sent by the Company shall detail all Services performed and delivered which are necessary to entitle the Company to the requested payment under the terms of this Contract.
  - 4.4.2. **CITY INVOICING:**  
The Company shall email summary invoices to [shite@charlottenc.gov](mailto:shite@charlottenc.gov) and shall cc [rdaddis@charlottenc.gov](mailto:rdaddis@charlottenc.gov).  
Invoices must be addressed to:  
City of Charlotte AP  
Attn: DEPARTMENT/CONTACT NAME  
P. O. Box 37979  
Charlotte, NC 28237-7979  
  
Accounts Payable (or AP) must be in the first line. On the Attn: line, you must indicate the department or area, along with the appropriate contact name.

Invoices that are addressed directly to City departments and not to Accounts Payable may not be handled as quickly as invoices that are addressed correctly.

Detailed invoices should be sent directly to City departments for their records. The City shall supply the Company with names and email addresses for users within each KBU or Department who should receive invoices. The City shall provide updates to this information to the Company as it occurs during the term of this Contract.

4.5. **DUE DATE OF INVOICES.**

Payment of invoices shall be due within thirty (30) days after receipt of an accurate, undisputed properly submitted invoice by the City.

4.6. **PRE-CONTRACT COSTS.**

The City shall not be charged for any Services or other work performed by the Company prior to the Effective Date of this Contract.

4.7. **AUDIT.**

During the term of this Contract and for a period of one (1) year after termination of this Contract, the City shall have the right to audit, either themselves or through an independent auditor, all books and records and facilities of the Company necessary to evaluate Company's compliance with the terms and conditions of this Contract or the City's payment obligations. The City shall pay their own expenses, relating to such audits, but shall not have to pay any expenses or additional costs of the Company. However, if non-compliance is found that would have cost the City in excess of \$10,000 but for the audit, then the Company shall be required to reimburse the City for the cost of the audit.

5. **CCPA ADMINISTRATIVE FEE.**

The Company shall pay the City a quarterly administrative fee in the amount of \$0.005 per gallon for all CCPA Program Spend by the County and all Participating Public Agencies during the term of this Contract. The City's gallons purchased under the contract are excluded from the CCPA Administrative Fee. The Company shall pay the administrative fee to the City within thirty (30) days after the close of each calendar month and shall include a report as mutually agreed by the parties outlining all sales through the CCPA Program.

5.1. **PRICING EXCEPTION APPLICABLE TO CCPA PARTICIPATING PUBLIC AGENCIES (Never below Company's Cost):**

The Company reserves the right to never bill CCPA Participating Agencies under this contract for any purchase at a Retail Fueling Location at a price below the Company's cost to settle with the card accepting Merchant and in the event the Participating Public Agency's OPIS based, cost-plus price calculates to be below the Company's cost to settle with the Merchant, the Company's cost shall apply.

6. **RECORDS.**

The Company shall be responsible for keeping a record that accurately states the number of hours worked by the Consultant(s). The City shall have the right to audit the Company's invoices, expense reports and other documents relating to the Services performed under this Contract, and shall not be required to pay for Services which did not occur, or which occurred in breach of this Contract. The Company shall make such documents available for inspection and copying by the City in Charlotte, North Carolina between the hours of 9:00 a.m. to 5:00 p.m. Monday through Friday, whenever requested by the City.

7. **TIME IS OF THE ESSENCE.**

Time is of the essence in having the Company perform all Services and deliver all Deliverables within the time frames provided by this Contract and Exhibit A, including all completion dates, response times and resolution times (the "Completion Dates"). Except as specifically stated in this Contract, there shall be no extensions of the Completion Dates. All references to days in this Contract (including the Exhibits) shall refer to calendar days rather than business days, unless this Contract provides otherwise for a specific situation.

8. **NON-APPROPRIATION OF FUNDS.**

If the Charlotte City Council does not appropriate the funding needed by the City to make payments

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

**9. COMPANY PROJECT MANAGER.**

The duties of the Company Project Manager include, but are not limited to:

- 8.1 Coordination of Project schedules and the Company's resource assignment based upon the City's requirements and schedule constraints;
- 8.2 Management of the overall Project by monitoring and reporting on the status of the Project and actual versus projected progress, and by consulting with the City's Project Manager when deviations occur and by documenting all such deviations in accordance with agreed upon change control procedures;
- 8.3 Provision of consultation and advice to the City on matters related to Project implementation strategies, key decisions and approaches, and Project operational concerns/issues and acting as a conduit to the Company's specialist resources that may be needed to supplement the Company's normal implementation staff;
- 8.4 Acting as the Company's point of contact for all aspects of contract administration, including invoicing for Services, and status reporting;
- 8.5 Facilitation of review meetings and conferences between the City and the Company's executives when scheduled or requested by the City;
- 8.6 Communication among and between the City and the Company's staff;
- 8.7 Promptly responding to the City's Project Manager when consulted in writing or by E-mail with respect to Project deviations and necessary documentation;
- 8.8 Identifying and providing the City with timely written notice of all issues that may threaten the Company's Services in the manner contemplated by this Contract (with "timely" meaning immediately after the Company becomes aware of them);
- 8.9 Ensuring that adequate quality assurance procedures are in place through the Project; and
- 8.10 Meeting with other service providers working on City projects that relate to this effort as necessary to resolve problems and coordinate the Services.

**10. CITY PROJECT MANAGER.**

The duties of the City Project Manager are to (1) ensure that the Company delivers all requirements and specifications in this Contract; (2) coordinate the City's resource assignment as required to fulfill the City's obligations pursuant to this Contract; (3) promptly respond to the Company's Project Manager when consulted in writing or by E-mail with respect to project issues; and (4) act as the City's point of contact for all aspects of the Project including contract administration and coordination of communication with the City's staff. The City shall be allowed to change staffing for the City Project Manager position on one (1) business day's notice to the Company.

**11. PROGRESS REPORTS.**

During implementation, the Company shall prepare and submit to the City weekly (or at such other times as may be agreed in Exhibit A) written progress reports, which accomplish each of the following:

- 11.1. Update the project schedule set forth in Exhibit A, indicating progress for each task and Deliverable.
- 11.2. Identify all information, personnel, equipment, facilities and resources of the City that will be required for the Company to perform the Services for the subsequent month.
- 11.3. Identify and report the status of all tasks and Deliverables that have fallen behind schedule.
- 11.4. Identify and summarize all risks and problems identified by the Company, which may affect the performance of the Services.



- 11.5. For each risk and problem, identify the action and person(s) responsible for mitigating the risk and resolving the problem.
- 11.6. For each risk and problem identified, state the impact on the project schedule.

**12. DUTY OF COMPANY TO IDENTIFY AND REQUEST INFORMATION, PERSONNEL AND FACILITIES.**

The Company shall identify and request in writing from the City in a timely manner: (i) all information reasonably required by the Company to perform each task comprising the Services, (ii) the City's personnel whose presence or assistance reasonably may be required by the Company to perform each task comprising the Services, and (iii) any other equipment, facility or resource reasonably required by the Company to perform the Services. Notwithstanding the foregoing, the Company shall not be entitled to request that the City provide information, personnel or facilities other than those which Exhibit A specifically requires the City to provide, unless the City can do so at no significant cost. The Company shall not be relieved of any failure to perform under this Contract by virtue of the City's failure to provide any information, personnel, equipment, facilities or resources: (i) that the Company failed to identify and request in writing from the City pursuant to this Section; or (ii) which the City is not required to provide pursuant to this Contract. In the event the City fails to provide any information, personnel, facility or resource that it is required to provide under this Section, the Company shall notify the City in writing immediately in accordance with the notice provision of this Contract. Failure to do so shall constitute a waiver by Company of any claim or defense it may otherwise have based on the City's failure to provide such information, personnel, facility or resource.

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

- 13.1. The City will have the right to require the removal and replacement of any personnel of the Company or the Company's subcontractors who are assigned to provide Services to the City based on experience, qualifications, performance, conduct, compatibility, and violation of City policy or any other reasonable grounds. The addition or promotion of any personnel to key positions within the Project must be approved by the City in writing. The Company will replace any personnel that leave the Project, including but not limited to Key Personnel, with persons having at least equivalent qualifications who are approved by the City in writing.
- 13.2. Unless approved by the City in writing, the Company's personnel set forth in Exhibit A (the "Key Personnel") shall stay on the Project until termination without any material reduction of such Key Personnel's duties, time on the Project or level of involvement. In the event of a breach or potential breach of the foregoing sentence, the Company will use its best efforts to maintain such Key Personnel on the Project (if necessary, in a subcontracting role).
- 13.3. As used in this Contract, the "personnel" includes all staff provided by the Company or its subcontractors, including but not limited to Key Personnel.

**14. BACKGROUND CHECKS.**

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

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

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

- If the job duties require driving: A motor vehicle records check.

- If the job duties include responsibility for initiating or affecting financial transactions: A credit history check.
- If job duties include entering a private household or interaction with children: A sexual offender registry check.

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

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

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

**15. NON-EXCLUSIVITY.**

The Company acknowledges that it is one of several providers of Services to the City and the City does not represent that they are obligated to contract with the Company for any particular project.

**16. EACH PARTY TO BEAR ITS OWN NEGOTIATION COSTS.**

Each party shall bear its own cost of negotiating this Contract and developing the exhibits. The City shall not be charged for any Services or other work performed by the Company prior to the Effective Date.

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

**17.1 GENERAL WARRANTIES.**

- 17.1.1 The Services shall satisfy all requirements set forth in this Contract, including but not limited to the attached Exhibits;
- 17.1.2 The Services provided by the Company under this Contract will not infringe or misappropriate any patent, copyright, trademark, or trade secret rights of any third party;
- 17.1.3 The Company has taken and will continue to take precautions sufficient to ensure that it will not be prevented from performing all or part of its obligations under this Contract by virtue of interruptions in the computer systems used by the Company;
- 17.1.4 All Services performed by the Company and/or its subcontractors pursuant to this Contract shall meet the highest industry standards and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;
- 17.1.5 Neither the Services, nor any Deliverables provided by the Company under this Contract will infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party;
- 17.1.6 The Company and each Consultant provided by the Company to the City shall have the qualifications, skills and experience necessary to perform the Services described or referenced in Exhibit A;
- 17.1.7 All information provided by the Company about each Consultant is accurate; and
- 17.1.8 Each Consultant is an employee of the Company, and the Company shall make all payments and withholdings required for by law for the Company for such Consultant.

**17.2 ADDITIONAL WARRANTIES.**

The Company further represents and warrants that:

- 17.2.1 It is a legal entity and if incorporated, duly incorporated, validly existing and in good standing under the laws of the state of its incorporation or licensing and is qualified to do business in North Carolina;
- 17.2.2 It has all the requisite corporate power and authority to execute, deliver and perform its

obligations under this Contract;

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

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

**18.1. WORK ON CITY'S PREMISES.**

The Company and all Consultants will, whenever on the City's premises, obey all instructions and City policies, which are provided to them with respect to performing Services on the City's premises.

**18.2. RESPECTFUL AND COURTEOUS BEHAVIOR.**

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

**18.3. REPAIR OR REPLACEMENT OF DAMAGE EQUIPMENT OR FACILITIES.** In the event that the Company causes damage to the City's equipment or facilities, the Company shall, at its own expense, promptly repair or replace such damaged items to restore them to the same level of functionality that they possessed prior to the Company's action.

**18.4. REGENERATION OF LOST OR DAMAGED DATA.**

With respect to any data which the Company or any Consultants have negligently lost or negligently damaged, the Company shall, at its own expense, promptly replace or regenerate such data from the City's machine-readable supporting material, or obtain, at the Company's own expense, a new machine-readable copy of lost or damaged data from the City's data sources.

**19. REMEDIES.**

**19.1. RIGHT TO COVER.**

If the Company fails to meet any completion date or resolution time set forth in this Contract (including the Exhibits) or the Project Plan, the City may take any of the following actions with or without terminating this Contract, and in addition to and without limiting any other remedies it may have:

- a. Employ such means as it may deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and the Company is again able to resume performance under this Contract; and
- b. Deduct any and all expenses incurred by the City in obtaining or performing the Services from any money then due or to become due the Company and, should the City's cost of obtaining or performing the services exceed the amount due the Company, collect the amount due either from the Company.

**19.2. RIGHT TO WITHHOLD PAYMENT.**

If the Company breaches any provision of this Contract, the City shall have a right to withhold all payments due to the Company until such breach has been fully cured.

- 19.3. **SPECIFIC PERFORMANCE AND INJUNCTIVE RELIEF.**  
The Company agrees that monetary damages are not an adequate remedy for the Company's failure to provide the Services or Deliverables as required by this Contract, nor could monetary damages be the equivalent of the performance of such obligation. Accordingly, the Company hereby consents to an order granting specific performance of such obligations of the Company in a court of competent jurisdiction within the State of North Carolina. The Company further consents to the City obtaining injunctive relief (including a temporary restraining order) to assure performance in the event the Company breaches this Contract.
- 19.4. **SETOFF.**  
Each party shall be entitled to setoff and deduct from any amounts owed to the other party pursuant to this Contract all damages and expenses incurred as a result of the other party's breach of this Contract.
- 19.5. **OTHER REMEDIES.**  
Upon breach of this Contract, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

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

- 20.1. **TERM.**  
This Contract shall commence on the Effective Date and shall continue in effect for five (5) years with the City having the unilateral right to renew for two (2) consecutive two (2) year terms thereafter.
- 20.2. **TERMINATION BY THE CITY.**  
The City may terminate this Contract at any time without cause by giving thirty (30) days prior written notice to the Company. As soon as practicable after receipt of a written notice of termination without cause, Company shall submit a statement to the City showing in detail the Services performed under this Contract through the date of termination. The forgoing payment obligation is contingent upon: (i) the Company having fully complied with Section 20.8; and (ii) the Company having provided the City with written documentation reasonably adequate to verify the number of hours of Services rendered by each Consultant through the termination date and the percentage of completion of each task.
- 20.3. **TERMINATION FOR DEFAULT BY EITHER PARTY.**  
By giving written notice to the other party, either party may terminate this Contract upon the occurrence of one or more of the following events:
- a. The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Contract, provided that, unless otherwise stated in this Contract, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party; or
  - b. The other party attempts to assign, terminate or cancel this Contract contrary to the terms hereof; or
  - c. The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Contract shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.

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

Notwithstanding anything contained herein to the contrary, upon termination of this Contract by the Company for default, the Company shall continue to perform the Services required by this Contract for the lesser of: (i) six (6) months after the date the City receives the Company's

written termination notice; or (ii) the date on which the City completes its transition to a new service provider.

20.4. ADDITIONAL GROUNDS FOR DEFAULT TERMINATION BY THE CITY.

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

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

20.5. NO SUSPENSION.

In the event that the City disputes in good faith an allegation of default by the Company, notwithstanding anything to the contrary in this Contract, the Company agrees that it will not terminate this Contract or suspend or limit the Services or any warranties or repossess, disable or render unusable any software supplied by the Company, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.

20.6. CANCELLATION OF ORDERS AND SUBCONTRACTS.

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

20.7. AUTHORITY TO TERMINATE.

20.7.1. City Authority.

The following persons are authorized to terminate this Contract on behalf of the City: (a) the City Manager, any Assistant City Manager or any designee of the City Manager; (b) the Key Business Executive of the City Key Business Unit responsible for administering this Contract.

20.8. OBLIGATIONS UPON EXPIRATION OR TERMINATION.

Upon expiration or termination of this Contract, the Company shall promptly return to the City (i) all computer programs, files, documentation, media, related material and any other material and equipment that is owned by the City; (ii) all Deliverables that have been completed or that are in process as of the date of termination; and (iii) a written statement describing in detail all work performed with respect to Deliverables which are in process as of the date of termination. The expiration or termination of this Contract shall not relieve either party of its obligations regarding "Confidential Information", as defined in this Contract.

20.9. NO EFFECT ON TAXES, FEES, CHARGES OR REPORTS.

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

20.10. OTHER REMEDIES.

The remedies set forth in this Section and **Section 19** shall be deemed cumulative and not exclusive, and may be exercised successively or concurrently, in addition to any other remedies available under this Contract or at law or in equity.

**21. TRANSITION SERVICES UPON TERMINATION.**

Upon termination or expiration of this Contract, the Company shall cooperate with the City to assist with the orderly transfer of the Services provided by the Company to the City. Prior to termination or expiration of this Contract, the City may require the Company to perform and, if so required, the Company shall perform certain transition services, necessary to shift the Services of the Company to another provider or to the City themselves as described below (the "Transition Services"). Transition Services may include but shall not be limited to the following:

- Working with the City to jointly develop a mutually agreed upon Transition Services Plan to facilitate the termination of the Services;
- Notifying all affected service providers and subcontractors of the Company;
- Performing the Transition Service Plan activities;
- Answering questions regarding the Services on an as-needed basis; and
- Providing such other reasonable services needed to effectuate an orderly transition to a new service provider.

**22. CHANGES.**

In the event changes to the Services (collectively "Change"), become necessary or desirable to the parties, the parties shall follow the procedures set forth in this Section. A Change shall be effective only when documented by a written, dated agreement executed by both parties which expressly references and is attached to this Contract (a "Change Statement"). The Change Statement shall set forth in detail: (i) the Change requested, including all modifications of the duties of the parties; (ii) the reason for the proposed Change; and (iii) a detailed analysis of the impact of the Change on the results of the Services and time for completion of the Services, including the impact on all Milestones and delivery dates and any associated price.

In the event either party desires a Change, the Project Manager for such party shall submit to the other party's Project Manager a proposed Change Statement. If the receiving party does not accept the Change Statement in writing within ten (10) days, the receiving party shall be deemed to have rejected the Change Statement. If the parties cannot reach agreement on a proposed Change, the Company shall nevertheless continue to render performance under this Contract in accordance with its (unchanged) terms and conditions.

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

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

23.1. The parties agree that the City shall have exclusive ownership of all reports, documents, designs, ideas, materials, reports, concepts, plans, creative works, and other Work Product developed for or provided to the City in connection with this Contract, and all patent rights, copyrights, trade secret rights and other intellectual property rights relating thereto (collectively "the Intellectual Property"). The Company hereby assigns and transfers all rights in the Intellectual Property to the City. The Company further agrees to execute and deliver such assignments and other documents as the City may later require to perfect, maintain and enforce the City's rights as sole owner of the Intellectual Property, including all rights under patent and copyright law. The Company hereby appoints the City as attorney in fact to execute all such assignments and instruments and agree that its appointment of the City as an attorney in fact is coupled with an interest and is irrevocable.

23.2. The City grants the Company a royalty-free, non-exclusive license to use and copy the Intellectual Property to the extent necessary to perform this Contract. The Company shall not be entitled to use the Intellectual Property for other purposes without the City's prior written

consent, and shall treat the Intellectual Property as “Confidential Information” under the Confidentiality Contract.

23.3. The Company will treat as Confidential Information under the Confidentiality and Non-Disclosure Contract all data in connection with this Contract. City data processed by the Company shall remain the exclusive property of the City. The Company will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the City in any manner except that contemplated by this Contract.

**24. LICENSING.**

The Company shall provide copies of all valid licenses and certificates required for performance of the Services. The copies shall be delivered to the City no later than ten (10) days after the Company receives the notice of award from the City. Current copies of licenses and certificates shall be provided to the City within twenty-four (24) hours of demand at any time during this Contract term. Licenses and certificates required for this contract 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 this Contract work.

Failure to obtain a valid Charlotte Business License within thirty (30) days of receiving contract award notification will result in garnishment by the Tax Office from any payments made to the Company.

**25. RELATIONSHIP OF THE PARTIES.**

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

**26. INDEMNIFICATION.**

To the fullest extent permitted by law, the Company shall indemnify, defend and hold harmless each of the “Indemnitees” (as defined below) from and against any and all “Charges” (as defined below) paid or incurred any of them as a result of any claims, demands, lawsuits, actions, or proceedings: (i) alleging violation, misappropriation or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to the Services or any products or deliverables provided to the City pursuant to this Contract (“Infringement Claims”); (ii) seeking payment for labor or materials purchased or supplied by the Company or its subcontractors in connection with this Contract; or (iii) arising from the Company’s failure to perform its obligations under this Contract, or from any act of negligence or willful misconduct by the Company or any of its agents, employees or subcontractors relating to this Contract, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible; or (iv) arising from any claim that the Company or an employee or subcontractor of the Company is an employee of the City, including but not limited to claims relating to worker’s compensation, failure to withhold taxes and the like. For purposes of this Section: (a) the term “Indemnitees” means the City and each of the City’s officers, officials, employees, agents and independent contractors (excluding the Company); and (b) the term “Charges” means any and all losses, damages, costs, expenses (including reasonable attorneys’ fees), obligations, duties, fines, penalties, royalties, interest charges and other liabilities (including settlement amounts).

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

This **Section 26** shall remain in force despite termination of this Contract (whether by expiration of the

term or otherwise).

**27. 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 Contract. Any subcontract entered into by Company shall name the City as a third party beneficiary.

**28. CONFIDENTIAL INFORMATION.**

28.1. CONFIDENTIAL INFORMATION.

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

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

28.1.2. *Information of the City or their suppliers, contractors or licensors marked "Confidential" or "Proprietary."*

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

28.1.4. *Information contained in the City's personnel files, as defined by N.C. Gen. Stat. 153A-98.* This consists of all information gathered and/or maintained by the City about employees, except for that information which is a matter of public record under North Carolina law.

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

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

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

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

28.1.9. *Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.*

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

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

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

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

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



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

28.2. RESTRICTIONS.

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

- 28.2.1. It shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information.
- 28.2.2. It shall not, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information of the other to any third party or to any individual employed by the Company, other than an employee, agent, subcontractor or vendor of the City or Company who: (i) has a need to know such Confidential Information, and (ii) has executed a confidentiality agreement incorporating substantially the form of this Section of this Contract and containing all protections set forth herein.
- 28.2.3. It shall not use any Confidential Information of the City for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written agreements between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.
- 28.2.4. It shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information of the other.
- 28.2.5. The Company shall use its best efforts to enforce the proprietary rights of the City, and the City's vendors, licensors and suppliers (including but not limited to seeking injunctive relief where reasonably necessary) against any person who has possession of or discloses Confidential Information in a manner not permitted by this Contract.
- 28.2.6. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, the Company shall assert this Contract as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.
- 28.2.7. All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to the City or destroyed upon satisfaction of the purpose of the disclosure of such information.

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

- 28.3.1. Was already known to the Company prior to being disclosed by the disclosing party;
- 28.3.2. Was or becomes publicly known through no wrongful act of the Company;
- 28.3.3. Was rightfully obtained by the Company from a third party without similar restriction and without breach hereof;
- 28.3.4. Was used or disclosed by the Company with the prior written authorization of the City;
- 28.3.5. Was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, the Company shall first give to the City notice of such requirement or request;
- 28.3.6. Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the Company shall take use its best efforts to obtain an agreement or protective order providing that, to the greatest possible extent possible, this Contract will be applicable to all disclosures under the court order or subpoena.

28.4. UNINTENTIONAL DISCLOSURE.

Notwithstanding anything contained herein in to the contrary, in the event that the Company is

unintentionally exposed to any Confidential Information of the City, the Company agrees that it shall not, directly or indirectly, disclose, divulge, reveal, report or transfer such Confidential Information to any person or entity or use such Confidential Information for any purpose whatsoever.

28.5. REMEDIES.

The Company acknowledges that the unauthorized disclosure of the Confidential Information of the City will diminish the value of the proprietary interests therein. Accordingly, it is agreed that if the Company breaches its obligations hereunder, the City shall be entitled to equitable relief to protect its interests, including but not limited to injunctive relief, as well as monetary damages.

**29. INSURANCE.**

29.1. TYPES OF INSURANCE.

Company shall obtain and maintain during the life of this Contract, with an insurance Company rated not less than "A" by A.M. Best, authorized to do business in the State of North Carolina, acceptable to the Charlotte-Mecklenburg, Risk Management Division the following insurance:

29.1.1. Automobile Liability - Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$5,000,000 bodily injury each person, each accident and \$5,000,000 property damage, or \$5,000,000 combined single limit - bodily injury and property damage. The automobile liability coverage shall be broadened to include pollution coverage on covered autos, and a copy of endorsement CA 99 48 shall be provided to the City.

Company must also supply the City with evidence of motor carrier endorsement MCS-90 as required by the Federal Motor Carrier Safety Administration's Motor Carrier Act.

29.1.2. Pollution Legal Liability- Insurance of not less than \$5,000,000 per occurrence/aggregate, including bodily injury, property damage and clean up costs. Coverage will be written on a claims-made basis.

29.1.3. Commercial General Liability - Bodily injury and property damage liability as shall protect the Company and any subcontractor performing Services under this Contract, from claims of bodily injury or property damage which arise from performance of this Contract, whether such operations are performed by the Company, any subcontractor, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$5,000,000 bodily injury each occurrence/aggregate and \$5,000,000 property damage each occurrence/aggregate, or \$5,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, operations, personal injury liability and contractual liability, assumed under the indemnity provision of this Contract.

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

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

29.2. OTHER INSURANCE REQUIREMENTS.

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

29.2.2. The City of Charlotte shall be named as an additional insured for operations or services rendered under the automobile and general liability coverage. Additionally, the additional insured language must reference Contract # (Actual Contract #). The Company's insurance shall be primary of any self-funding and/or insurance otherwise carried by the City for all loss or damages arising from the Company's operations under

this agreement.

- 29.2.3. Certificates of such insurance will be furnished to the City and shall contain the provision that the City be given thirty (30) days' written notice of any intent to amend coverage reductions or material changes or terminate by either the insured or the insuring Company.
- 29.2.4. Should any or all of the required insurance coverage be self-funded/self-insured, a copy of the Certificate of Self-Insurance or other documentation from the North Carolina Department of Insurance shall be furnished to the City.
- 29.2.5. If any part of the Services under this Contract is sublet, the subcontractor shall be required to meet all insurance requirements as listed above. However, this will in no way relieve the Company from meeting all insurance requirements or otherwise being responsible for the subcontractor.

**30. COMMERCIAL NON-DISCRIMINATION.**

30.1. Commercial Non-Discrimination for City.

The City has adopted a Commercial Non-Discrimination Ordinance that is set forth in Section 2, Article V of the Charlotte City Code, and is available for review on the City's website (the "Non-Discrimination Policy"). As a condition of entering into this Contract the Company agrees to comply with the Non-Discrimination Policy, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the Company shall not discriminate on the basis of race, gender, religion, national origin, sexual orientation, ethnicity, age, disability, or political affiliation in the solicitation, selection, hiring, or treatment of subcontractors, vendors, suppliers, or commercial customers in connection with a City contract or contract solicitation process, nor shall the Company retaliate against any person or entity for reporting instances of such discrimination. The Company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on City contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace.

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

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

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

**31. DRUG-FREE WORKPLACE.**

The Company shall provide a drug-free workplace during the performance of this Contract. This obligation is met by:

- 31.1. Notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the Company's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

- 31.2. Establishing 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;
- 31.3. Notifying each employee that as a condition of employment, the employee will (i) abide by the terms of the prohibition outlined in (a) above, 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;
- 31.4. Notifying the City within ten days after receiving from an employee a notice of a criminal drug statute conviction or after otherwise receiving actual notice of such conviction;
- 31.5. Imposing a sanction on, or requiring the satisfactory participation in a drug counseling, rehabilitation or abuse program by, an employee convicted of drug crime;
- 31.6. Making a good faith effort to continue to maintain a drug-free workplace for employees; and
- 31.7. Requiring any party to which it subcontracts any portion of the Services under this Contract to comply with the provisions of 30.1 through 30.6.

Failure to comply with the above drug-free workplace requirements during the performance of this Contract shall be grounds for suspension, termination or debarment.

**32. NOTICES AND PRINCIPAL CONTACTS.**

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

For the Company:

Todd House  
President, U.S. Direct Business  
655 Engineering Dr., Suite 300.  
Norcross, GA 30092  
PHONE: 678-969-7608  
FAX: 770-449-3471  
E-MAIL: [todd.house@fleetcor.com](mailto:todd.house@fleetcor.com)

For the City:

Kay Elmore  
City of Charlotte/Mecklenburg County  
Procurement Services Division  
600 East Fourth Street, CMGC 9<sup>th</sup> Floor  
Charlotte, NC 28202-2850  
PHONE: 704-336-2524  
FAX: 704-336-2258  
E-MAIL: [kelmores@ci.charlotte.nc.us](mailto:kelmores@ci.charlotte.nc.us)

With Copy to (Company):

Mark Roberts  
Director, Gov't Bids & Contracts  
2015 Ayrley Town Blvd.  
Suite 202  
Charlotte, NC 28203  
PHONE: 704-853-2662  
FAX: 704-853-1945  
E-MAIL: [markr@fleetcor.com](mailto:markr@fleetcor.com)

With Copy to (City):

Cindy White  
City of Charlotte  
City Attorney's Office  
600 East Fourth Street  
CMGC 15<sup>th</sup> Floor  
Charlotte, NC 28202  
PHONE: (704)336-3012  
E-MAIL: [cwhite@ci.charlotte.nc.us](mailto:cwhite@ci.charlotte.nc.us)

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

**33. MISCELLANEOUS.**

33.1. ENTIRE AGREEMENT.

This Contract is the entire agreement between the parties with respect to its subject matter, and there are no other representations, understandings, or agreements between the parties with respect to such subject matter. This Contract supersedes all prior agreements, negotiations, representations and Bids, written or oral.

- 33.2. **AMENDMENT.**  
No amendment or change to this Contract shall be valid unless in writing and signed by both parties to this Contract.
- 33.3. **GOVERNING LAW AND JURISDICTION.**  
The parties acknowledge that this Contract is made and entered into in Charlotte, North Carolina, and will be performed in Charlotte, North Carolina. The parties further acknowledge and agree that North Carolina law shall govern all the rights, obligations, duties and liabilities of the parties under this Contract, and that North Carolina law shall govern interpretation and enforcement of this Contract and any other matters relating to this Contract (all without regard to North Carolina conflicts of law principles). The parties further agree that any and all legal actions or proceedings relating to this Contract shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By the execution of this Contract, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections, which they may have with respect to in any court sitting in Mecklenburg County, North Carolina.
- 33.4. **BINDING NATURE AND ASSIGNMENT.**  
This Contract shall bind the parties and their successors and permitted assigns. Neither party may assign any of the rights and obligations thereunder without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void.
- 33.5. **CITY NOT LIABLE FOR DELAYS.**  
It is agreed that the City shall not be liable to the Company, its agents or representatives or any subcontractor for or on account of any stoppages or delay in the performance of any obligations of the City or any other party hereunder caused by injunction or other legal or equitable proceedings or on account of any other delay for any cause beyond the City's reasonable control. The City shall not be liable under any circumstances for lost profits or any other consequential, special or indirect damages.
- 33.6. **FORCE MAJEURE.**
- 33.6.1. The Company shall be not liable for any failure or delay in the performance of its obligations pursuant to this Contract (and such failure or delay shall not be deemed a default of this Contract or grounds for termination hereunder if all of the following conditions are satisfied: (i) if such failure or delay: (a) could not have been prevented by reasonable precaution, and (b) cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and (ii) if and to the extent such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, or court order.
- 33.6.2. Upon the occurrence of an event which satisfies all of the conditions set forth above (a "Force Majeure Event") the Company shall be excused from any further performance of those of its obligations pursuant to this Contract affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) the Company continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.
- 33.6.3. Upon the occurrence of a Force Majeure Event, the Company shall immediately notify the City by telephone (to be confirmed by written notice within two (2) days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents the Company from performing its obligations for more than five (5) days, the City may terminate this Contract.
- 33.6.4. Strikes, slow-downs, walkouts, lockouts, and individual disputes are not excused under this provision.
- 33.7. **SEVERABILITY.**  
The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Contract shall not affect the validity of the remaining portion of this Contract so long as the material purposes of this Contract can be determined and effectuated. If any provision of this

Contract is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Contract shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

33.8. NO PUBLICITY.

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

33.9. APPROVALS.

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

33.10. WAIVER.

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

33.11. SURVIVAL OF PROVISIONS.

The following sections of this Contract shall survive the termination hereof:

Section 4.3	"Employment Taxes and Employee Benefits"
Section 17	"Representations and Warranties of Company"
Section 20	"Term and Termination of Contract"
Section 23	"City Ownership of Work Product"
Section 26	"Indemnification"
Section 28	"Confidential Information"
Section 29	"Insurance"
Section 32	"Notices and Principal Contacts"
Section 33	"Miscellaneous"

33.12. CHANGE IN CONTROL.

In the event of a change in "Control" of the Company (as defined below), the City shall have the option of terminating this Contract by written notice to the Company. The Company shall notify the City within ten (10) days of the occurrence of a change in control. As used in this Contract, the term "Control" shall mean the possession, direct or indirect, of either (i) the ownership of or ability to direct the voting of, as the case may be fifty-one percent (51%) or more of the equity interests, value or voting power in the Company or (ii) the power to direct or cause the direction of the management and policies of the Company whether through the ownership of voting securities, by contract or otherwise.

33.13. DRAFTERS PROTECTION.

Each of the Parties has agreed to the use of the particular language of the provisions of this Contract and any questions of doubtful interpretation shall not be resolved by any rule or interpretation against the drafters, but rather in accordance with the fair meaning thereof, having due regard to the benefits and rights intended to be conferred upon the Parties hereto and the limitations and restrictions upon such rights and benefits intended to be provided.

33.14. FAMILIARITY AND COMPLIANCE WITH LAWS AND ORDINANCES.

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

33.15. CONFLICT OF INTEREST.

The Company covenants that its officers, employees and shareholders have no interest and

shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Services required to be performed under this Contract.

33.16. NO BRIBERY.

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

33.17. HARASSMENT.

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

33.18. TRAVEL UPGRADES.

The City has no obligation to reimburse the Company for any travel or other expenses incurred in connection with this Contract.

33.19. LIMITATION OF LIABILITY

Except for claims for personal injury, death or property damage, neither the City or the Company shall have any liability for indirect, special, consequential, punitive, or incidental damages of any kind, including claims for loss of profits, whether resulting directly or indirectly to either party or to third parties, Except for claims for personal injury, death or property damage, the Company's liability in the aggregate for such direct damages will not exceed the total quoted bid markup amounts submitted on the Form 4 – Pricing Sheet, paid or payable by the City to the Company for the Year (12 months) preceding the date on which the claim arose.

33.20. TAXES.

Except as specifically stated elsewhere in this Contract, the Company shall pay all applicable federal, state and local taxes which may be chargeable against the performance of the Services. The Company consents to and authorizes the City to collect any and all delinquent taxes and related interest, fines, or penalties of the Company by reducing any payment, whether monthly, quarterly, semi-annually, annually, or otherwise, made by the City to the Company pursuant to this Contract for an amount equal to any and all taxes and related interest, fines, or penalties owed by the Company to the City. The Company hereby waives any requirements for notice under North Carolina law for each and every instance that the City collects delinquent taxes pursuant to this paragraph. This paragraph shall not be construed to prevent the Company from filing an appeal of the assessment of the delinquent tax if such appeal is within the time prescribed by law.

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

ATTESTED:

FLEETCOR TECHNOLOGIES OPERATING COMPANY, LLC:

BY: [Signature]

BY: [Signature]

TITLE: Director - Gov't Bids & Contracts

TITLE: PRESIDENT US DIRECT

DATE: 10/24/11

DATE: 10/24/11

CITY OF CHARLOTTE:  
CITY MANAGER'S OFFICE

CITY OF CHARLOTTE:  
INSURANCE AND RISK MANAGEMENT

BY: [Signature]

BY: [Signature]

TITLE: ASSISTANT CITY MANAGER

TITLE: Ins. Manager

DATE: 10/28/2011

DATE: 10/27/11

CITY OF CHARLOTTE:  
CITY CLERK'S OFFICE

BY: [Signature]

TITLE: Deputy City Clerk

DATE: 10/28/11

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

Deputy Finance officer Date

*NA purchase order to be issued*



## EXHIBIT A

### SCOPE OF SERVICES

#### 1. SCOPE OF SERVICES AND SPECIFICATIONS.

##### 1.1. General Scope.

This Contract covers the annual requirements for the City of Charlotte for Fuel Supply Products, Fuel Cards, and Related Services. The purpose is to establish requirements with rack plus pricing on applicable Fuels for which the Lead Public Agency's Key Business Units (KBUs) may obtain or order as needed.

While the Lead Public Agency is flexible with respect to certain elements of its relationship with the Company, the Lead Public Agency does have certain preferences for that relationship and has developed the proposed model included in this Contract for that relationship.

This Contract shall be available to any Participating Public Agency through the Charlotte Cooperative Purchasing Alliance (CCPA). Each Participating Public Agency enters into an Agreement that allows the Agency to purchase Fuel and Services from the Company in accordance with each Participating Public Agency's purchasing policies and procedures.

The Company shall communicate directly with any Participating Public Agency concerning the placement of orders, issuance of purchase orders, contractual disputes, invoicing, and payment, credit applications, or lease documents. The City of Charlotte shall not be held liable for any costs, damages, expenses, fees, liabilities, etc. incurred by any other Participating Public Agency.

##### 1.2. Fuel Products and Services.

1.2.1. The City shall purchase unleaded gasoline, diesel fuel, motor oil and automotive products from the Company, shall meet the specifications described herein. The Products may be purchased from the Company at various Retail Fueling Locations as specified by the Company.

1.2.2. The City shall purchase the following:

##### Gasoline Grades

**A. Regular Unleaded Gasoline (87-88 Octane)** – shall be priced based on the Oil Price Information Service (OPIS) Gross Average Rack Price as published in the OPIS Newsletter for the close of business on Thursday of each week (hereafter "Weekly OPIS Newsletter Prices") for the Charlotte, North Carolina Rack location. For stations selling regular unleaded gasoline containing ethanol the OPIS Conventional Ethanol 10% Gross Price shall apply. For stations selling gasoline NOT containing ethanol the OPIS Conventional Clear Gross Price shall apply. During summer "low RVP" season, the Company may use the applicable rack price for Low (7.8 RVP). The Weekly OPIS Newsletter Prices shall be used for invoicing transactions from the preceding Monday at 12:01 am EST through the following Sunday at 12:00 pm EST. For purchases of regular unleaded outside Mecklenburg County, The Company may invoice the applicable OPIS Average rack price as defined above using the OPIS Rack City prices for the Rack City where the station receives its fuel deliveries. In addition to the Weekly OPIS Newsletter Prices, the Company shall be reimbursed its quoted bid markup plus any applicable non-exempt taxes and the price shall be reduced for any Volumetric Ethanol Tax Credit ("VEETC") rate per gallon which The Company agrees to provide as quoted on the Pricing Schedule provided in Exhibit B.

**B. Unleaded Mid Grade Gasoline (89-90 Octane)** – shall be priced based on the Oil Price Information Service (OPIS) Gross Average Rack Price as published in the OPIS Newsletter for the close of business on Thursday of each week (hereafter "Weekly OPIS Newsletter Prices") for the Charlotte, North Carolina Rack location. For stations selling mid-grade unleaded gasoline containing ethanol the OPIS Conventional Ethanol 10% Gross Price shall apply. For stations selling gasoline NOT containing ethanol the OPIS

Conventional Clear Gross Price shall apply. During summer "low RVP" season, the Company may use the applicable rack price for Low (7.8 RVP). The Weekly OPIS Newsletter Prices shall be used for invoicing transactions from the preceding Monday at 12:01 am EST through the following Sunday at 12:00 pm EST. For purchases of mid-grade unleaded outside Mecklenburg County, The Company may invoice the applicable OPIS Average rack price as defined above using the OPIS Rack City prices for the Rack City where the station receives its fuel deliveries. In addition to the Weekly OPIS Newsletter Prices, the Company shall be reimbursed its quoted bid markup plus any applicable non-exempt taxes and the price shall be reduced for any Volumetric Ethanol Tax Credit rate per gallon which The Company agrees to provide as quoted in Exhibit B.

- C. Premium Unleaded Gasoline (91-93 Octane)** -- shall be priced based on the Oil Price Information Service (OPIS) Gross Average Rack Price as published in the OPIS Newsletter for the close of business on Thursday of each week (hereafter "Weekly OPIS Newsletter Prices") for the Charlotte, North Carolina Rack location. For stations selling premium unleaded gasoline containing ethanol the OPIS Conventional Ethanol 10% Gross Price shall apply. For stations selling gasoline NOT containing ethanol the OPIS Conventional Clear Gross Price shall apply. During summer "low RVP" season, the Company may use the applicable rack price for Low (7.8 RVP). The Weekly OPIS Newsletter Prices shall be used for invoicing transactions from the preceding Monday at 12:01 am EST through the following Sunday at 12:00 pm EST. For purchases of premium unleaded outside Mecklenburg County, The Company may invoice the applicable OPIS Average rack price as defined above using the OPIS Rack City prices for the Rack City where the station receives its fuel deliveries. In addition to the Weekly OPIS Newsletter Prices, the Company shall be reimbursed its quoted bid markup plus any applicable non-exempt taxes and the price shall be reduced for any Volumetric Ethanol Tax Credit rate per gallon which The Company agrees to provide as quoted in Exhibit B.
- D. E-85 Blend Ethanol Enhanced Unleaded Gasoline** -- shall be priced based on the Oil Price Information Service (OPIS) Gross Average Rack Price for E-85 as published in the OPIS Newsletter for the close of business on Thursday of each week (hereafter "Weekly OPIS Newsletter Prices") for the Charlotte, North Carolina Rack location. If there is no OPIS Posted price for E-85, the Company will calculate a "virtual rack price" each week for E-85 based on the sum of the following: a) the applicable OPIS Rack Price for 100% Ethanol at the Charlotte terminal (multiplied times the appropriate blend percentage); and b) the Rack Average Price for unleaded gasoline at the Charlotte terminal (multiplied times the appropriate blend percentage). The Weekly OPIS Newsletter Prices shall be used for invoicing transactions from the preceding Monday at 12:01 am EST through the following Sunday at 12:00 pm EST. For purchases of E-85 outside Mecklenburg County, the Company may invoice the applicable OPIS Average rack price as defined above using the OPIS Rack City prices for the Rack City where the station receives its fuel deliveries. In addition to the Weekly OPIS Newsletter Prices Company shall be paid its quoted bid markup plus any applicable non-exempt taxes and the price shall be reduced for any Volumetric Ethanol Tax Credit rate per gallon which The Company agrees to provide as quoted in Exhibit B.
- E. E-10 Blend Ethanol Enhanced Unleaded Gasoline**-- shall be priced based on the Oil Price Information Service (OPIS) Gross Average Rack Price for E-10 as published in the OPIS Newsletter for the close of business on Thursday of each week (hereafter "Weekly OPIS Newsletter Prices") for the Charlotte, North Carolina Rack location. If there is no OPIS Posted price for E-10, the Company will calculate a "virtual rack price" each week for E-10 based on the sum of the following: a) the applicable OPIS Rack Price for 100% Ethanol at the Charlotte terminal (multiplied times the appropriate blend percentage); and b) the Rack Average Price for unleaded gasoline at the Charlotte terminal (multiplied times the appropriate blend percentage). The Weekly OPIS Newsletter Prices shall be used for invoicing transactions from the preceding Monday at 12:01 am EST through the following Sunday at 12:00 pm EST. For purchases of E-10 outside Mecklenburg County, The Company may invoice the applicable OPIS Average rack price as defined above using the OPIS Rack City prices for the Rack City where the station receives its fuel

deliveries. In addition to the Weekly OPIS Newsletter Prices the Company shall be reimbursed its quoted bid markup plus any applicable non-exempt taxes and the price shall be reduced for any Volumetric Ethanol Tax Credit rate per gallon which The Company agrees to provide as quoted in Exhibit B.

### **Diesel Fuel Grades**

- F. B-20 Biodiesel Blended Fuel (80% Ultra Low Sulfur Diesel Fuel, 20% pure soybean oil product)** - shall be priced based on a calculated “virtual rack price” each week for B-20 based on the sum of the following: a) the applicable OPIS Rack Price for Biodiesel (B99) at the Charlotte terminal (multiplied times the appropriate blend percentage i.e. 20%); and b) the Rack Average Price for Ultra Low Sulfur Diesel at the Charlotte terminal (multiplied times the appropriate blend percentage i.e. 80%). The virtual rack price calculated as defined above shall be used for invoicing transactions from the preceding Monday at 12:01 am EST through the following Sunday at 12:00 pm EST. In addition to the Prices defined above the Company shall be reimbursed its quoted bid markup plus any applicable non-exempt taxes and the price shall be reduced for any Volumetric Ethanol Tax Credit rate per gallon which The Company agrees to provide as quoted on the ITB Pricing Form.
- G. (Ultra Low Sulfur) Diesel Fuel (“ULSD”)** -- shall be priced based on the Oil Price Information Service (OPIS) No. 2 Distillate Gross Prices for Ultra Low Sulfur (ULS) as published in the OPIS Newsletter for the close of business on Thursday of each week (hereafter “Weekly OPIS Newsletter Prices”) for the Charlotte, North Carolina Rack location. The Weekly OPIS Newsletter Prices shall be used for invoicing transactions from the preceding Monday at 12:01 am EST through the following Sunday at 12:00 pm EST. For purchases of diesel fuel outside Mecklenburg County, The Company may invoice the applicable OPIS Average rack price as defined above using the OPIS Rack City prices for the Rack City where the station receives its fuel deliveries. In addition to the Weekly OPIS Newsletter Prices the Company shall be reimbursed its quoted bid markup plus any applicable non-exempt taxes. Diesel Fuel may also be referred to as Fuel Oil “Fuel Oil” within this Contract for Onsite Locations requiring fuel for onsite generators.
- H. Gross Ultra Low Sulfur Red Dye Distillate Diesel Fuel (“Red Dye Distillate/RDD”).** – as available, shall be priced based on the Oil Price Information Service (OPIS). No. 2 Distillate Gross Prices for Ultra Low Sulfur (ULS) as published in the OPIS Newsletter for the close of business on Thursday of each week (hereafter “Weekly OPIS Newsletter Prices”) for the Charlotte, North Carolina Rack location. The Weekly OPIS Newsletter Prices shall be used for invoicing transactions from the preceding Monday at 12:01 am EST through the following Sunday at 12:00 pm EST. For purchases of diesel fuel outside Mecklenburg County, The Company may invoice the applicable OPIS Average rack price as defined above using the OPIS Rack City prices for the Rack City where the station receives its fuel deliveries. In addition to the Weekly OPIS Newsletter Prices the Company shall be reimbursed its quoted bid markup plus any applicable non-exempt taxes.
- I. Diesel Exhaust Fluid** - required in all 2010 and newer model diesel engine vehicles. The pricing for this product is not clear at this time and is NOT included in OPIS pricing but needs to be available for purchase at Retail Fueling Locations utilizing Fleet Credit Cards.

### **Motor Oils**

#### **J. For Gasoline Engines**

- Full Synthetic 0W-20 (ILSAC: GF-4, API: SM)
- Synthetic Blend 5W-30 (ILSAC: GF-4, API: SM, SL)
- Synthetic Blend 5W-20 (ILSAC: GF-4 API: SM)

#### **K. For Diesel Engines**

- Synthetic Blend 15W40 (API: CJ-4, CI-4 PLUS, CI-4, CH-4, SM)
- Full Synthetic 15W50 (CI-4 Plus/SL rating)

### **Auxiliary Fuels**

**L. Kerosene** – the City uses Kerosene in a limited number of small equipment items. The Company shall detail how Kerosene can be supplied to the City and how pricing for Kerosene shall be handled.

**M. Propane** - the City uses Propane in a limited number of locations. The Company shall detail how Propane can be supplied to the City and how pricing for Propane shall be handled. If necessary, Propane can be sold to the City directly rather than as a Consigned Fuel.

**N. Compressed Natural Gas (“CNG”)** - The pricing for this product should be in gasoline gallon equivalents (GGE) and is NOT included in OPIS pricing but needs to be available for purchase at fueling locations and billed to vehicles operated by the city. All Retail Fueling Locations providing CNG must utilize fast-fill dispensing systems.

1.2.3. The Company shall be responsible for providing all of the above referenced Products to all City vehicles desiring to purchase said Products at the prices specified in this Contract.

1.2.4. The Company shall purchase and maintain one (1) OPIS subscription each for the City and County for the entire term of the Agreement.

### **1.3. Current and Future Tax Credits.**

The Volumetric Ethanol Excise Tax Credit (“VEETC”), also known as the “blender’s credit”, is the primary federal tax incentive for the use of ethanol. The tax credit, which was created by the American Jobs Creation Act of 2004, provides blenders and marketers of fuel with a federal tax credit of 45 cents on each gallon of ethanol blended with their gasoline. This tax credit is scheduled to expire on December 31, 2011. This tax credit for blending ethanol with gasoline is provided to the actual blender of the fuel only. If a refiner is blending gasoline with ethanol and offers the finished product for sale at its terminal, the only party eligible to take the credit is the refiner, who has in fact blended the product. The refiner may reduce their sale price to reflect the tax credit as a rebate. This reduced price may then be passed along from distributor to retailer, and ultimately to the consumer.

IRS Code also provides an excise tax credit for biodiesel mixtures (“biodiesel blenders credit”). The credit is \$1.00 for each gallon of biodiesel used in a biodiesel/diesel fuel mixture. A blend of 99.9% biodiesel and .1% diesel fuel qualifies as a mixture, and can be claimed by a biodiesel producer. The credit can be used to offset excise tax liability, and is refundable to the degree that the credit exceeds excise tax owed by a taxpayer. The biodiesel credit and biodiesel mixture income tax credit are coordinated to take into account amounts claimed via the blenders credit. The vast majority of biodiesel tax incentives are claimed as a blenders credit. This tax credit is also scheduled to expire on December 31, 2011.

Where applicable by Fuel Type, the Company shall pass any Fuel Blender’s Tax Credits on to the City automatically in billings from the Company. Specifically, the Company agrees that where applicable, and except at sites the Company confirms the location is not selling gasoline products containing ethanol, the gasoline rack price shall be reduced for any Volumetric Ethanol Tax Credit rate per gallon. Similarly, wherever diesel fuel containing biodiesel is sold, the Company shall use the after biodiesel blender’s tax credit price when determining the virtual rack cost of the biodiesel blend such as B20. So as an example, where a biodiesel blend of 20% is available (B20), the \$1.00 tax credit shall be removed from the biodiesel cost portion of the blended virtual rack price (80% ultra low sulfur rack diesel rack cost + 20% biodiesel rack cost with blender’s tax credit removed).

The Company agrees that so long as federal law allows for Blender’s Tax Credits (VEETC or the biodiesel blender’s tax credit), at stations or consigned locations believed to be selling gasoline blended with ethanol, or biodiesel blends the Company will reduce the OPIS Newsletter Price defined in the ITB, by the amount of the Blender’s Tax Credit. So on 10% ethanol gasoline, this currently equals \$0.045 per gallon reduction of the OPIS Rack Average cost used for billing the City at sites believed to be pulling from a 10% ethanol rack. The Company shall not be required to provide a “Rebate Report” or a “summary of savings from tax credits” with the billing, as was specified in the ITB.

### **1.4. Fuel Contamination.**

Fuel delivered to City owned facilities by FleetCor or its fuel supplier shall be delivered free of contaminants. The City shall maintain the security of such fuel and shall ensure that contaminants are not introduced into such fuel after delivery. The City shall bear any costs associated with replacement of contaminated fuel contaminated either by City Personnel, or at the property after being pumped into City owned tanks. Claims by the City for defective fuel shall be made within seventy-two (72) hours after delivery hereunder. Once the fuel has been delivered to the City's property, the sole responsibility for it shall rest with the City.

1.4.1. Fuel Purchased at Off-site Retail Locations

A. *Claims.* All claims for defective Fuel shall be made through the Company within fifteen (15) days from the date of the purchase of the alleged defective Fuel giving rise to the claim.

B. *Merchant Limitations.* The personnel (if any) at a Retail Fueling Location are not the agents or employees of the Company. The Company shall work with their Retail Fueling Location merchants to mitigate damage which arises from the action or negligence of the personnel of any of the merchants, their agents, or their employees, and shall be responsible for the products or services rendered by any of the Retail Fueling Locations to City if Charlotte property or personnel.

1.4.2. Damages.

The Company shall be liable for the following damages, to be reimbursed to the City at the actual expense of the associate damage to vehicles and/or equipment, or paid for in full by the Company.

- Cost to remove contaminated fuel from City owned vehicles and/or equipment
- Cost to clean City owned tanks into which contaminated fuel was pumped.
- Cost to repair damages to City owned vehicles and equipment caused by contaminated fuel.

1.5. **Retail Fueling Location Purchases.**

The Company shall ensure the following Products shall be available for retail purchase by the City, as per the requirements detailed in Section 1.2.2:

The City requires the majority of Retail Fueling Locations offer:

- Fuels A, B, C, E, G, I, J, and K
  - I – Diesel Exhaust Fluid is required only at locations selling Diesel Fuel.
  - J & K – Motor Oils are required only at locations selling Gasoline or Diesel Fuel.

The City requires that some Retail Fueling Locations offer:

- Fuels D, F, H, L, M, N

1.5.1. Additional Retail Fueling Location Requirements.

Company's Retail Fueling Locations must maintain the following levels of service:

- Multiple major brand gas and diesel fuel dispensing locations throughout Mecklenburg County, state of North Carolina, and continental United States accessible 24 hours a day, 7 days a week with maps and directories for cardholders showing available fuel locations,
- Fleet Card Management System support office with personnel available 24 hours a day, 7 days a week with a toll free number or local number to respond to City needs,
- The Company shall work closely with City personnel to develop a minimum of four (4) additional strategic partner locations that are generator ready with auxiliary power and card reading capabilities in the event of any disaster and allow Company to position their personnel onsite to manually capture transactions in the event electronic capture is not available. One (1) location shall be determined by the Company, with the remaining three (3) locations at Retail Fueling Facilities owned by The Pantry, as agreed upon between the City, County, and Company.

- Subject to Merchant's POS Authorization limitations, as detailed in Appendix A, Section 7, for fuel cards identified by the City as restricted from purchases of Fleet Supplies, any attempt to purchase any of the following restricted items shall trigger an alert to the City Designated alert recipient for the corresponding Cost Center/Account:
  - Brake fluid
  - Other items as restricted by the City during the term of this Contract
- Subject to Merchant's POS Authorization limitations, as detailed in Appendix A, Section 7, for fuel cards identified by the City as restricted from purchases of concessions, Retail Fueling Locations shall not sell the following items to City users via their Fleet Cards:
  - Concessions and other food items
- Attempts to purchase Concessions shall also trigger an alert to the City Designated alert recipient for the corresponding Cost Center/Account.
- Other automotive goods and or Services such as engine coolant, transmission fluid, or washer solvent shall be provided to the City at their retail price not to exceed fifteen dollars (\$15). These goods and/or services must be installed or performed on the vehicle at the time of purchase. Brake fluid is not to be sold or offered for purchase.
- All fuel purchases shall be self-service only.

**1.6. Consignment Fuel Purchases.**

The Company shall ensure the following Products shall be available for consignment purchase by the City, as per the requirements detailed in Section 4.2.2:

- Fuels A, E, G, H, I

**1.7. Additional Consignment Fuel Requirements.**

**1.7.1. Delivery.**

The Company must deliver fuel to City locations within twenty-four (24) hours of receipt of order from City Representative. This requirement is 24/7, and includes orders made on weekends, nights, and holidays.

For large volume orders, the Company shall supply a minimum of 2000 gallons every twenty-four (24) hours until order is fulfilled.

Fuel orders for emergency generators or any orders to City identified Critical Locations must be filled within six (6) hours, or supplied in 2000 gallon increments every six (6) hours until the order has been fulfilled. The Company agrees that time is of the essence in delivering Fuel orders for emergency generators or other City defined Critical Locations.

The Company shall be responsible for placing all fuel purchased on a consignment basis in specified tanks at each Onsite Fueling Location per instructions provided by the City at the time the order is placed.

Alternatively, the Company shall monitor fuel tank levels, and shall refill as needed when the tank level dips below capacity, as determined by and between the Company and the City. The City may still request as-needed deliveries with the response times detailed above, but it is the Company's responsibility to monitor tanks to schedule deliveries appropriately for tanks with Card Readers and monitors in place. This requirement does not apply to Bulk Fuel deliveries.

**1.7.2. Payment.**

The City will reimburse the Company for the fuel at designated City Onsite Fueling Locations as fuel is issued to City vehicles after an invoice is submitted to the City. Fuel purchases for the City and County shall not be commingled, and must be invoiced separately. This invoice must be reconcilable with the electronic transmission of data at the time the fuel products are purchased/dispensed.

The Company shall be responsible for installing electronic devices to record transactions and other necessary data at these locations, per equipment identified in Appendix A.

**1.8. Onsite Generator Fuel.**

The City have various locations with onsite Generators requiring Fuel. During the term of the Agreement, these locations may request the Company to deliver a set quantity of Fuel to their location to refill the generator tank(s).

The Company shall deliver fuel within the response times indicated in Section 1.7.1 for Consignment Fuel purchases.

The Company shall invoice the City upon delivery for the full amount of the delivered Fuel.

For additional information regarding delivery of Fuel to City locations, refer to Section 1.21.2

An initial list of locations requiring Onsite Generator Fuel shall be provided to the Company by the City and/or County. Additional locations may be required during the term of the Agreement, and shall be provided to the Company at the time of request.

**1.9. Bulk Fueling Location Fuel Purchases.**

The Company shall ensure the following Products shall be available for Bulk purchase by the City, as per the requirements detailed in Section 1.2.2:

- Fuels G and H

Bulk Fuel deliveries, including tankwagon deliveries to generators, shall be billed based on the OPIS Rack Average Price on Day of Delivery.

**1.10. Fleet Credit Cards.**

The Company shall issue the City fleet credit cards (Fleet Cards) able to purchase fuel Products and Services at Company's Retail Fueling Locations and through Card Readers provided at each City and County Onsite Fueling Location. Approximately, 6500 City vehicles and 1,100 County vehicles from various City and County Agencies will require fleet credit cards for purchasing Fuel Products and Related Supplies.

The Company shall have a local representative to handle issues related to the Fleet Card Program, manage training services, and distribution of new and/or replacement cards to City users.

**1.10.1. Card Issuance.**

- 1.10.1.1. The Company shall supply original fleet credit cards for City vehicles, and shall provide replacement cards at no additional cost to the City for the term of this Contract.
- 1.10.1.2. The Company shall coordinate scheduling of card issuance with each City KBU. The Company must provide a one card system for the City.
- 1.10.1.3. The Company shall limit authorized purchases to City authorized Fuels, Fuel Supplies, and related products only.
- 1.10.1.4. Replacement of expiring cards a minimum of sixty (60) days prior to expiration.
- 1.10.1.5. The Company shall stagger Fleet Card expiration dates to keep large volumes of cards from expiring on the same date.
- 1.10.1.6. New and replacement cards (for lost, stolen, etc.) must be issued within two (2) business days, at no additional charge to the City.
- 1.10.1.7. The Company and authorized City users shall have the ability to lock future purchases on a card or PIN immediately upon notification by the City. The City accepts no liability for subsequent purchases made with locked out card or PIN,
- 1.10.1.8. The Company shall terminate fleet credit cards issued under this Agreement within twenty-four (24) hours of notification by the City.
- 1.10.1.9. The fleet credit card issued must be uniform in appearance for the entire City and County. Size of imprinted characters on the card must be acceptable to the City and County.

- 1.10.1.10. All fleet credit cards shall have either magnetic striping, RFID tags, or other electronic means of identification and shall define the fuel products valid for that card.
- 1.10.1.11. Include Protective Sleeve included with all cards (hard plastic case to protect card, with option for ring, rubber attachment, etc.).
- 1.10.1.12. Upon request by City, the Company shall provide spare cards at initial issue or at time of request during the term of this Contract that may be activated by the City from the Fleet Card Management System. Spare cards shall be activated by authorized City users in the Fleet Card Management System.

1.10.2. Card Restrictions.

The following restrictions shall be placed on City Fleet Cards. Any restrictions MUST be enforced for all purchases made using the Fleet cards, including retail purchases at the pump and in store, as well as purchases of Consigned Fuel at City Onsite Fueling Locations.

- 1.10.2.1. The City shall be able to set a tank gallon maximum on each individual vehicle card and/or employee pin.
- 1.10.2.2. The maximum fuel that can be obtained at each fueling and the maximum fuel that a vehicle can receive each day is to be encoded on the vehicle card, and will lock out the vehicle from receiving additional fuel if either of those parameters are exceeded.
- 1.10.2.3. There shall be a type of fuel or fuels designated for each individual vehicle card so that each vehicle can be restricted to using only one type of fuel, two types of fuel, three types of fuel or all fuels, etc. The option to purchase multiple fuel types must be included in this program, and final decisions regarding limitations on a per-card basis shall be at the discretion of the City. Attempts to purchase restricted fuel types shall trigger an alert to the City Designated alert recipient(s) for the corresponding Cost Center/Account.
- 1.10.2.4. Each fuel card transaction shall read the previous odometer reading as recorded by that vehicle. If the odometer reading is outside of a user defined minimum or maximum miles driven range since the last fueling, the system shall generate an exception. For those Authorized Users set up to receive exceptions via alert, email, or other method, the exception shall be immediately transmitted to them. The Fleet Card Management System shall send an error report to each City cost center or account for all exceptions on a weekly schedule.
- 1.10.2.5. The Fleet Card Management System shall allow KBUs/Departments with Onsite Fueling Locations to provide permissions to users at the user level, division level, KBU/Department level, or Citywide/Countywide level to purchase from their tanks on a per tank/fuel type basis. Users may have allowances at none, one, or more onsite locations to purchase Consigned Fuel on their fleet card.

**1.11. Fleet Card Management System.**

The Company shall supply City authorized users with access to its Fleet Card Management System to manage, monitor, and report on fueling transactions and activities.

The Fleet Card Management System must be web-based and allow City users to log in to a secured site using secure usernames and passwords.

The Fleet Card Management System shall provide 24/7 access to real time dispensing information for authorized City users.

The Fleet Card Management System shall allow the City to set up various levels of access within the Fleet Card Management System, and to define authorized permissions for each level to edit and/or read information in the Fleet Card Management System. Each KBU/Department should have ability to allow or restrict edit and read permissions per user, and for the KBU/Division/Department as a whole.

The Fleet Card Management System must allow for roll up of information from a reporting standpoint



from the Vehicle/User Pin# level all the way up to Citywide & Countywide combined.

1.11.1. Security and Controls.

The Company's Fleet Card Management System shall include the following minimum control and security features:

- One (1) card fuel access system with approximately a four (4) digit unique card number with the ability to identify four (4) to seventeen (17) digit City equipment numbers;
- Fleet Card Management System must require an employee PIN not more than five (5) digits, identifying the driver before fuel is dispensed;
- Each Fleet Vehicle Card number must be tied to a specific City Cost Center;
- User PINs may be authorized to purchase for multiple specific City Cost Centers based on their permissions within the Fleet Card Management System;
- Enable only authorized City employees to access software in order to add, delete or edit card and/or PIN information; and
- Should have the ability to prohibit purchase of non-fuel items.

1.11.2. Modifications to Card/User Permissions.

1.11.2.1. There shall be easy access to moving a vehicle or an employee pin# (identifying #) from one cost center or account to another cost center or account without having to issue a new fuel card.

1.11.2.2. The Fleet Card Management System shall be accessible via the internet. The ability to add, edit, lock and unlock vehicle, employee information as well as query and report on all aspects of vehicle, employee, fuel usage or other pertinent data is required.

1.11.3. General Reporting.

The Company shall submit a subsidiary report agreeing with the summary report and categorized by cost center number to the respective City department. The report shall present similar information as described above for each purchase. The purchase shall be grouped according to vehicle number, product, and date of purchase. (Please note that some equipment uses an hour use meter rather than an odometer (mileage). The Fleet Card Management System must be able to differentiate between the two and to report similar information for each.)

Per transaction, the Fleet Card Management System must report at a minimum, the following detail:

- Date & Time of transaction;
- Identification of transaction location;
- Identification of vehicle/equipment fueled;
- Vehicle cost center;
- Pin #/Card #/User ID that created purchase;
- Odometer Reading Or Hour Meter Reading;
- Type, grade and price per gallon of fuel at time of purchase (both price at pump and actual price paid by City after discounts and taxes are removed);
- Total volume (Quantity) and dollar amount of fuel purchased;
- Item purchased (other than fuel- only authorized items), quantity purchased, and unit price of item;
- Miles traveled since last fueling and vehicle miles per gallon;
- Average Mileage OR Average hour; and

- Cost per mile OR Cost per hour.

The electronic transaction file must match the hardcopy invoice provided to the City.

#### 1.11.4. City Reporting Requirements.

The Company shall provide a weekly report on the usage of each fuel product, separated by Cost Center for each City KBU and/or Division that details the following base information at a minimum:

- Fuel Product;
- Total Usage per Fuel product (in gallons (pounds or GGE where applicable));
- Actual Cost at time of purchase; and
- Cumulative chart of each Cost Center / Org Number usage year to date.

A quarterly report shall be provided to the City from the Company showing average cost per gallon per month, average rack price for the period, and final city costs for the quarterly period. The report shall be made available to the City within fifteen (15) calendar days after the end of each quarter.

All reports shall be accessible electronically via the Fleet Card Management System and should represent live data. The Fleet Card Management System must have the ability to print reports, save reports in a searchable format (i.e. Adobe pdf), and to export reports to Microsoft Excel. At a minimum, the Fleet Card Management System must be able to support retention and reporting of historical data for at least the last twenty-four (24) months. The City prefers the Fleet Card Management System to maintain and report on historical data for the entire time that the Fleet Card Management System is in place, irrelevant of the minimum requirement of twenty-four (24) months of historical data.

#### 1.11.5. EMD Reporting Requirements.

The Company shall provide EMD with the following, either via automatic email, or via authorized access within the Fleet Card Management System:

- Daily electronic transaction file for each Equipment Company of fuel transactions from the previous day in the format as shown in Appendix C;
- Weekly recap files from each KBU/Department containing all transactions for the previous week; Files for each equipment company account, ex; city/police/county
- Weekly error files for error reporting to managers and tracking repeat errors and issues in a City defined format.

#### 1.11.6. Exceptions.

The Fleet Card Management System shall be capable of providing immediate notifications, via email, to up to two (2) designated City users per City Cost Center, of the following exceptions, at a minimum:

- Attempt to purchase restricted items (unauthorized fuel types, brake fluid, concessions, or other unauthorized non-fuel items, etc);
- Attempt to purchase/purchase of fuel exceeding authorized volume, and/or exceeding number of times allowed for refueling during the day;
- Average Mileage below or above acceptable level (as defined by City);
- Incorrect Odometer / Hour Meter entry (outside of acceptable range for error as defined by City); and
- Purchases at locations other than those authorized by the Company.

### 1.12. Accounting and Collection of Data.

1.12.1. The Company shall provide the necessary data collection and accounting needed to maintain the City current records and accounting system. Fleet credit cards, card readers, software,

and other equipment required providing an entirely electronic flow of data between the Company and the City shall be the responsibility of the Company. The Company assumes all responsibility for meeting the requirements of the City accounting and computer system in order to assure the proper collection and timely transfer of data.

#### 1.12.2. City Interfaces.

The Company must be willing to work with the City to interface to future City systems as needed. The City anticipates the need to interface with a new Enterprise Resource Planning system (ERP) during the term of this Contract. The ERP system has not yet been purchased. The City would provide additional details to the Company once a decision has been made regarding the ERP system. The Company would need to collaborate with the City and the City's ERP software provider to create a fuel information interface with two (2)-way live streaming capabilities.

In order to interface with the City's FASTER (FMIS) Fleet Management Information System, the Company shall format their export to the City in the format detailed in Appendix C. (And any and all future FMIS formats)

#### 1.12.3. Accounting Reports

The Company's Fleet Card Management System must provide daily reports of the previous day's fuel transaction information for all equipment and weekly recap files with all fuel transactions for that week. This report must also provide data broken down by specific City defined Equipment Companies, including:

- CMPD
- Total City Fleet
- Total County Fleet

Equipment Companies are subject to change at EMD's discretion and may be added, removed, or modified during the term of this Contract.

Both files must be in plain American Standard Code Information Interchange (ASCII) format. The daily and weekly transaction files must additionally be emailed to Designated EMD Staff. All reports must file the file layout provided in Appendix C.

1.12.4. The Company shall have an easy method to title accounts for easy access of transaction data, based on City defined parameters. Each account shall have clear titles and consistent labeling. The Fleet Card Management System shall allow for multiple accounts within each major cost center.

1.12.5. The Company shall give the City 30 days notice of any computer or software changes intended by the Company that have any potential to delay or disrupt of the daily transfer of fuel transaction information. The Company shall be liable for any extra costs incurred by the City because the transfer of fuel information is disrupted by any information technology issues caused wholly or in part by the Company.

At a minimum, the City must either have access to the current daily fuel transactions or be provided (in the case of a system outage or planned downtime only), an electronic file of fuel transactions on a daily basis, 365 days/year. Any delay in providing these files shall be considered a breach of this Contract.

#### 1.13. City Invoicing and Billing.

1.13.1. The Company shall be responsible for billing each individual City KBU on separate billing statements. It will be the responsibility of each individual City KBU to provide the Company a listing of any additional accounting information and associated specifications that may be required to meet the needs of said KBU's accounting system.

1.13.2. The Company shall invoice the City no more than twice per month along with all of the necessary supporting documentation, and prior to any payment. A summary invoice shall be sent electronically in an ASCII or EXCEL format to the Accounts Payable Section of the

Finance Department. The summary invoice shall summarize by City KBU and/or department. Each City KBU and/or department will be designated by a four-digit fund number and a five-digit center number. The invoice must include total gallons purchased in North Carolina, total extended cost for these purchases, total North Carolina Fuel tax included in this cost, and a separate column for all non-fuel purchases with sales tax listed separately if applicable. If purchases are made outside the state of North Carolina, they must be reported separately. Total purchases should then be extended to a total balance due by City KBU and/or department and total due from the City for that billing cycle.

- 1.13.3. The invoice price shall be free of applicable state and federal taxes. The Company shall administer the federal tax program so that the City is exempt from payment of federal tax.
- 1.13.4. The Company shall submit to the City terms of a prompt payment discount.
- 1.13.5. The payment of the invoices by the City shall not prejudice the City's right to object to or question any invoice or matter in relation thereto. Such payment by the City shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- 1.13.6. The Company's invoice shall be subject to reductions for amounts included in any invoice or payment theretofore made which are determined by the City on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- 1.13.7. Information in this Section 1.13 is subject to change during the term of this Contract, at the discretion of the City. The City anticipates possible changes to the City's Chart of Accounts with an upcoming Enterprise Resource Planning system (ERP) implementation. The Company shall be willing to work with the City to make any necessary changes within the Fleet Card Management System to adjust for possible changes to the City's Chart of Accounts and/or invoicing and reporting requirements.

#### 1.14. **General Reporting Requirements.**

##### 1.14.1. Progress Reports.

Throughout the development and implementation period, the Company will be required to prepare and submit weekly written reports to the City Project Manager. The weekly reports shall: Update the Project Plan indicating progress for each task; Identify and report the status of all tasks that have fallen behind schedule and the reason and cure period; Identify and summarize all risks and problems identified by the Company which may affect the Project; For each risk and problem, identify the action and person(s) responsible for mitigating the risk and resolving the problem; For each risk and problem identified, state the impact on the Project Plan; and Identify all changes in the Project Plan that affect personnel, equipment, facilities and resources of the City which will be required for the Company to perform the Services two (2) weeks in advance of the need.

##### 1.14.2. Environmental Reporting Requirements for the City.

The Company shall furnish quarterly usage reports showing a summary of the ordering and/or history of each City department for the previous quarter to the Procurement Services Division. The report must show at minimum, description and total quantity of each item ordered during the period, reporting period, City KBU, and total dollars per KBU. The City reserves the right to request additional information, if required, when reviewing contract activity.

#### 1.15. **Training Plan.**

The City views training as a critical element of the Project. Explain the training curriculum available to support the Company's Proposed Solution.

The Company shall utilize a Training Plan that outlines the content, sequence and duration of each segment of each training session necessary to thoroughly and comprehensively train City personnel to fully utilize the Deliverables (the "Training Plan"). The City shall, at their discretion, determine the final number of users requiring each type of training. The Training Plan must, at a minimum, address training for the following types of users:

- Fleet Card Liaisons & KBU/Department Business Managers

- Fleet Card Users
- Onsite Fueling Location Users
- Reporting Services Users (Viewers and Administrators as necessary depending on Company's Proposed Reporting Solution and our requirements)
  - a) The Training Plan will outline all subjects necessary to train City staff to fully understand and utilize the Deliverables, and to train the designated City "trainers" to effectively train other City personnel to fully understand and utilize the Deliverables and Services in between scheduled Company-Facilitated Training Sessions.
  - b) The Training Plan shall require the Company to provide the operator training and comprehensive "train the trainer" training for any City designated personnel; the Company will schedule the training classes and modules according to their appropriate phase of the Project.
  - c) The Training Plan must take into account classroom resources and personnel scheduling. Onsite locations for training shall be provided by the City and/or County. The Company shall work with the City Project Manager and/or County Project Manager to schedule training sessions during implementation, and during the term of this Contract.
  - d) The Training Plan must include written description of the types of the precise training classes that will be conducted, the number of persons that can be trained in each session, and the total number of hours required for each person to be trained.
  - e) All training will be conducted onsite in City and/or County facilities.
  - f) The cost of all training referenced in this Section is included in rates detailed in Exhibit B and the Company shall not charge the City separately for any aspect of the training services.

#### 1.16. **Instruction and Training.**

The Company shall instruct City users of the Service in its proper use initially and at periodic intervals in the future as the City deems appropriate. This pertains to both new users in the City, and to any upgraded/changes to the Fleet Card Management System and/or services as they happen.

At least one (1) month prior to the beginning of services (Contract effective date), the successful Company will be required to schedule and provide onsite training to each City KBU and Division utilizing the Services. The training shall include, but not be limited to the following actions, based on the specific user audience:

- a) Website / System navigation
- b) Applying for and terminating Fleet Credit/Fuel Cards;
- c) Adding, changing and deleting employee PIN numbers;
- d) Report analysis;
- e) Problem resolution; and
- f) Onsite Fueling Location card usage procedures.

The Company will be required to provide a training course outline to the City for each user group prior to training, detailing the items to be covered in each course.

The Service Provide shall also provide all users with the following:

- A "How to" or "Best Practices" guide for general users to answer questions about the program, or
- A "How To" guides for reporting users, Fleet Liaisons, and Business Managers to address reporting and editing.

The training schedule shall be determined by and between the Company and the City, and shall be released (2 weeks prior to training) to all City users to allow them to properly plan to attend their KBU / Department training session, or to plan to join another KBU / Department's session as a makeup.

#### 1.17. **Retail Fueling Locations and Contacts.**

##### 1.17.1. Maps and Site Directions.

The Company shall provide maps or site directories acceptable to the City with directions to the sites where the above described Fuel Products and other automotive goods and Services may be obtained. The Company shall provide the City with an electronic copy of the maps or site directories in a format acceptable to the City, or shall have them available via the web, without the need for users to login to view this information. The City will need the maps or site directories by this Contract execution date. Updates of the maps or site directories are to be furnished to the City at least quarterly.

1.17.2. Signage.

The Company shall provide signage at all Retail Fueling Locations providing Fuel Products and other automotive goods and/or Services, which indicates availability for City vehicles. These signs shall be uniform in size, color, shape, and content, and shall meet the approval of the City; provided, however, Company shall be exempted from this requirement where ordinances, permitting, regulations or business practices of a retailer prohibit the display of such signage. Whenever possible, signage should be visible from the street to aide City drivers in easily recognizing Retail Fueling Locations that accept the Company's fleet cards from the road.

1.17.3. Points of Contact.

The Company shall designate an individual that will manage this Contract and will be the focal point for all questions and resolution of problems. The individual designated to manage this Contract must be available in person or by phone during normal business hours. The City shall be notified immediately if the name and contact information for the emergency responder changes.

The Company shall also designate a minimum of one (1) individual in the local area that must be available 24/7 to address issues and concerns related to the Services, including contact leading up to, during, and following any weather events and/or natural disasters. The full name, email and telephone number contact information for that individual shall be provided to the City prior to this Contract effective date, and any changes to this individual or their contact information must be provided immediately to the City.

1.17.4. Company Key Personnel.

Dedicated Support, Backup Support and Traditional Customer Service Points of Contact

The Company agrees to provide expedited responses to reporting needs from all Authorized Users, not just City Program Representatives. We will provide dedicated support and backup support for the Authorized Users. The dedicated and backup support includes two (2) local representatives that shall available to support the City as necessary. Any changes to the below listed Key Personnel shall be provided in writing to the City Project Manager at the Company's earliest convenience.

- A. Dedicated Account Manager (Janet Ward).
  - [janet.ward@fleetcor.com](mailto:janet.ward@fleetcor.com) or by phone at 1-800-877-9019 ext. 15507
- B. Backup Dedicated Account Manager (Andrea Laferriere)
  - [andrea.laferriere@fleetcor.com](mailto:andrea.laferriere@fleetcor.com) or by phone at (706) 894-1440 or (800) 877-9019 ext 18016 (toll free VM w/Page)
- C. Local Dedicated Contract Business Manager (Mark Roberts)
  - [markr@fleetcor.com](mailto:markr@fleetcor.com) or by phone at (704) 853-2662 or (800) 877-9019 ext. 12511 (toll free VM w/page)
- D. Direct Access to our Manager of the Billing Department (Randall Hon).
  - [Randall.hon@fleetcor.com](mailto:Randall.hon@fleetcor.com) or by phone at 1-800-877-9019 ext. 18234
  - The billing department which reports to Randall Hon is responsible for delivering daily transaction files and bi-weekly customer billing reports to the City.
  - Mr. Hon shall be utilized as a backup to Janet Ward as needed, and for specific Billing support needs during the term of this Contract.
- E. Local Field Account Manager (Jonathan Tuohy)
  - [jonathan.tuohy@fleetcor.com](mailto:jonathan.tuohy@fleetcor.com) or by phone at (704) 491-2039 or (800) 877-9019 ext.

- [19830](tel:19830) (toll free VM w/page)
  - [Requests](#) for a site visit from the field account manager should be directed through Janet Ward or Mark Roberts.
- F. Backup support from our manager over non-contract account managers (Jennifer McClain)
- [jmccclair@fleetcor.com](mailto:jmccclair@fleetcor.com) or toll free 800.877.9019 ext. 17029.
  - If [for](#) any reason the City were to not be able to reach Janet Ward, Andrea Laferriere, or Mark Roberts, Jennifer McClain is available to help support the City's accounts.
- G. Fuelman Customer Service Department in Norcross, GA (dept. managed by Sue Case).
- [customerservice@fleetcor.com](mailto:customerservice@fleetcor.com) or by phone to VIP Customer Service toll free number: (866)-211-3364 or normal client service center toll free number: (800) 877-0800.
  - Traditional card and Pin Ordering is especially supported by the Norcross customer [service](#) department.
  - More experienced Team Leads within the customer service organization are [available](#) for escalated issues or more complicated requests the City's Authorized Users might have. The manager of the customer service center (Ken Kliment) is available at: [ken.kliment@fleetcor.com](mailto:ken.kliment@fleetcor.com) or (800) 877-9019 ext. 18186.

The Company shall work with the City establish appropriate protocol or procedures for contact to Key Personnel listed above, however the City should begin by contacting the first listed dedicated account manager (Janet Ward), preferably by Email and copy of the request could be made to the backup account manager (Andrea Laferriere) and/or their supervisor (Mark Roberts). If it is determined that a quick or impromptu field visit is necessary, the Company shall dispatch either Jonathan Tuohy or Mark Roberts to meet with the City Authorized User. Janet Ward can schedule in person meetings and travel as necessary or requested.

#### 1.17.5. Technical or IT Related Support

If technical or IT related issues requiring IT or Application Support assistance arise, the Company's account management team shall assist and escalate the problem to their Application or IT Support groups to contact the City's representative or IT Department directly.

#### 1.17.6. Special Reporting or Query Reporting Support

If Special Reporting needs arise for the City, especially advanced query reporting and Quick Data (Mart) access, the initial Point of Contact for the City shall be the account management team (please address to both Janet Ward and Mark Roberts). Janet and Mark shall work directly with special report writing and programming resources within the Company's IT/Product support team.

#### 1.17.7. Merchant/POS Support

For technical support issues related to Merchant Point of Sale (POS), Site/Transaction or merchant training issues, the Company's account management team and customer service department shall work directly with their POS Support Department or Merchant Services Department.

#### 1.17.8. On-site Refueling Locations - Equipment and Fuel Delivery Support

In the event that the Company's island card reader (ICR) equipment malfunctions or fails, or for any other fuel delivery question or problem, the City shall notify the Company's Fuel Supplier (Mansfield Oil) immediately. During normal business hours, 8:00 a.m. to 5:00 p.m. EST, Mansfield Oil's Monitoring Center Personnel can be reached at: 800-843-0134, ext. 2122 or ext.2123. Outside of normal business hours, Mansfield Oil's Monitoring Center is available at 678-414-5625. Notices of equipment or fuel delivery problems should also be sent to the Company's business manager over consigned fuel supply as follows:

#### A. Alice Hafkey, Business Manager – Consigned Fuel Services

- [ahafkey@fleetcor.com](mailto:ahafkey@fleetcor.com)
- [By Phone: 630-717-9943](tel:6307179943)

### 1.18. Security Requirements.

The Company must define and demonstrate security procedures that are in place. The City requires that security measures be taken – both physical security and network security, in that the City's information and other documents are made available only to the Company and parties that the City approves.

1.18.1. Retail Fueling Locations.

The City prefers that the Company's Retail Fueling Locations have security measures in place both during hours of operation, and after-hours.

1.19. **Onsite Fueling Location Information.**

The City shall provide to the Company a detailed list indicating the location and capacity of the City Onsite Fueling Locations and related dispensers for on-site fueling operations.

1.19.1. Pre-Existing Fuel.

The City may have pre-existing fuel reserves in their onsite fuel tanks. The Company shall work with the City to address proper recording of pre-existing fuel and proper payment for fuel. Fuel is owned in one of the two following ways:

A. Tanks with existing Card-Readers.

Mansfield Oil currently owns the fuel existing in City on-site tanks. The Company will need to work through the City with Mansfield Oil to address any remaining fuel in City owned tanks with readers, to include the following:

- Current readings of on-site tanks;
- Scheduling of refills; and
- Transfer of ownership of Fuel with Mansfield Oil as of this Contract Effective date.

B. Tanks without Card-Readers.

For tanks without readers, pre-existing fuel is already owned by the City. The Company will need to address initial readings of tanks and credits in the Fleet Card Management System for the existing Fuel so that the KBU does not pay for fuel that was already purchased as it is pumped out of the tanks.

1.19.2. Tank Ownership

The City hereby acknowledge that they are the owner and/or operator of all underground and/or aboveground storage tank(s), connected underground/aboveground piping, ancillary equipment and containment systems on existing City facilities designated as on-site fueling operations hereunder (the "UST/AST System"). FleetCor and its fuel supplier have no control of, or responsibility for, the operation of the UST/AST System. As owner/operator of the UST/AST System, the City is responsible for compliance, and shall comply, with current and future federal, state and local laws and regulations applicable to the UST/AST System including spill prevention containment and contingency ("SPCC"), as well as all other pertinent environmental laws and regulations. Without limiting the generality of the foregoing, the City shall be responsible for compliance with the following requirements with respect to the UST/AST System: registration; payment of all registration, monitoring, maintenance and other fees; reporting; record keeping; replacements; release detection, reporting, investigation, containment, response and corrective actions; assurance of financial responsibility; closure; and compensation of claims for bodily injury, death, exemplary damages, property damage and natural resources damages caused by or arising from, in whole or in part, a release from any UST/AST System. FleetCor shall have no responsibility, obligation or liability with respect to the ownership or operation of any UST/AST System or compliance with federal, state, or local laws and regulations applicable to an owner or operator of the UST/AST System.

1.19.3. Fuel Inventory Shortages.

The Company reserves the right from time to time, to reconcile the City's transaction data totals with the site's automated tank monitor readings and inventory records (reconciliation including fuel deliveries and recorded sales) from the first day of the relevant period and the



gallons recorded on the totalizer. In the event of a discrepancy between these totals (other than small, insignificant shortages due to normal fuel evaporation and shrink), the tank monitoring fuel readings will control, and the fuel dispersed for the relevant period will be adjusted accordingly. However, in the event that the automated tank monitoring system is not installed or not functioning properly, or not being utilized for a site, then the City shall provide the Company (or its Fuel Supplier, as directed) with a stick reading of the fuel in each tank routinely as might be required Monday through Friday. In any such situation, the City will be billed for all unaccounted gallons (other than small insignificant shortages due to normal evaporation and shrink) and will be notified in the event of such discrepancies. At those sites without automatic tank gauge ("ATG") or where ATGs are not functioning properly, or otherwise not available, the Company shall be authorized to balance stick readings with fuel delivery data and City's transaction data in invoicing the City. Considering that major malfunctions of petroleum pumping equipment owned/maintained by the City that can occur (i.e. bad meters in dispensers, bad pulsars attached to mechanical meters in dispensers); and considering the significant dollars involved with fuel inventory caused by escalating fuel prices which has further caused the commodity to be under significant risk and a prime target of theft or removal from fuel storage tanks on City properties; for these reasons it is necessary that the responsibility for larger inventory discrepancies (shortages) be clearly explained and understood. Any risk of loss, injury, or destruction of fuel delivered to City's sites from any cause whatsoever, except negligence or willful destruction by Company or Company's Fuel Supplier (other than small insignificant shortages due to normal evaporation and shrink), shall be borne by the City from the time the fuel arrives on the Property. Any loss of fuel inventory discovered in inventory reconciliations by the third party fuel supplier (as explained above), either due to manual override of the fuel control terminal(s), bad meter or pulsar calibrations from the dispensers, any other equipment problems or major unexplained losses or theft from the tank shall be the responsibility of the City. The Company or its fuel supplier would be responsible for providing sufficient proof of losses via inventory reconciliation schedules and proof of recorded sales and fuel delivery information as necessary.

**1.20. On-Site Fueling Instructions.**

Company employees must adhere to location policies while on site which include, but are not limited to tobacco free restrictions, no weapons of any kind (concealed or otherwise), safety, environmental, and ISO 14001 requirements.

**1.20.1. Shipping Instructions.**

Shipments must be made within twenty-four (24) hours of order placement. Partial orders shall only be accepted so long as the Company takes all reasonable measures to ensure timely delivery of products in order to minimize risk of shortages throughout the term of this Contract. Designated delivery hours shall be indicated in the Onsite Fueling Location list provided to the Company by the City and/or County.

The City locations will accept shipments on weekends and holidays, unless otherwise excluded by the City to the Company. The City shall request fueling times that are compliant with actual times that facilities are open for service.

**1.20.2. Fuel Deliveries.**

- a) Where agreed upon by the City and the Company, following the Onsite Fueling Location Audits, deliveries of Fuel to certain City locations must be provided in trucks with a maximum capacity of 2500-2700 gallons.

City locations able to accommodate trucks with capacities greater than 2500-2700 gallons shall be identified in the Onsite Fueling Location list provided to the Company by the City following completion of the Onsite Fueling Location audits. The City may, at their discretion, detail additional locations that can accommodate larger trucks during the Term of this Contract.

The Company shall make every effort necessary to either (i) restrict delivery in smaller trucks only to those sites requiring it, or (ii) shall not charge additional freight charges for delivery of Fuel to Onsite Fueling Locations in restricted size trucks when doing so is not warranted by actual limitations of the facility, or size of fuel delivery as ordered by the

City.

- b) Company shall use the fill port or system designated by the City representative.
- c) Company shall use a specific on-site truck route as designated by the City representative.
- d) Company must have the ability to deliver fuel in all weather conditions.
- e) If requested by the City for specific locations, the Company shall not conduct filling operations during adverse weather conditions. The Company agrees that Fuel deliveries shall occur in all weather conditions except when driving or safety conditions do not permit the delivery trucks to be on the road. The Company shall communicate such times to the City should they impact a requested delivery.
- f) The Company shall follow standard operating procedures and good safety practices in accordance with the regulations defined by the Department of Transportation to confirm proper connection and disconnection of tank trucks from fuel transfer lines during fuel deliveries.

#### 1.20.3. Company Delivery Staff

The Company's Delivery staff shall adhere to the following during all deliveries:

- Sign in at a City Designated area immediately upon entering the facility/site.
- Use designated routes to fuel tank(s), as defined by the City.
- Be escorted to the delivery point by City staff, which shall be present during all connections and disconnections.
- Use the fill port system designated by the City in order to transfer the fuel.
- Remain with the Company vehicle at all times, and continually monitor the fuel transfer process.
- Use physical barriers such as wheel chocks to reduce the potential for unintentional disconnections.
- Drain the loading/unloading lines to the storage tank and close the drain valves before disconnecting loading/unloading lines.
- Place a drain pan or other appropriate containment device under all connections.
- Inspect the Company vehicle before departure to confirm all loading/unloading lines have been disconnected, all drain and vent valves are closed, and confirm that there are no leaks.

#### 1.20.4. Security Access to On-site Fueling

Company shall adhere to the following security measures at all receiving facilities:

- Company shall provide City with Photos and names of any Company Employees who shall be making deliveries of Consigned Fuel to City facilities upon Contract Execution and for new employees during the term of this Contract, prior to servicing any City facility;
- The City shall be notified of pending deliveries to an Onsite Fueling Location;
- Company employees must sign in at each facility upon entering the facility;
- Company employees must wear a company ID badge;
- Delivery employees shall be escorted to the delivery point by a City representative; and
- For select locations, the delivery employees shall be issued a radio and must maintain constant communication contact with the City representative.

#### 1.20.5. Spill Prevention and Response.

The Company should have measures in place to meet the requirements of City Spill Prevention, Control, and Countermeasure (SPCC) Plans in accordance with the SPCC Regulation (40 CFR 112), and the City and County's Stormwater Pollution Prevention Plan in

accordance with the Federal Water Pollution Control Act's National Pollutant Discharge Elimination System (NPDES) program. The Company must:

- Be HAZMAT trained.
- Have the ability to provide documentation of completion of HAZMAT training for Company fuel delivery staff.
- Have the appropriate training, policies and procedures, and equipment to be able to immediately clean up any fuel spills that occur during service to the City.
- Immediately report fuel spills to the on-site City representative and to appropriate external agencies in a timely fashion.

The Company shall maintain all equipment necessary on their delivery vehicles for the clean-up of incidental spills, drips or leaks at all times. Suggested equipment includes: absorbent material, industrial wipers, and clean-up containers.

In the event of a spill resulting from the Company's actions, the Company's employee shall perform initial spill response to prevent potential injury to City employees, damage to City Equipment, materials, or land, and to prevent chemicals from reaching storm drains. The Company shall be liable for reimbursing the City for any fines levied against the City for spills resulting from the Company's actions and shall pay for any costs incurred for clean-up and emergency response.

The Company must have a spill prevention program available and follow the Company's procedures in case of a spill. The Company awarded this Contract must provide a copy of their spill prevention program to the City for review.

This requirement shall in no way limit the Company's recourse with its suppliers to recover any damages, losses, costs, expenses, penalties, fines or liabilities of any kind resulting from overfills or spillages occurring on City property, to the extent caused by the Company, their subcontractor, or their subcontractors' subcontractors.

#### 1.21. **Equipment.**

The Company will be required to provide, install, maintain, repair, and replace as needed one (1) Card Reader per tank / Fuel Island. The Company shall calibrate all pumps prior to the beginning of service, and at least once annually during the term of this Contract.

The City shall calibrate City owned equipment as needed. The Company shall not be responsible for calibration or other repair or maintenance of City owned equipment during the term of this Contract.

##### 1.21.1. Audits.

The Company shall conduct a full audit of all existing Onsite Fueling Locations with Consignment Fueling Requirements for the City prior to beginning services for the purpose of confirming the information provided in the list of City / County Onsite Fueling Locations and determining any necessary equipment repairs, replacements, or additions required to begin services. A final audit report shall be provided to the City, detailing the following:

- Onsite Fueling Location
- Equipment
- Age of Equipment
- Condition of Equipment
- Equipment needing to be Replaced/upgraded (also indicate recommended replacement model/make/price, etc.)
- Additional required equipment
- Verification of delivery truck size restrictions

Recommendations to replace, upgrade, or purchase new equipment shall only be made when existing equipment impedes the Company's ability to install and/or run Card Readers at the Onsite Fueling Location. These recommendations shall include a quote for the recommended replacement or new equipment, which the City shall, at their own discretion choose to purchase and install or not. The City shall work with the Company to have equipment in working order at each Onsite Fueling Location.

**1.21.2. Required Equipment.**

The Company shall, at a minimum, provide the following equipment for each City Onsite Fueling Location, along with any associated devices, readers, etc.:

- One (1) Card Reader per pump or Fuel Island to allow monitoring of all Fuel Transactions at City Sites and provide appropriate reporting data into the Fleet Card Management System. Each Card Reader must have the ability to issue receipts to users at the time of transaction. The City shall, at their discretion, determine which Onsite Fueling Locations with Card Readers will also require printers. The Cost of providing and maintaining each receipt printer shall be directly passed along to the Onsite Fueling Location only, rather than spread across all Onsite Fueling Locations.
- Installation, ongoing support and maintenance, and replacement/repair of faulty/outdated/out of order card readers and other Company owned and installed equipment shall be provided by the Company at no cost to the City.
- The Company shall respond to notifications by the City of issues with Onsite Card Readers or inoperable Card Readers within two (2) hours of notification.

The Company must allow the City's truck wash system vendor to format their card reader system so that the City's truck wash card reader is able to read and record the equipment number from the Company's fuel card.

Additionally, the Company must utilize the proper size fuel hose(s) and nozzle(s) to fill City owned tanks through the appropriate ports. The Company shall be liable to pay for any damage to tanks owned by the City through the use of incorrect equipment by the Company at the actual cost of such damage.

**1.22. Customer Service.**

The City is very focused on Customer Service with a philosophy to provide all customers with quality services in a manner that is courteous, responsive, accessible, and seamless. The Services will be delivered with patience, understanding, good will, and without regard to our own convenience. The Company is expected to use these guidelines in providing the Services:

- Accessible, courteous, responsive and seamless customer service is of highest priority for the City.
- Accessible service means that citizens have easy access to the organization.
- Seamless customer service means that a customer gets good service no matter who is responsible.
- Responsible customer service means that our employees know what they are doing; that information they give is accurate; that they have a good understanding of how to get problems and decisions made; that they are trained and evaluated for the jobs they are doing.
- Customer Service goals must be measurable and regularly evaluated.
- Continuous improvements in customer service must be made in order to make City services accessible, responsive and as seamless as possible.

**1.22.1. Authorized Vehicles.**

It will be the responsibility of each City KBU to furnish the Company a listing of vehicles that will be authorized to obtain Fuel Products and Services under the terms of this Agreement.

**EXHIBIT B**  
**PRICING SCHEDULE**

<b>Fuel Supplies, Fleet Cards, and Related Services</b>				
<b>Consignment Fuel</b>				
<b>Gasoline Grades</b>			<b>Margin</b>	<b>Unit</b>
Regular Unleaded	<i>Required</i>	Rack +	\$0.11900	Gallon
Mid-Grade Unleaded	<i>Required</i>	Rack +	\$0.11900	Gallon
Premium Unleaded	<i>Required</i>	Rack +	\$0.11900	Gallon
Ethanol Blended (E10)	<i>Required</i>	Rack +	\$0.11900	Gallon
Ethanol Blended (E85)	<i>Required</i>	Rack +	\$0.11900	Gallon
<b>Diesel Fuel Grades</b>			<b>Margin</b>	<b>Unit</b>
Ultra Low Sulfur Diesel	<i>Required</i>	Rack +	\$0.11900	Gallon
B-20 Blended Diesel	<i>Required</i>	Rack +	\$0.11900	Gallon
Red Dye Distillate Ultra Low Sulfur Diesel	<i>Required</i>	Rack +	\$0.11900	Gallon
<b>Auxiliary Fuels</b>			<b>Margin</b>	<b>Unit</b>
Propane	<i>Optional</i>	Retail -	\$0.00000	Pound

<b>Retail Fuel</b>				
<b>Gasoline Grades</b>			<b>Margin</b>	<b>Unit</b>
Regular Unleaded	<i>Required</i>	Rack +	\$0.1190	Gallon
Mid-Grade Unleaded	<i>Required</i>	Rack +	\$0.1190	Gallon
Premium Unleaded	<i>Required</i>	Rack +	\$0.1190	Gallon
Ethanol Blended (E10)	<i>Required</i>	Rack +	\$0.1190	Gallon
Ethanol Blended (E85)	<i>Required</i>	Rack +	\$0.1190	Gallon
<b>Diesel Fuel Grades</b>			<b>Margin</b>	<b>Unit</b>
Ultra Low Sulfur Diesel	<i>Required</i>	Rack +	\$0.1390	Gallon
B-20 Blended Diesel	<i>Optional</i>	Rack +	\$0.1390	Gallon
Red Dye Distillate Ultra Low Sulfur Diesel	<i>Required</i>	Rack +	\$0.1390	Gallon
<b>Auxiliary Fuels</b>			<b>Margin</b>	<b>Unit</b>
Kerosene	<i>Optional</i>	Retail -	\$0.0020	Gallon
Propane	<i>Optional</i>	Retail -	\$0.0020	Pounds
Compressed Natural Gas ("CNG")	<i>Optional</i>	Retail -	\$0.0020	GGE
<b>Motor Oils - Gasoline Engines</b>			<b>Margin</b>	<b>Unit</b>

Full Synthetic 0W-20 (ILSAC: GF-4, API: SM)	<i>Required</i>	Retail -	\$0.0000	Quart
Synthetic Blend 5W-30 (ILSAC: GF-4, API: SM, SL)	<i>Required</i>	Retail -	\$0.0000	Quart
Synthetic Blend 5W-20 (ILSAC: GF-4 API: SM)	<i>Required</i>	Retail -	\$0.0000	Quart
<b>Motor Oil - Diesel Engines</b>			<b>Margin</b>	<b>Unit</b>
Synthetic Blend 15W40 (API: CJ-4,CI-4 PLUS,CI-4,CH-4,SM)	<i>Required</i>	Retail -	\$0.0000	Quart
Full Synthetic 15W50 (CI-4 Plus/SL rating)	<i>Required</i>	Retail -	\$0.0000	Quart
<b>City of Charlotte &amp; Mecklenburg County Only</b>			<b>Margin</b>	<b>Unit</b>
Additional \$0.02/gallon discount at locations owned by The Pantry, Inc. only.			(\$0.0200)	Gallon

**Non - Consignment (Bulk) Fuel (Annual usage is unknown at this time).**

Gasoline Grades			Truck Size ≤ 2500 Gal.		Truck Size 2500 - 6999 Gal		Volume Discount (where applicable)
Regular Unleaded	<i>Required</i>	Rack +	\$0.3190	Gallon	\$0.3190	Gallon	Delivery trucks over 7000 gal. - \$0.199 / gal
Mid-Grade Unleaded	<i>Optional</i>	Rack +	\$0.3190	Gallon	\$0.3190	Gallon	Delivery trucks over 7000 gal. - \$0.199 / gal
Premium Unleaded	<i>Optional</i>	Rack +	\$0.3190	Gallon	\$0.3190	Gallon	Delivery trucks over 7000 gal. - \$0.199 / gal
Ethanol Blended (E10)	<i>Required</i>	Rack +	\$0.3190	Gallon	\$0.3190	Gallon	Delivery trucks over 7000 gal. - \$0.199 / gal
Ethanol Blended (E85)	<i>Optional</i>	Rack +	\$0.3190	Gallon	\$0.3190	Gallon	Delivery trucks over 7000 gal. - \$0.199 / gal
Gasoline Grades			Truck Size ≤ 2500 Gal.		Truck Size 2500 - 6999 Gal		Volume Discount (where applicable)
Ultra Low Sulfur Diesel	<i>Required</i>	Rack +	\$0.3190	Gallon	\$0.3190	Gallon	Delivery trucks over 7000 gal. - \$0.199 / gal
B-20 Blended Diesel	<i>Required</i>	Rack +	\$0.3190	Gallon	\$0.3190	Gallon	Delivery trucks over 7000 gal. - \$0.199 / gal
Red Dye Distillate Ultra Low Sulfur Diesel	<i>Required</i>	Rack +	\$0.3190	Gallon	\$0.3190	Gallon	Delivery trucks over 7000 gal. - \$0.199 / gal
Auxiliary Fuels			Truck Size ≤ 2500 Gal.		Truck Size 2500-6999 Gal		Volume Discount (where applicable)
Propane	<i>Optional</i>	Retail -	n/a	Pound	n/a	Pound	

<b>Onsite Fueling Location Audits</b>			
Full Audit of each Onsite Fueling Location with Consignment Fueling Requirements for the City and County	Cost Per Pump	\$1,000.00	Per Location
	Additional Information	<b><u>Per Location</u></b>	
<b>CCPA Admin Fee</b>			
The Company is responsible for paying to CCPA an administrative fee for all Participating Public Agency sales volumes within 30 days of the end of each calendar quarter set out in the Agreement.			Per Gallon Rebate \$0.005

<b>Additional Equipment</b>			
Receipt Printers (At Card Reader Locations)	Cost Per Each	\$3,000.00	Each
	Additional Information	installed	
Annual Support & Maintenance of Receipt Printers	Cost Per Pump	\$1,200.00	Per Pump
	Additional Information		

**APPENDIX A**  
**GENERAL TERMS AND CONDITIONS FOR USE OF FLEET CARDS**

**99.1 Security, Loss, Theft, or Unauthorized Use of Card.**

**1. General Security.** Each Card can be programmed to only allow Fuel or both Fuel & Maintenance services such as oil changes, vehicle washes, etc. Typically each Transaction is authorized with the Card number, product code, quantity and driver's Driver ID across the proprietary Fuelman network to ensure that the purchase is authorized and limited to the product and quantity (e.g. gallons of Fuel or dollars of Maintenance) that have been pre-approved. This system also helps prevent unauthorized Driver IDs and stolen Cards from being used to make purchases. The product and quantity controls are subject to each Merchant Location's POS Authorization Limitations described herein.

**2. Fuelman's Liability.** In the event an unauthorized Transaction occurs, subject to the limitations and Customer responsibilities explained in this Article 99.1 and in the event that the Account has been issued fewer than ten (10) Cards, Fuelman will assume full responsibility for those purchases. If the Account has been issued ten (10) or more Cards, Customer assumes all liability and responsibility for unauthorized Transactions or Account activity.

**3. Customer's Responsibility.** It is the responsibility of Customer to ensure proper security controls are kept in place to protect the Cards and Driver IDs and that only authorized employees or agents of Customer use them to make purchases. It is also the Customer's responsibility to lock any inactive, misplaced, or stolen Cards and Driver IDs immediately. Fuelman is not responsible for fraudulent Transactions made on unlocked Cards with valid Driver IDs. Customer should use the online account application to lock Cards and Driver IDs instantly. Alternatively, the Customer can contact Fuelman Customer Service during regular business hours via fax or email with the requested change, in which case Fuelman will make the requested changes within 24 hours and assume responsibility for any unauthorized purchases at that point. All Transactions in which a valid/unlocked Card number was used in conjunction with a valid/active Driver ID will be considered to be authorized. Transactions in which Customer is fully responsible for payment. It is also the Customer's responsibility to review the standard fleet management reports and optional email exception alerts to identify potential purchasing discrepancies. Customer should instruct its Cardholders to keep any record of their Driver ID separate from the vehicle's Card.

**4. Lost or Stolen Cards.** Customer shall report all lost or stolen Cards to Fuelman immediately via phone call or email to Fuelman's Customer Service department identifying the Card number and such other details concerning the loss or theft of the Cards as are known by Customer. Customer shall be liable for all Transactions made by lost or stolen Cards until midnight of the day that Fuelman receives Customer's notice of such lost or stolen Cards. Customer and Guarantor(s) agree to and acknowledge full liability for any losses resulting from any failure to report the loss or theft of Card(s) in accordance with the terms hereof.

**5. Terminated Drivers.** It is the Customer's responsibility to lock a terminated driver's Driver ID as explained herein.

**6. Merchant Limitations.** The personnel (if any) at a Merchant Location are not the agents or employees of Fuelman and Fuelman shall not be responsible for the products FleetCor Technologies Response to City of Charlotte ITB # 269-2011-011 Page 154 or services rendered by any of the Merchants or any other liability or damage which arises from the action or negligence of the personnel of any of the Merchants, their agents or their employees.

**7. POS Authorization Limitations.** Authorization controls are provided as a convenience to the Customer and are not guaranteed to prevent unauthorized purchases. Specifically, depending on the particular point-of-sale (POS) equipment and Fuel dispenser controls being used by a particular Merchant Location, the product type and spending limit may not be enforceable prior to completing the Transaction. In these situations the Transaction will still be considered to be authorized, but will be identified as an exception on the Customer's standard fleet management report and reported via email if desired by Customer.

**99.2 Account Administration and Card Issuance.**

**1. Credit Limit.** Upon receipt of notice of award of RFP/contract and signed credit applications from Customer, Fuelman will establish an aggregate spending limit for all the Cards issued to Customer under the Account(s) (the "Credit Limit") based on Fuelman's evaluation of the Customer's creditworthiness. The initial Credit Limit has already been established (for existing older accounts already using Fuelman). Fuelman reserves the right to



increase or decrease this Credit Limit at any time. So long as sufficient creditworthiness exists, the intention shall be to have sufficient credit limit to meet the anticipated purchasing projections or purchasing history/activity of the Customer under the billing frequency and terms provided in the RFP or this response to RFP.

The Company shall provide notice of significant decreases in Credit limit that might somehow impact the City's service by the Company within two (2) business days of such change to the City.

**2. Administration of Cards.** Customer shall be solely responsible for the use, maintenance, administration, and security of the Cards and Driver IDs within Customer's business, including, but not limited to, distributing Cards to, and collecting Cards from, its employees and agents following the initial issuance prior to Contract Execution. Notwithstanding any other provision in this Agreement, Customer is responsible for any loss or misuse of Cards by its employees and agents. See Article 99.1 for more information regarding Customer responsibilities.

**3. Cancellation of Cards.** If, at any time, for any reason, Customer desires to cancel any particular Card, but not the Account, Customer's Representative must notify Fuelman via the online application or in writing of such cancellation. Customer's liability for purchases made using the canceled Card shall end at midnight of the day that Fuelman receives notice of such Card cancellation. The on-line application allows customer to instantly cancel (lock) cards.

**4. Suspension of Cards.** Fuelman, at its sole discretion, may suspend or terminate the use of any Card at any time for any reason, including, but not limited to, inactivity, unusual activity, or suspected loss, theft, fraud, or in compliance with the USA Patriot Act. However, nothing in this Agreement shall obligate Fuelman to monitor the use of any Card, and, as described in this Agreement, Customer is solely responsible for the use of any outstanding Cards.

**5. Suspension of Account.** Fuelman, reserves the right to suspend or terminate the use of an Account due to substantial change in creditworthiness, late payment (excessive days beyond terms), aggregate outstanding balance owing on the Account (outstanding Account balance and unbilled Transactions) over the Credit Limit or in compliance with the USA Patriot Act.

**99.3 Force Majeure.**

FleetCor shall not be liable for failure to perform when such failure is occasioned or caused by circumstances beyond its control

**APPENDIX B**  
**Master Intergovernmental Cooperative Purchasing Agreement.**

Each Participating Public Agency shall enter into a Master Intergovernmental Cooperative Purchasing Agreement (MICPA) outlining the terms and conditions that allow access to the Lead Public Agencies' Master Agreements. Under the terms of the MICPA, the procurement by the Participating Public Agency shall be construed to be in accordance with, and governed by, the laws of the state in which the Participating Public Agency resides. A copy of the MICPA is provided below.

**MASTER INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT**

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

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

**APPENDIX C - CITY FUEL TRANSACTION LAYOUT**  
 The City requires the following Fuel Transaction Layout.

**FUEL TRANSACTION LAYOUT**  
 FILE TYPE: SEQUENTIAL, ASCII  
 RECORD LENGTH: 140 CHAR.

FROM – TO	FIELD NAME	FIELD DESCRIPTION	FIELD FORMAT	BYTES.DEC
1 – 5	CARD#	VEHICLE CARD NUMBER	NUMERIC	5
6 – 11	DATE	DATE OF TRANS MMDDYY	NUMERIC	6
12 – 15	TIME	TIME OF TRANSACTION HHMM	NUMERIC	4
16 – 25	LOCDSC	LOCATION DESCRIPTION	ALPHANUM	10
26 – 35	DRIVER	DRIVER'S NAME	ALPHANUM	10
36 – 40	EMPCD#	EMPLOYEE PIN NUMBER	NUMERIC	5
41 – 46	ODOM	ODOMETER READING	NUMERIC	6
47 – 50	MILES	MILES DRIVEN	NUMERIC	4
51 – 51	FTYPE	FUEL TYPE (1-8)	NUMERIC	1
52 – 54	FDESC	FUEL DESCRIPTION	ALPHANUM	3
55 – 59	GALS	GALS PUMPED XXXX.X	NUMERIC	5.1
60 – 66	EXTAMT	EXT. AMT XXXXX.XX	NUMERIC	7.2
67 – 70	MPG	MILE PER GAL XXX.X	NUMERIC	4.1
71 – 75	CSTMIL	COST PER MILE XX.XXX (anything above 0.000)	NUMERIC	5.3
76 – 90	VEHDSC	VEHICLE DESCRIPTION	ALPHANUM	15
91 – 100	VEH#	CUSTOMER VEHICLE#	ALPHANUM	10
101 – 105	VDEP#	(CITY) VEHICLE DEPARTMENT#	NUMERIC	5
106 – 110	VSDEP	(CITY) VEHICLE SUB-DEPT#	NUMERIC	5
111 – 116	TAX\$	TAX AMT. XXXX.XX	NUMERIC	6.2
117 – 126	EMP#	CUSTOMER EMP#	ALPHANUM	10
127 – 133	-----	NOT USED	ALPHANUM	7
134 – 140	CUST#	CUSTOMER NUMBER	NUMERIC	7