

REQUEST FOR PROPOSALS

NEIGHBORHOOD AND BUSINESS SERVICES LEGAL SERVICES

RFP # 269-2010-153



**CITY OF CHARLOTTE
NORTH CAROLINA**

FEBRUARY 19, 2010

REQUEST FOR PROPOSALS
RFP # 269-2010-153
Neighborhood and Business Services Legal Services

FEBRUARY 19, 2010

Dear Service Provider:

The City of Charlotte, located in the State of North Carolina, is now accepting Proposals for Neighborhood and Business Services Legal Services. The requirements for submitting a Proposal are stated in the attached Request for Proposals (the "RFP"). Please review them carefully.

All Service Providers must return a completed Request for Proposals Acknowledgement Form (see **Section 8, Form One**) by the deadline stated in the schedule in **Section 2.1** of this RFP.

All Proposals are due to the Business Support Services, Procurement Services Division, 9th Floor, CMGC 600 East Fourth Street, Charlotte, North Carolina 28202, no later than **MARCH 12, 2010 at 3:00 p.m.** One electronic copy on a CD in MS Word and one unbound original Proposal signed in ink by a company official authorized to make a legal and binding offer along with the corporate seal, plus Seven (7) copies of your Proposal must be submitted in a sealed box or opaque envelope plainly marked with the Proposal number and service description as follows:

Request for Proposals
Attention: Amelia Beonde
Name of Company Submitting Proposal
Neighborhood and Business Services Legal Services
RFP # 269-2010-153

RFP questions must be directed to Amelia Beonde, Business Support Services, Procurement Services Division, per the enclosed instructions in **Section 2.3**. The City is an equal opportunity purchaser.

Sincerely,

Kay Elmore
Assistant Director, Procurement Services Division

cc: Rick Barksdale, Neighborhood and Business Services
Sandra Caldwell, Neighborhood and Business Services
Michael Jenkins, Neighborhood and Business Services
Anna Schleunes, City Attorney's Office
Richard Woodcock, Neighborhood and Business Services
Whitcomb, Gail, Neighborhood and Business Services
RFP file

TABLE OF CONTENTS

1. INTRODUCTION.....	1
1.1. OBJECTIVE.	1
1.2. DEFINITIONS.	1
1.3. ACCURACY OF RFP AND RELATED DOCUMENTS.	1
1.4. CITY’S RIGHTS AND OPTIONS.	2
1.5. EXPENSE OF SUBMITTAL PREPARATION.	2
1.6. PROPOSAL CONDITIONS.	3
1.6.1. <i>RFP Not an Offer.</i>	3
1.6.2. <i>Right to Terminate Discussions.</i>	3
1.6.3. <i>Requirement for Representation as to Accuracy and Completeness of Proposal.</i> 3	
1.6.4. <i>Trade Secrets/Confidentiality.</i>	3
1.6.5. <i>Prohibited Discrimination.</i>	4
1.6.6. <i>Statutory Requirements.</i>	4
1.6.7. <i>Reservation of Right to Change Schedule.</i>	4
1.6.8. <i>Reservation of Right to Amend RFP.</i>	4
1.6.9. <i>Additional Evidence of Ability.</i>	5
1.6.10. <i>No Collusion or Conflict of Interest.</i>	5
1.6.11. <i>Proposal Terms Firm and Irreversible.</i>	5
1.6.12. <i>Proposal Binding for 180 Days.</i>	5
1.6.13. <i>SBO Program.</i>	5
1.6.14. <i>Subcontracting.</i>	5
1.6.15. <i>Equal Opportunity.</i>	6
1.6.16. <i>Use of City’s Name.</i>	6
1.6.17. <i>Withdrawal for Modification of Proposals.</i>	6
1.6.18. <i>No Bribery.</i>	6
1.6.19. <i>Exceptions to the RFP.</i>	6
1.6.20. <i>Fair Trade Certifications.</i>	6
1.6.21. <i>Clarification of Ambiguities.</i>	7
1.6.22. <i>Service Provider’s Obligation to Fully Inform Themselves.</i>	7
1.6.23. <i>Disclaimer.</i>	7
2. PROCUREMENT PROCESS.	8
2.1. SCHEDULE AND PROCESS.	8
2.2. INTENT TO PROPOSE.....	8
2.3. INTERPRETATIONS AND ADDENDA.	8
2.4. SUBMISSION OF PROPOSALS.	9
2.5. CORRECTION OF ERRORS.	9
2.6. EVALUATION.	10
2.7. CONTRACT AWARD BY COUNCIL.	10
3. SCOPE OF SERVICES.....	11
3.1. CIVIL PENALTY AND LIENS COLLECTION SERVICES.	11
3.2. TITLE SEARCHES.....	11
3.3. HOUSING SERVICES PROGRAMS.....	12

Table of Contents

3.3.1.	<i>Housing Rehabilitation and Replacement Loan Program.....</i>	12
3.3.2.	<i>Lead Based Paint Hazard Reduction Program.</i>	12
3.3.3.	<i>Housing Development Loans and Grants.</i>	13
3.3.4.	<i>Servicing and Administration of Existing Loan Portfolio.....</i>	13
3.3.5.	<i>Special Proceedings involving Housing Services Program Loans.....</i>	14
3.3.6.	<i>Miscellaneous Services.</i>	15
3.4.	HOUSECHARLOTTE LOAN PROGRAM.	15
3.5.	COMMUNITY & COMMERCE LOAN AND GRANT PROGRAMS.	15
3.5.1.	<i>Residential and Commercial Loan Programs.....</i>	16
3.5.2.	<i>Miscellaneous Services.</i>	19
3.5.3.	<i>Communication.</i>	19
3.6.	ECONOMIC DEVELOPMENT.	19
3.7.	LENGTH OF RELATIONSHIP.	20
4.	PROPOSAL FORMAT.....	21
4.1.	PROPOSAL CONTENT.....	21
4.1.1.	<i>Cover Letter.</i>	21
4.1.2.	<i>Executive Summary.....</i>	22
4.1.3.	<i>Background and Experience.....</i>	22
4.1.4.	<i>Proposed Solution.....</i>	22
4.1.5.	<i>Required Forms.</i>	23
4.1.6.	<i>Exceptions to the RFP.....</i>	23
5.	SERVICE PROVIDER’S BACKGROUND AND EXPERIENCE.....	24
5.1.	OFFICIAL NAME.	24
5.2.	SERVICE PROVIDER BACKGROUND.	24
5.3.	PROPOSING ORGANIZATION’S STRUCTURE.	24
5.4.	ANALYTICAL APPROACH.	24
5.5.	GUARANTOR.	25
5.6.	REQUESTS FOR FINANCIAL INFORMATION.	25
5.7.	PROPOSED PROJECT TEAM.	26
5.8.	PAST OR PENDING JUDGMENTS.	27
5.9.	FINANCIAL AND LEGAL CONSIDERATIONS.	27
5.10.	BUSINESS PARTNERS.....	28
5.11.	PERSONNEL MANAGEMENT.	28
5.12.	REFERENCES.	28
6.	PROPOSAL EVALUATION CRITERIA.....	29
6.1.	QUALIFICATIONS, EXPERIENCE AND APPROACH.	29
6.2.	FINANCIAL QUALIFICATIONS.	29
6.3.	COST EFFECTIVENESS AND VALUE.	29
6.4.	ACCEPTANCE OF THE TERMS OF THE CONTRACT.	29
7.	CITY CONTRACTING REQUIREMENTS.	30
7.1.	TRANSITION.	30
7.2.	PROJECT PLAN.	30
7.3.	EXHIBITS.....	31

Table of Contents

7.4.	DESCRIPTION OF THE SERVICES.	31
7.5.	PAYMENT FOR SERVICES.....	31
7.5.1.	TOTAL FEES AND CHARGES.	31
7.5.2.	EMPLOYMENT TAXES AND EMPLOYEE BENEFITS.....	32
7.6.	RECORDS.	32
7.7.	DUTY OF THE COMPANY TO IDENTIFY AND REQUEST INFORMATION, PERSONNEL AND FACILITIES.	32
7.8.	NON-EXCLUSIVITY.	32
7.9.	NON-APPROPRIATION OF FUNDS.....	33
7.10.	TIME IS OF THE ESSENCE.	33
7.11.	COMPANY PROJECT MANAGER.	33
7.12.	CITY PROJECT MANAGER.	34
7.13.	PROGRESS REPORTS.....	34
7.14.	COMPANY PERSONNEL REMOVAL, REPLACEMENT, OR PROMOTION.	34
7.15.	EACH PARTY TO BEAR ITS OWN NEGOTIATION COSTS.....	35
7.16.	GENERAL WARRANTIES.....	35
7.17.	ADDITIONAL REPRESENTATIONS AND WARRANTIES.	35
7.18.	SUBSTITUTE PERFORMANCE.	36
7.19.	TERM AND TERMINATION OF AGREEMENT.	36
7.19.1.	<i>Termination Without Cause.</i>	36
7.19.2.	<i>Termination for Default by Either Party.</i>	36
7.19.3.	<i>Additional Grounds for Default Termination by the City.</i>	37
7.19.4.	<i>No Suspension.</i>	37
7.19.5.	<i>Cancellation of Orders and Subcontracts</i>	37
7.19.6.	<i>Authority to Terminate.</i>	37
7.19.7.	<i>No Effect on Taxes, Fees, Charges, or Reports.</i>	37
7.19.8.	<i>Specific Performance and Injunctive Relief.</i>	38
7.19.9.	<i>Other Remedies.</i>	38
7.20.	SERVICE PROVIDER’S EQUIPMENT, FACILITIES, AND RECORDS.	38
7.21.	TRANSITION SERVICES UPON TERMINATION.	39
7.22.	AUDIT.	39
7.23.	COMPANY WILL NOT SELL OR DISCLOSE DATA.	39
7.24.	LICENSING.	40
7.25.	COMPLIANCE WITH LAWS AND CODES.....	40
7.26.	WORK ON CITY’S PREMISES.	40
7.27.	DAMAGE CLAIMS.....	40
7.28.	RELATIONSHIP OF THE PARTIES.	40
7.29.	INDEMNIFICATION.....	40
7.30.	SUBCONTRACTING.	41
7.31.	RESTRICTIONS.....	41
7.32.	EXCEPTIONS.....	42
7.33.	UNINTENTIONAL DISCLOSURE.	43
7.34.	REMEDIES.	43
7.35.	INSURANCE.	43
7.35.1.	<i>Automobile Liability</i>	43
7.35.2.	<i>Commercial General Liability.</i>	43

Table of Contents

7.35.3.	<i>Professional Liability.....</i>	44
7.35.4.	<i>Worker’s Compensation and Employers Liability.....</i>	44
7.36.	OTHER INSURANCE REQUIREMENTS.	44
7.37.	NOTICES.....	44
7.38.	NON-DISCRIMINATION.....	45
7.39.	DRUG-FREE WORKPLACE.	46
7.40.	MISCELLANEOUS.	46
7.40.1.	<i>Entire Agreement.</i>	46
7.40.2.	<i>Amendment.....</i>	47
7.40.3.	<i>Governing Law and Jurisdiction.</i>	47
7.40.4.	<i>Binding Nature and Assignment.</i>	47
7.40.5.	<i>City Not Liable for Delays.</i>	47
7.40.6.	<i>Force Majeure.</i>	47
7.40.7.	<i>Severability.</i>	48
7.40.8.	<i>No Publicity.</i>	48
7.40.9.	<i>Approvals.</i>	48
7.40.10.	<i>Waiver.....</i>	49
7.40.11.	<i>Survival of Provisions.</i>	49
7.40.12.	<i>Conflict of Interest.</i>	49
7.40.13.	<i>No Bribery.....</i>	49
7.40.14.	<i>Change in Control.....</i>	49
7.40.15.	<i>Familiarity and Compliance with Laws and Ordinances.</i>	49
7.40.16.	<i>Taxes.</i>	50
7.40.17.	<i>Harassment.</i>	50
REQUEST FOR PROPOSALS ACKNOWLEDGEMENT		51
ADDENDA RECEIPT CONFIRMATION		52
PROPOSAL SUBMISSION FORM		53
PRICING WORKSHEET.....		54
PROPOSAL CERTIFICATION		56
EXHIBIT A-CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT		57

Section 1

Introduction and General Information

1. INTRODUCTION.

1.1. Objective.

The objective of this RFP is to solicit Proposals that will enable the City to determine which Service Provider and Proposed Solution will best meet the City's needs.

1.2. Definitions.

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

<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 RFP.
<i>Company Project Manager:</i>	Refers to a specified Company employee representing the best interests of the Company for this Project.
<i>Agreement:</i>	Refers to a contract executed by the City and Service Provider for all or part of the Services covered by this RFP.
<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 this Agreement.
<i>Evaluation Committee:</i>	Refers to a committee, as appointed by the City, responsible for determining the best Service Provider for the Services described in this RFP.
<i>Neighborhood and Business Services</i>	
<i>Project:</i>	Refers to the procurement process to choose a Service Provider to perform Neighborhood and Business Services Legal Services for the City.
<i>Proposal:</i>	Refers to the Proposal submitted by a Service Provider for the Services as outlined in this RFP.
<i>Services:</i>	Refers to the Neighborhood and Business Services Legal Services as requested in this RFP.
<i>Service Provider:</i>	Refers to a company that has interest in providing the Services required by this RFP.

1.3. Accuracy of RFP and Related Documents.

The City assumes no responsibility for conclusions or interpretations derived from the information presented in this RFP, or otherwise distributed or made available during this procurement process. In addition, the City will not be bound by or be responsible for any explanation, interpretation or conclusions of this RFP or any documents provided by the City other than those provided by the City through the

Section 1

Introduction and General Information

issuance of addenda. In no event may a Service Provider rely on any oral statement by the City or its agents, advisors or consultants.

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

1.4. City's Rights and Options.

The City reserves the following rights, which may be exercised at the City's sole discretion:

- 1.4.1. To supplement, amend, substitute or otherwise modify this RFP at any time;
- 1.4.2. To cancel this RFP with or without the substitution of another RFP;
- 1.4.3. To take any action affecting this RFP, this RFP process, or the Services or facilities subject to this RFP that would be in the best interests of the City;
- 1.4.4. To issue additional requests for information;
- 1.4.5. To require one or more Service Providers to supplement, clarify or provide additional information in order for the City to evaluate the Proposals submitted;
- 1.4.6. To conduct investigations with respect to the qualifications and experience of each Service Provider;
- 1.4.7. To waive any defect or irregularity in any Proposal received;
- 1.4.8. To reject any or all Proposals;
- 1.4.9. To award all, none, or any part of the Services that is in the best interest of the City, with one or more of the Service Providers responding, which may be done without or without re-solicitation.
- 1.4.10. To discuss and negotiate with selected Service Provider(s) any terms and conditions in the Proposals including but not limited to financial terms; and
- 1.4.11. To enter into any agreement deemed by the City to be in the best interest of the City, with one or more of the Service Providers responding.

1.5. Expense of Submittal Preparation.

The City accepts no liability for the costs and expenses incurred by the Service Providers in responding to this RFP, in preparing responses for clarification, in attendance at interviews, participating in contract development sessions, or in meetings and presentations required for the contract approval process. Each Service Provider that enters into the procurement process shall prepare the required materials and submittals at its own expense and with the express understanding that the Service Provider cannot make any claims whatsoever for reimbursement from the City for the costs and expenses associated with the procurement process.

Section 1

Introduction and General Information

1.6. Proposal Conditions.

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

1.6.1. RFP Not an Offer.

This RFP does not constitute an offer by the City. No binding contract, obligation to negotiate, nor any other obligation shall be created on the part of the City unless the City and the Service Provider execute a Contract. No recommendations or conclusions from this RFP process concerning the Service Provider shall constitute a right (property or otherwise) under the Constitution of the United States or under the Constitution, case law, or statutory law of North Carolina.

1.6.2. Right to Terminate Discussions.

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

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

Each Service Provider shall make the following representations and warranty in its Proposal Cover Letter, the falsity of which might result in rejection of its Proposal: **"The information contained in this Proposal or any part thereof, including its Exhibits, Schedules, and other documents and instruments delivered or to be delivered to the City, is true, accurate, and complete. This Proposal includes all information necessary to ensure that the statements therein do not in whole or in part mislead the City as to any material facts."**

1.6.4. Trade Secrets/Confidentiality.

Upon receipt at the Procurement Services Division, your Proposal is considered a public record except for material which qualifies as "trade secret" information under N.C. Gen. Stat. 66-152 et. seq. After the Proposal opening, the City's Evaluation Committee, as well as other City staff and members of the general public who submit public records requests will review the Proposal.

The public disclosure of the contents of each Service Provider Proposal submitted in response to this RFP is governed by Chapter 132 and 66-152 et. seq. of the General Statutes of North Carolina. If any Proposal contains trade secret information as defined by Chapter 66-152 et. seq. of the General Statutes of North Carolina, such trade secret information should be specifically and clearly identified in accordance with this Section 1.6.4.

To properly designate material as trade secret under these circumstances, each Service Provider must take the following precautions: (a) any trade secrets submitted by a Service Provider should be submitted in a separate, sealed envelope marked **"Trade Secret—Confidential and Proprietary Information—Do Not Disclose Except for the Purpose of Evaluating this Proposal,"** and (b) the same trade secret/confidentiality designation

Section 1

Introduction and General Information

should be stamped on each page of the trade secret materials contained in the envelope.

In submitting a Proposal, each Service Provider agrees that the City may reveal any trade secret materials contained in such response to all City staff and City officials involved in the selection process, and to any outside consultant or other third parties who serve on the Evaluation Committee or who are hired by the City to assist in the selection process.

Furthermore, each Service Provider agrees to indemnify and hold harmless the City and each of its officers, employees, and agents from all costs, damages, and expenses incurred in connection with refusing to disclose any material, which the Service Provider has designated as a trade secret. **Any Service Provider that designates its entire Proposal as a trade secret may be disqualified.**

1.6.5. Prohibited Discrimination.

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

1.6.6. Statutory Requirements.

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

1.6.7. Reservation of Right to Change Schedule.

The City shall ultimately determine the timing and sequence of events resulting from this RFP. The City reserves the right to delay the closing date and time for any phase if City staff believe that an extension will be in the best interest of the City.

1.6.8. Reservation of Right to Amend RFP.

The City reserves the right to amend this RFP at any time during the process, if it believes that doing so is in the best interests of the City. Any addenda will be posted to the Internet at www.ips.state.nc.us, bid # 269-2010-153. Service Providers are required to acknowledge their receipt of

Section 1

Introduction and General Information

each addendum by using the Addenda Receipt Confirmation Form set forth in **Section 8, Form Two**.

- 1.6.9. Additional Evidence of Ability.
Service Providers shall be prepared to present additional evidence of experience, qualifications, abilities, equipment, facilities, and financial standing. The City reserves the right to request such information at any time during the Proposal evaluation period for this RFP.
- 1.6.10. No Collusion or Conflict of Interest.
By responding to this RFP, the Service Provider shall be deemed to have represented and warranted that the Proposal is not made in connection with any competing Service Provider submitting a separate response to this RFP, and is in all respects fair and without collusion or fraud.
- 1.6.11. Proposal Terms Firm and Irreversible.
The signed Proposal shall be considered a firm offer on the part of the Service Provider. The City reserves the right to negotiate price and Services. All Proposal responses (including all statements, claims, declarations, prices and specifications in the Proposals) shall be considered firm and irrevocable for purposes of future Contract negotiations unless specifically waived in writing by the City. The Service Provider chosen for award should be prepared to have its Proposal and any relevant correspondence incorporated into the Contract, either in part or in its entirety, at the City's election. Any false or misleading statements found in the Proposal will be grounds for disqualification.
- 1.6.12. Proposal Binding for 180 Days.
Each Proposal shall contain a statement to the effect that the Proposal is a firm offer for one-hundred-eighty (180) calendar day period from the date of the opening. This statement must be signed by an individual authorized to bind the Service Provider and include their name, title, address, and telephone number. All prices quoted shall be firm and fixed for the full Contract period. The City shall have the option to accept subject to exception by Contract.
- 1.6.13. SBO Program.
It is the policy of the City of Charlotte in accordance with SB 1336 as approved by the NC General Assembly on August 27, 2002, that Small Business Enterprises shall have the maximum opportunity to compete for and participate in the performance of contracts issued on behalf of the City of Charlotte. The City further requires that its contractors agree to take all the necessary and responsible steps to ensure that Small Business Enterprises have the maximum opportunity to participate as subcontractors for contractors issued by City of Charlotte, Economic Development Division.
- 1.6.14. Subcontracting.
The Service Provider given contract award shall be the prime contractor and shall be solely responsible for contractual performance. In the event of a subcontracting relationship, the Service Provider shall remain the prime contractor and will assume all responsibility for the performance of the

Section 1

Introduction and General Information

Services that are supplied by the subcontractor. Additionally, the City must be named as a third party beneficiary in all subcontracts.

- 1.6.15. Equal Opportunity.
The City has an equal opportunity purchasing policy. The City seeks to ensure that all segments of the business community have access to supplying the goods and services needed by City programs. The City provides equal opportunity for all businesses and does not discriminate against any Service Providers regardless of race, color, religion, age, sex, and national origin or disability.
- 1.6.16. Use of City's Name.
No advertising, sales promotion or other materials of the Service Provider or its agents or representatives may identify or reference the City in any manner absent the prior written consent of the City.
- 1.6.17. Withdrawal for Modification of Proposals.
Service Providers may change or withdraw their Proposals at any time prior to Proposal opening; however, no oral modifications will be allowed. Only telegrams, letters, or other formal written requests for modifications or corrections of a previously submitted Proposal, which is addressed in the same manner as the Proposal, and received by the City prior to the scheduled closing time for receipt of Proposals, will be accepted. The Proposal, when opened, will then be corrected in accordance with such written request(s), provided that the written request is contained in a sealed envelope, which is plainly marked "**Modifications to Proposal.**"
- 1.6.18. No Bribery.
In submitting a response to this RFP, each Service Provider certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the foregoing has bribed, or attempted to bribe, an officer or employee of the City in connection with the Contract.
- 1.6.19. Exceptions to the RFP.
Other than exceptions that are stated in compliance with this Section, each Proposal shall be deemed to agree to comply with all terms, conditions, specifications, and requirements of this RFP. An "exception" is defined as the Service Provider's inability or unwillingness to meet a term, condition, specification, or requirement in the manner specified in the RFP. All exceptions taken must be identified and explained in writing in your Proposal and must specifically reference the relevant section(s) of this RFP. If the Service Provider provides an alternate solution when taking an exception to a requirement, the benefits of this alternative solution and impact, if any, on any part of the remainder of the Service Provider's solution, must be described in detail.
- 1.6.20. Fair Trade Certifications.
By submission of a Proposal, the Service Provider certifies that in connection with this procurement:
 - The prices have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with anyone;

Section 1

Introduction and General Information

- Unless otherwise required by law, the prices which have been quoted in its Proposal have not been knowingly disclosed by the Service Provider and will not knowingly be disclosed by the Service Provider prior to opening; and
- No attempt has been made or will be made by the Service Provider to induce any other person or firm to submit or not to submit a Proposal for the purpose of restricting competition.

1.6.21. Clarification of Ambiguities.

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

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

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

1.6.23. Disclaimer.

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

Section 2

Procurement Process

2. PROCUREMENT PROCESS.

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

2.1. Schedule and Process.

The following chart shows the schedule of events to prepare the Service Provider's Proposal. The key events and deadlines for this process are as follows, some of which are set forth in more detail in the Sections that follow:

DATE	EVENT
FEBRUARY 19, 2010	<i>Issuance of RFP.</i> The City issues this RFP.
MARCH 2, 2010	<i>Request for Proposals Acknowledgement.</i> Service Providers who intend to submit a Proposal shall submit the RFP Acknowledgement Form on this date to the fax number listed in Section 2.2 .
MARCH 2, 2010	<i>Submission of Written Questions.</i> Service Providers are permitted to submit written questions, but only for purposes of clarifying this RFP. All submissions must be faxed or preferably e-mailed to Amelia Beonde at the address and number listed in Section 2.3 . Questions are due by 3:00 p.m. on MARCH 2, 2010.
MARCH 12, 2010	<i>Proposal Submission.</i> Proposals are due by 3:00 p.m. on MARCH 12, 2010, at the Procurement Services Division, CMGC 9 th Floor. All Proposals will be time-stamped upon receipt and held in a secure place until this date.
MARCH 12, 2010 - APRIL 26, 2010	<i>Evaluation.</i>
APRIL 26, 2010	<i>Contract Award by Council.</i>
JULY 1, 2010	<i>Neighborhood and Business Services Legal Services.</i> Service Provider begins providing all Neighborhood and Business Services Legal Services.

2.2. Intent to Propose.

Please acknowledge receipt of this RFP via facsimile by **MARCH 2, 2010** using the Request for Proposals Acknowledgement Form located in Section 8, Form One. Complete the form in its entirety advising the City of your firm's intention to submit or not submit a Proposal. Fax the completed and signed form to 704-632-8268, attention Amelia Beonde.

2.3. Interpretations and Addenda.

No interpretation or clarification of the meaning of any part of this RFP will be made orally to any Service Provider. Service Providers must request such interpretations or clarifications in writing from the City. Address requests for information or clarification of this RFP to Amelia Beonde at the e-mail address listed below. When

Section 2

Procurement Process

submitting questions, please reference the RFP page and topic number. In order for questions to be addressed in any follow up addenda to this RFP, they must be submitted by **3:00 p.m. on MARCH 2, 2010**.

In the case of questions not submitted in a timely manner, the Procurement Officer will, based on the availability of time to research and communicate an answer, decide whether an answer can be given before the Proposal Due Date. When responding to Service Provider questions or issuing addenda to the RFP, the City will post the answer or information to the Internet at www.ips.state.nc.us, bid# 269-2010-153. It is the Service Provider's responsibility to check for addenda prior to the proposal submittal deadline.

Amelia Beonde
Procurement Services Division
City of Charlotte
600 East Fourth Street
Charlotte, NC 28202
RFP # 269-2010-153
Fax: 704-632-8268
E-mail: abeonde@ci.charlotte.nc.us

The City reserves the right to disqualify any Service Provider who contacts a City or County official, employee, or agent concerning this RFP other than in accordance with this Section. Nothing in this Section shall prohibit the City from conducting discussions with Service Providers after the Proposal opening.

2.4. Submission of Proposals.

One (1) electronic copy on a CD and one (1) unbound original Proposal signed in ink by a company official authorized to make a legal and binding offer along with the corporate seal, plus **Seven (7)** copies shall be submitted to the address listed in Section 2.3 above by **MARCH 12, 2010 at 3:00 p.m.** The "original" Proposal and each of the Seven (7) copies shall be complete and unabridged, and shall not refer to any other copy of the signed/sealed original for any references, clarifications, or additional information. When received, all Proposals and supporting materials, as well as correspondence relating to this RFP, shall become the property of the City. **Proposals sent by facsimile will not be accepted.**

Due to increased security concerns at the Charlotte-Mecklenburg Government Center (CMGC) your sealed boxed may be searched and thoroughly inspected prior to admittance. Please allow time for this search to take place if delivering your Proposal in person to the CMGC.

Please do not arrive at the Procurement Services Division on the Proposal due date for the purposes of reviewing your competitor's Proposals. The Proposals will not be read aloud or made available to inspect or copy until any trade secret issues have been resolved.

2.5. Correction of Errors.

The person signing the Proposal must initial erasures or other corrections in the Proposal. The Service Provider further agrees that in the event of any obvious errors, the City reserves the right to waive such errors in its sole discretion. The City, however, has no obligation under any circumstances to waive such errors.

2.6. Evaluation.

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

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

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

2.7. Contract Award by Council.

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

3. SCOPE OF SERVICES.

This **Section 3** contains information that identifies the Services to be provided.

3.1. Civil Penalty and Liens Collection Services.

The Service Provider shall furnish various civil penalty and lien collection services related to the City's code enforcement program.

- 3.1.1. Upon referral of a civil penalty claim by the City's Collections Office, the Service Provider shall demand payment from civil penalty debtors and file civil actions against them as necessary. Neighborhood and Business Services refers approximately forty (40) civil penalty claims per year.

The Service Provider shall be completely responsible for the performance of all work required for the prosecution of a civil action, including, but not limited to, preparing and filing all pleadings and other documents, accomplishing service of process, attending court hearings and mediation and arbitration conferences, negotiating settlements, conducting trials, and enforcing judgments through execution if necessary.

The Service Provider shall collect payments on behalf of the City and remit such payments to the City's Collections Office. The Service Provider shall advance execution sales expenses to the Sheriff's Office and bill the City for the advances.

- 3.1.2. Upon referral of statutory liens by the City's Collections Office, the Service Provider shall demand payments from the owners of and other persons who hold interests in the property that is encumbered by the liens, and, if necessary, the Service Provider shall conduct lien foreclosures by one of the methods prescribed by statute for the foreclosure of tax liens.

The Service Provider shall perform title searches to determine owners of, and other persons with interests in, encumbered properties, prepare and file judgments for lien, request execution upon judgments, and assist the Sheriff as necessary with execution sales. The Service Provider shall collect payments on behalf of the City and remit the payments to the City's Collections Office. The Service Provider shall advance execution sales expenses to the Sheriff's Office and bill the City for the advances

3.2. Title Searches.

The Service Provider shall perform title searches for code enforcement and other related activities. It is anticipated that the City will generate approximately six hundred (600) title search requests annually for the various programs. A title search shall encompass all usual and customary services required to examine the state of title and to furnish a title abstract for the estate. Such searches shall include, but not be limited to, the following:

- 3.2.1. Check the tax record to obtain the name of the listed taxpayer, the tax parcel number and, the deed reference.

- 3.2.2. Check estates for the current owner of record. In the non-typical case, examination of the index to wills or the estate index shall be required in order to locate a link in the chain of title. In some cases, such as when the owner dies without a recorded will and there is no estate administration, it might be necessary to conduct an investigation independent of the records in order to establish a chain of title.
- 3.2.3. Utilize the grantee index at the Register of Deeds Office to validate the chain of title back for thirty-five (35) years.
- 3.2.4. Check the out conveyances by using the grantor indexes of each person in the chain of title.
- 3.2.5. Check the judgment index for each person who owned the property during the ten (10) years immediately preceding the title search.
- 3.2.6. Check special proceedings for any pending foreclosures.
- 3.2.7. Provide the address of Owner, Beneficiary and Trustee for all title searches.
- 3.2.8. Requests for Title Searches may be submitted in no more than fifteen (15) requests at a time and the title search shall be completed and the title search abstract delivered to Neighborhood and Business Services via electronic mail within fourteen (14) days of the request.

3.3. Housing Services Programs.

The Service Provider shall perform various legal services in connection with loan and grant and housing development programs to include, but not be limited to, the following:

- 3.3.1. Housing Rehabilitation and Replacement Loan Program.
 - Verify borrower is the owner of the property through a Title Search. (Approximately 100 title searches annually);
 - If the borrower is to purchase the property from a third party, conduct a full title search on the property;
 - When a full title search is needed, prepare a title opinion letter disclosing items impacting title to property;
 - Review information submitted by contractor and prepare construction contract;
 - Prepare construction agreements;
 - Prepare all necessary loan documents; and
 - Conduct loan closings, including, without limitation, recordation of applicable closing documents for no more than (100) replacement housing and rehabilitation loans annually.
- 3.3.2. Lead Based Paint Hazard Reduction Program.
 - Review executed deed restrictions to confirm the owner of record signed the restrictions and to verify the restrictions were signed and notarized properly;

Section 3

Scope of Services

- Provide the correct legal description and attach it to the deed restrictions;
- Prepare all necessary agreements; and
- Review and record no more than 50 deed restrictions annually.

3.3.3. Housing Development Loans and Grants.

- Prepare grant and loan documents and, as needed, other project documentation and complex agreements in connection with City funding of the development of single-family and multi-family housing enterprises by private and non-profit developers;
- Review and analyze loan documents and development documents prepared by other project participants;
- Negotiate with developers upon request by Neighborhood and Business Services;
- Provide advice regarding compliance of project documentation with HUD and City project funding requirements and guidelines;
- Perform title work and prepare deeds for the conveyance of real property by the City;
- Service existing Housing Development Program loans and grants by preparing and reviewing proposed modifications, loan assumptions, consents and subordinations, etc.;
- Provide City staff with regular updates on time tables for completion of grant and loan projects;
- Advise City staff regarding the impact of City involvement in tax credit projects;
- Work on approximately (10) Housing Development loans and grants annually; and
- Within ten (10) days of receipt from City staff of request for Housing Development Loans and Grants, provide estimated time table for completion of the Housing Development Loan/Grant.

3.3.4. Servicing and Administration of Existing Loan Portfolio.

3.3.4.1. Loan Modifications.

Prepare approximately 50 modifications annually. Within ten (10) days of receipt from City staff of request(s), provide estimated time table for completion of request(s).

3.3.4.2. Loan Assumptions.

- Review and analyze the original loan documents;
- Review and analyze City's determination of ownership;

Section 3

Scope of Services

- Examine title, including, without limitation, investigation of estates and determination of heirs of deceased borrower(s);
 - Research title to confirm ownership of the property;
 - Prepare loan assumption documents;
 - Within 10 days of receipt from City staff of loan assumption notice provide estimated time table for completion of loan assumption;
 - Conduct closing, including, without limitation, recordation of applicable closing documents; and
 - Complete approximately 25 loan assumptions annually.
- 3.3.4.3. Subordinations.
- Prepare approximately 25 subordinations.
- 3.3.4.4. Loan Cancellations and Satisfaction.
- Prepare approximately 50 cancellations and satisfactions annually.
- 3.3.5. Special Proceedings involving Housing Services Program Loans.
- 3.3.5.1. Foreclosures.
- Review and analyze loan documents;
 - Review and analyze City's determination of ownership;
 - Examine title to determine ownership, including, without limitation, investigation of estates and determination of heirs of deceased borrower(s);
 - Prepare standard foreclosure pleadings;
 - Attend hearings and sales; and
 - Conduct approximately 30 foreclosures.
- 3.3.5.2. Surplus Proceeds.
- Review and analyze completed foreclosure files to assist in determining entitlement to surplus sale proceeds;
 - Examine title to assist in determining entitlement to surplus proceeds, including, without limitation, investigation of heirs and other lien holders in order to notify respondents in special proceeding;
 - Prepare and file special proceedings to determine ownership of surplus proceeds;
 - Attend hearing and prepare appropriate orders; and
 - Conduct approximately (60) proceedings for surplus proceeds annually.

Section 3

Scope of Services

3.3.5.3. Bankruptcy.

- File claims in bankruptcy proceedings;
- Attend bankruptcy hearings and negotiate as necessary, excluding large Chapter 11 proceedings in which the City is a major creditor; and
- Conduct approximately 10 bankruptcy proceedings annually.

3.3.6. Miscellaneous Services.

The Service Provider shall provide services not covered by other agreements when requested by the Neighborhood and Business Services Key Business Unit or the City Attorney's Office. Based on experience and historical data, the City expects the volume of use to be 150 hours. Services may include, but are not limited to:

- Monthly meetings with City Staff to review and provide counsel concerning legal requirements for Neighborhood and Business Services programs and policies;
- Meetings with contractors, borrowers, developers, and others regarding services provided by Neighborhood and business Services;
- Prosecuting housing code summary ejectment actions;
- Providing, at City's expense, legal services to third party recipients of Neighborhood and Business Services.

3.4. **HouseCharlotte Loan Program.**

- Prepare Requests for Notice for no more than (400) HouseCharlotte loans annually; and
- As needed, advise closing attorney and Neighborhood and Business Services Staff on questions and issues for specific closings and general policy issues.

3.5. **Community & Commerce Loan and Grant Programs.**

The need for professional Services pertains to residential (single family and multi-family) and commercial loan and grant programs administered by the Community & Commerce Division of the Neighborhood & Business Services Key Business Unit. New programs may be developed, and existing programs may be amended, as necessary.

Overview of Existing Community & Commerce Programs:

- Business Corridor Revitalization Programs. These are geographically based programs that currently consist of:
 - (a) Business Equity Loan Program.

This loan program works in participation with a primary bank loan. Each loan closing incorporates customary commercial loan underwriting and documentation. Most loans are structured to include real estate and/or business assets as collateral. Repayment of the loan is often structured to provide a deferral period followed by loan payoff or amortization.

(b) Matching Grant Programs

Matching grant programs provide funds to eligible businesses or property owners to assist with capital improvements to the buildings or land from which a business operates such as façade, infrastructure, and security improvements.

(c) Proposed new home loan and business loan programs are currently being considered for development.

3.5.1. Residential and Commercial Loan Programs.

(a) Commercial loan programs include the above referenced Business Equity Loan Program together with any new loan programs that may be created. Currently, approximately 3-5 loan closings occur per year. This number is subject to increase as new loan programs are created and existing loan programs are revised. Currently new loan programs are being proposed for energy efficient or green technology upfits to commercial property. The existing Business Equity Loan Program is in the process of being revised with projections that 20 or more loans may close annually as a result. Both of these could increase the number of loan closings as well as loan servicing and collection assistance requests, etc.

(b) Residential loan programs: Currently new residential programs for both single family and multi-family properties are being proposed to fund energy efficient or green technology upfits to residential properties. As these are programs that are currently being proposed yet are not fully developed, the number of loan closings is unknown. If implemented, could increase the number of loan closings as well as loan servicing and collection assistance requests, etc.

3.5.1.1. New Loan Closings.

- Review loan documentation templates and make recommendations for changes to ensure City compliance with all lending laws and regulations, City policies and program requirements, as well as standard loan language, covenants, etc. to protect City's interest as lender.
- Perform title searches to determine ownership of, and other recorded interest in, real property that will serve as security for, or is related to, loans.
- Obtain copies of, and review, company organizational documentation to determine, among other things, company good standing and ability to enter into legal contracts. Provide opinions to City based upon review thereof.
- Prepare and/or review all necessary loan documents including but not limited to loan agreements, deeds of trust, legal descriptions, promissory notes, security agreements, guaranty agreements, assignments of leases, rents and profit agreements, assignments of life

Section 3

Scope of Services

insurance policies, requests for notice of sale forms, landlord waiver forms, business borrowing resolutions, and any and all other such legal documents normally used in commercial loan transactions.

- Prepare and record uniform commercial code financing statements
- Obtain verification of insurance on collateral and other property for loans.
- Obtain title insurance binders and policies fully securing City as lender and/or prepare title opinions on real estate that will serve as collateral, or otherwise be related to, loans.
- Serve as trustee for deeds of trust, etc.
- Coordinate receipt of all required documentation from borrower and/or primary bank such as appraisal copies, surveys, flood zone verifications, environmental reports, copies of bank loan documents, etc.
- Schedule and conduct loan closing transaction including but not limited to recording all applicable loan documents as needed. Coordinate loan closing in coordination with other lenders as necessary.
- Serve as disbursing and escrow agent on behalf of City for all loan programs. Ensure City funds are disbursed in a manner consistent with City's policies and contractual obligations.
- Provide City staff with regular updates via a monthly report, the format and content of which to be approved by City staff.
- *TIMING NOTE:* All loan closing transactions for the Business Equity Loan program should occur concurrently with the private sector bank loan transaction and timing should meet bank and borrower needs. All loan transactions should be positioned and ready to be closed within 20 days of first notice received from City.

3.5.1.2. Servicing and Administration of Loan Portfolio.

- Provide Services for the City's active loan portfolio including but not limited to:
 - Review and analyze loan file documents as needed;
 - Prepare and/or review subordination agreements, modification agreements, assumptions agreements, (approximately 7-10- per year);

Section 3

Scope of Services

- o Review proposed subordination, assumptions, modifications, etc. and provide opinions related to same;
 - o Conduct subordination, modification, assumption transactions as needed;
 - o Prepare substitution of trustee documents as needed;
 - o Conduct title searches and prepare title opinions on collateral property as needed;
 - o Prepare and file UCC continuation statements as needed;
 - o Record documents in the public record as needed; and
 - o Prepare cancellations and satisfactions and record as needed.
- 3.5.1.3. Assist with collection of delinquent and/or defaulted loans (approximately 5-10 per year).
 - Review and analyze loan file documents as needed;
 - Provide legal opinions on loans in default;
 - Send letters of default and/or letters of demand, etc., as needed and within 10 days of request;
 - Examine title to determine City lien position;
 - Handle all aspects of City foreclosures of deeds of trust;
 - Report on foreclosures of collateral property by primary lenders and file related legal documents on City's behalf;
 - Attend foreclosure proceeding by senior lenders as applicable and report outcome to City;
 - Identify surplus proceeds on senior lender foreclosure cases and file necessary documents for City receipt of eligible surplus proceeds;
 - File claims in bankruptcy proceedings, attend bankruptcy hearings as necessary, negotiate as necessary, etc.;
 - File and prosecute civil actions against delinquent debtors, including efforts to enforce judgments; and
 - Provide City staff with regular updates via a monthly report, the format and content of which to be approved by City staff.

3.5.2. Miscellaneous Services.

- Attend meetings with staff as requested;
- Attend meetings with contractors, borrowers, developers and others as required regarding services provided by Community & Commerce; and
- Provide advice regarding compliance of project documentation with HUD or other federal agency requirements and guidelines.

3.5.3. Communication.

Communication between the City and Legal Services Provider occur electronically whenever possible. Documents should be able to be shared via email in Word format. The City currently uses Office 2007 and regularly updates its programs as said updates are made available. Software used by Legal Services Provider should be compatible with all City software programs and upgrades as they occur.

3.6. Economic Development.

Economic Development projects typically involve participation in complex retail and/or mixed-use commercial developments including acquisition or sale of City owned land, development agreements, loans, etc. Financial participation in these projects often involves the utilization of federal loan and/or grant programs, tax increment financing tools, etc.

- Meetings with contractors, borrowers, developers, and others regarding services provided by the Neighborhood & Business Services Key Business Unit;
- Advise City on participation in economic development revitalization or other projects to include but not limited to reviewing lease agreements, proforma's risk assessments, market rates, etc.;
- Advise on options & land development agreements as to form and content needed to ensure City's goals;
- Provide title updates and reports as needed;
- Advise on legal entity validity doing business with City;
- Provide opinion as to deed restrictions and covenants needed to ensure City's goals;
- Provide amendments needed to expand development agreements to ensure City's goals;
- Close real estate purchases and sales with preparation of closing documents needed;
- Provide advice regarding real estate easements related to City projects;
- Provide due diligence advice regarding City loans & grants;
- Attend meetings with contractors, borrowers, developers and others as required regarding services provided by Community & Commerce; and

Section 3

Scope of Services

- Provide advice regarding compliance of project documentation with HUD or other federal agency requirements and guidelines

3.7. Length of Relationship.

The City expects to establish a long-term relationship with its Neighborhood and Business Services Legal Service Provider in order to permit costs and fees to be distributed properly over a sufficient time period. For purposes of this RFP and the Service Provider's Proposal, assume an initial term of three (3) years, with the City having an option to renew for two (2) additional consecutive one- (1) year terms thereafter.

4. PROPOSAL FORMAT.

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

- a. Cover letter;
- b. Executive Summary;
- c. Background and Experience as requested in **Section 5**;
- d. Proposed Solution as requested in **Section 4**;
- e. Financial Information as requested in **Section 5**;
- f. The "Request for Proposals Acknowledgement Form" set forth in **Section 8, Form One**;
- g. The "Addenda Receipt Confirmation Form" set forth in **Section 8, Form Two**;
- h. The "Proposal Submission Form" set forth in **Section 8, Form Three**;
- i. The "Pricing Worksheet" set forth in **Section 8, Form Four**;
- j. The "Proposal Certification Form" set forth in **Section 8, Form Five**; and
- k. Exceptions to the Remainder of the RFP.

All Proposals shall be 8 1/2" x 11" format with all standard text no smaller than eleven (11) points. All submissions should use one-sided copying and be bound in a three ring binder with tab dividers corresponding to the content requirements specified below. Proposals may also include a compact disk including the entire Proposal in a searchable format such as Adobe Acrobat.

Service Providers are required to organize the information requested in this RFP in accordance with the format outlined. Failure of the Service Provider to organize the information required by this RFP as outlined may result in the City, at its sole discretion, deeming the Proposal non-responsive to the requirements of this RFP. The Service Provider, however, may reduce the repetition of identical information within several sections of the Proposal by making the appropriate cross-references to other sections of the Proposal. Appendices for certain technical or financial information may be used to facilitate Proposal preparation.

4.1. Proposal Content.

4.1.1. Cover Letter.

The Proposal must include a letter of transmittal attesting to its accuracy, signed by an individual authorized to execute binding legal documents on behalf of the Service Provider. The cover letter shall provide the name, address, telephone and facsimile numbers of the Service Provider along with the name, title, address, telephone and facsimile numbers of the executive that has the authority to contract with the City. The cover letter shall present the Service Provider's understanding of the Project, a summary of the approach to be undertaken to perform the Services, as well as a summary of the costs to provide the Services.

Each Service Provider shall make the following representations and warranty in its Proposal Cover Letter, the falsity of which might result in rejection of its Proposal: **"The information contained in this Proposal or any part thereof, including its Exhibits, Schedules, and other documents and instruments delivered or to be delivered to the City,**

Section 4

Proposal Format

is true, accurate, and complete. This Proposal includes all information necessary to ensure that the statements therein do not in whole or in part mislead the City as to any material facts.”

4.1.2. Executive Summary.

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

4.1.3. Background and Experience.

The Service Provider shall provide a concise description of the company, including origin, state of incorporation, background, and current size as requested in Section 5. Include information concerning general organization and staffing as well as experience with similar Legal Services projects as described in Section 3.

4.1.4. Proposed Solution.

Given the purpose of this project and the City's goals as stated in this RFP, provide a creative solution to meet such goals. Following is a framework and questions to guide your organizations suggested solution. Please address the following as completely as possible. **If you wish to add supplemental information, it shall be labeled “Supplemental Information.”**

4.1.4.1. Process.

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

4.1.4.2. Transition Plan.

The Company shall prepare and submit to the City for approval a comprehensive and detailed Transition Plan, which describes in detail all tasks and resources associated with the transition of Neighborhood and Business Services Legal Services to the Company (the “Transition Plan”) with minimum disruption to the City’s operations. The Transition Plan is subject to the terms set forth in Section 7 of this RFP.

4.1.4.3. Project Plan.

Prepare and submit a Project Plan (preferably in MS Project format) to describe, to the best of your ability, all times, tasks and resources associated with the performance of Services. The Project Plan is subject to the terms set forth in Section 7 of this RFP.

Section 4

Proposal Format

- 4.1.4.4. Client Relationship Management.
Describe the communications scheme that your organization will use to keep the City informed about the progress of the Project.
- 4.1.4.5. Risk Management.
Describe the risks associated with this contract. What contingencies have been built in to mitigate those risks?
- 4.1.4.6. Pricing.
The City is requesting pricing on a time and materials basis for the Services as outlined in **Section 3**. Time and material rates are submitted shall remain firm for the duration of the contract, including renewals. Service Providers are required to submit **Section 8, Form 4** which should detail the pricing structure for the services as described in the form.

Describe how you arrived at this pricing structure and define any service expectations that might not fall within this structure.
- 4.1.5. Required Forms.
To be deemed responsive to this RFP, Service Providers must complete in detail, all Proposal Forms listed in this Section 4.
- 4.1.6. Exceptions to the RFP.
An “exception” is defined as the Service Provider’s inability or unwillingness to meet a term, condition, specification, or requirement in the manner specified in the RFP. All exceptions taken must be identified and explained in writing in your Proposal and must specifically reference the relevant section(s) of this RFP. Other than exceptions that are stated in compliance with this Section, each Proposal shall be deemed to agree to comply with all terms, conditions, specifications, and requirements of this RFP. If the Service Provider provides an alternate solution when taking an exception to a requirement, the benefits of this alternative solution and impact, if any, on any part of the remainder of the Service Provider’s solution, must be described in detail.

Section 5

Background and Experience

5. SERVICE PROVIDER'S BACKGROUND AND EXPERIENCE.

Please answer the following questions as completely as possible, placing your answer immediately after the question to which it applies. **If you wish to add supplemental information, it shall be labeled "Supplemental Information."**

5.1. Official Name.

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

5.2. Service Provider Background.

Provide an overview and history of your company. How long has the company been providing Services to local governments? Describe the organization and ownership. Include an organization chart.

5.3. Proposing Organization's Structure.

- a. Describe your total organization, including any parent companies, subsidiaries, affiliates, and other related entities;
- b. Describe the ownership structure of your organization, including any significant or controlling equity holders;
- c. Provide a management organization chart of your overall organization, showing director and officer positions and names and the reporting structure. Provide detailed information for the Neighborhood and Business Services Legal Services business segments of your organization, showing the reporting structures within these segments and among these segments and the overall organization; and
- d. Describe any organizational changes such as divestitures, acquisitions, or spin-offs involving your Neighborhood and Business Services Legal Services business segments that have occurred in the latest two (2) years or are anticipated in the future.

5.4. Analytical Approach.

The evaluation of financial viability of the Service Providers was developed with one primary goal in mind: to protect the City from risk of default by a selected Service Provider due to financial instability. Various analytical techniques will be used to assess the financial strength and stability of each Service Provider, focusing on profitability, solvency, and efficiency. The analysis will include an evaluation of specific financial indices and ratios in an effort to maximize objectivity and provide measures that are more directly comparable among Service Providers.

Other factors which may impact the financial position of a Service Provider, or which provide additional evidence of the financial strength of a Service Provider, will also be assessed. These factors include years of experience in providing similar Services, and demonstration of the ability to obtain sufficient levels of liability and property damage insurance.

Relevant information regarding recent litigation and bankruptcy filings, which may materially affect a Service Provider's financial position, will be examined. In addition to credit ratings and credit reports, bank and vendor references will be used to evaluate the credit worthiness of each Service Provider.

Section 5

Background and Experience

5.5. Guarantor.

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

Any financial information requested of the Service Provider in the following section must similarly be provided for the guarantor. In the event of a joint submission or Proposal, all proposing entities must provide statements specifying the extent to which each entity will act as guarantor and provide all relevant financial documents for all entities involved in the joint venture. Additionally, if there is more than one (1) guarantor, then the guarantors must be jointly and separately obligated.

5.6. Requests for Financial Information.

The Service Provider must have the financial information requested in this Section 5.6 readily available and have the ability to provide it to the City, **without exception**, within twenty-four (24) hours upon the City's request during the Proposal evaluation process.

DO NOT INCLUDE THE FINANCIAL INFORMATION REQUESTED IN THIS SECTION WITH YOUR PROPOSAL SUBMISSION.

If your Company does not have the audited financial statements requested, it is the responsibility of the Company to provide the City with information of sufficient quantity and with verifiable sources to ascertain that the Company is financially capable of performing the Services described in this RFP. Failure to provide adequate financial information may result in the exclusion of your Proposal from the procurement process.

Upon request, please furnish the following financial information for the proposing Service Provider(s), guarantor(s), and any sub-contractor included as having a significant role (defined as providing more than fifteen percent (15%) of the services) in providing Services to the City:

- a. Include in the statement of guarantor(s), as described in Section 5.5. Guarantor, evidence of the ability of the guarantor to meet the short-term funding needs of this project;
- b. Evidence that demonstrates the ability to obtain the insurance as required in **Section 7.25**. Such insurance should provide coverage in the stated amount for each occurrence of bodily injury and for each occurrence of property damage with coverage for products/completed operations, personal injury liability, and contractual liability;
- c. Annual audited financial reports for each of the past five (5) fiscal years, prepared in accordance with Generally Accepted Accounting Principles (GAAP), and all relevant notes;

Section 5

Background and Experience

- d. The most recent Form 10-K and Form 10-Q filed with the Securities and Exchange Commission (SEC); or, if the contractor is not regulated by the SEC, then the most recent quarterly financial report.
- e. Description of any material adverse changes in financial position within the past five (5) years; any material changes in the mode of conducting business; any bankruptcy proceedings, mergers, acquisitions, takeovers, joint ventures, and/or divestitures within the past five (5) years. In addition, provide a clear and definitive statement of the following:
 - Years of providing similar Services by the Service Provider and/or predecessor organization;
 - Whether or not the Service Provider (and/or predecessor, guarantor or subcontractor) has declared bankruptcy within the last five (5) years;
 - Description of the financial impact of any past or pending legal proceedings and judgments, as identified in Section 5.9 that could materially affect the Service Provider's financial position or ability to provide Services to the City. This information will be reviewed and assessed in accordance with the information provided by the Service Provider, in the above referenced Section;
 - All credit reports, credit bulletins, and any other published statements by the most recognized agencies (Standard & Poors Rating Group, Moody, Investor Services, Dun & Bradstreet, and Value Line) that have been issued or published about the entity within the past five (5) years;
 - The prospectus or offering statement for the entity's latest security or equity offering;
 - The company name, contact person, telephone number, and fax number of at least two (2) references from bank or institutional lenders which have extended credit to the entity in the past five (5) years; or if the entity has not applied for credit in the past five (5) years, the contact person's name, telephone number, and fax number of at least two (2) references from banks with which the entity conducts business;
 - The company name, contact person, telephone number, and fax number of at least two (2) credit references from suppliers/vendors; and
 - Any additional information, which the Service Provider believes, is appropriate to fully reflect the financial strength of the entity.

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

5.7. Proposed Project Team.

If the Service Provider's proposal submission will be from a team composed of more than one (1) company or if any subcontractor will provide more than fifteen percent

Section 5

Background and Experience

(15%) of the Services, all participating companies must be identified. Provide a description, which includes the teaming relationships, form of partnership, each team member's contribution, and the experience of each team member, which qualifies them to fulfill their responsibility. Provide descriptions and references for the projects on which team members have previously collaborated. Identify the extent, if any, of Small Business Enterprise participation in this Project.

5.8. Past or Pending Judgments.

For purposes of this Section, the term "Related Entity" means any parent, subsidiary, affiliate or guarantor of the Service Provider. For all matters involving the Service Provider providing products or services to local, state or federal government, submit declarations of the current status of any past or pending criminal, civil, or administrative litigation against the Service Provider or any Related Entity. For all matters involving the Service Provider providing products or services to local, state or federal government, in addition, submit declarations of the current status of all pending criminal, civil or administrative litigation that commenced within the past five (5) years in North America, whether or not it involves local governments, against the Service Provider or Related Entity. (For the purpose of the declarations, current officer, shall be defined to include those individuals who are presently serving or who have served within the past two (2) years as an officer of the company.) Please state whether there are any cases pending against the Service Provider, a Related Entity, officer of either, that, if adversely resolved, would pose a material risk of insolvency to either the Service Provider or Guarantor or materially affect the Service Provider's or Guarantor's ability to perform their obligations.

The respondent may choose not to submit records for matters that were resolved prior to the time that the subsidiary or affiliate became associated with the parent company, as long as that subsidiary or affiliate will not be involved in the provision of Services to the City. All records for subsidiaries or affiliates of the parent company that may be involved in the provision of Services to the City must be included.

The City reserves the right to request additional information to explain any of the above citations/violations.

5.9. Financial and Legal Considerations.

The Service Provider must have the financial information requested in this **Section 5.9** readily available and have the ability to provide it to the City, **without exception**, within twenty-four (24) hours upon the City's request during the Proposal evaluation process.

DO NOT INCLUDE THE FINANCIAL INFORMATION REQUESTED IN THIS SECTION WITH YOUR PROPOSAL SUBMISSION.

If the audited financial statements requested in this section are not available, it is the responsibility of the Company to provide the City with information of sufficient quantity and with verifiable sources to ascertain that each entity identified is financially capable of performing the Services required by the Company in performance of the Services described in this RFP. Failure to provide adequate financial information may result in the exclusion of your Proposal from the procurement process.

Section 5

Background and Experience

- a. For each entity identified in Section 5.3a, specify the entity's total revenue, number of employees, products and services, affiliated companies, and other descriptive information;
- b. For each entity identified in Section 5.3a, provide relevant documents that describe the entity's financial status, such as audited financial statements, annual reports, or 10-K reports, and the DUNS number; and
- c. If your Company does not have the audited financial statements requested above, it is the responsibility of the Company to provide the City with information of sufficient quantity and with verifiable sources to ascertain that the Company is financially capable of performing the Services described in this RFP. Failure to provide adequate financial information may result in the exclusion of your Proposal from the procurement process.

5.10. Business Partners.

- a. Describe your organization's customer service philosophy and describe how it is communicated and reinforced throughout the organization;
- b. Describe your organization's continuous improvement program and how your current customers benefit from your service improvements; and
- c. Describe your organization's experiences in adapting to changing technologies.

5.11. Personnel Management.

- a. Describe the key individuals, along with their qualifications, professional certifications and experience that would comprise your organization's team for providing Services to the City;
- b. Explain how your organization ensures that personnel performing technical support services are qualified and proficient;
- c. Describe your organization's approach, policies, and experience with respect to deployment of your personnel; and
- d. Has your organization been the subject of a dispute or strike by organized labor within the last five (5) years? Describe the circumstances and the resolution of the dispute.

5.12. References.

Provide an organization name, address, contact name, email address and contact telephone number for three (3) customers of comparable size and scope of service that your Company has been under contract with to provide similar Legal Services for during the past two (2) years.

6. PROPOSAL EVALUATION CRITERIA.

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

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

- a. Qualifications, Experience and Approach;
- b. Financial Qualifications;
- c. Cost Effectiveness and Value; and
- d. Acceptance of the Terms of the Contract.

6.1. Qualifications, Experience and Approach.

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

6.2. Financial Qualifications.

This criterion includes an evaluation of the financial qualifications of the Service Provider. The evaluation will take into account the financial strength of the Service Provider and its ability to meet the long-term financial requirements of the Contract.

The Internal Audit Division of the City will evaluate the Proposal responses and give an opinion to the evaluation team as to the financial strength of each Service Provider based on the financial information submitted in accordance with **Section 5**.

6.3. Cost Effectiveness and Value.

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

6.4. Acceptance of the Terms of the Contract.

The City will evaluate the Proposals for compliance with the terms, conditions, requirements, and specifications stated in this RFP. Regardless of exceptions taken, Service Providers shall provide pricing based on the requirements and terms set forth in this RFP. Exceptions shall be identified in accordance with Section 1.6.19 of this RFP.

7. CITY CONTRACTING REQUIREMENTS.

The City will enter into an Agreement written by the City with the successful Service Provider that contains the terms and conditions set forth in this Section. Each Service Provider must state specifically in its Proposal any exceptions to the terms and conditions included in this Section, and any proposed additional terms or conditions deemed important by the Service Provider. The City will take any such exceptions and proposed additions into account during the evaluation process. Any terms and conditions that the Service Provider does not specifically object to will be incorporated into the resultant Agreement. Notwithstanding the foregoing, the City reserves the right to change the proposed contractual terms and conditions prior to or during contract negotiations if it is in the City's best interest to do so.

The terms and conditions set forth in this Section are not all inclusive. The City will propose additional terms and conditions based on the responses to this RFP and the City's analysis of the successful Service Provider's Proposal.

As used in this Section of the RFP, the term "Agreement" shall refer to the contract entered into between the City and the successful Service Provider, and the term "Company" shall refer to the successful Service Provider.

7.1. Transition.

The Transition Plan in the form approved by the City shall be attached and incorporated into the Agreement as an Exhibit.

The Transition Plan will contain a time line and completion date for all such tasks and activities. The Company will ensure that certain essential operations as set forth in the Transition Plan will not be interrupted by any part of the Project. The Company shall seek the City's input in developing the Transition Plan, and the Transition Plan shall not be deemed final until accepted in writing by the City.

The Transition Plan shall be maintained by the Company, and shall be updated and submitted to the City on a weekly basis throughout the transition period, to reflect the current status of all work. Aside from updates to show tasks accomplished, no changes to the Transition Plan shall be made without the prior written approval from the City.

7.2. Project Plan.

The Company shall develop a detailed Project Plan that describes all tasks, activities, and resources associated with the performance of the Services (the "Project Plan"). The Project Plan will further contain a time line and completion dates for all such tasks and activities providing for completion of each item. The Company shall seek the City's input in developing the Project Plan, and the Project Plan shall not be deemed final until the City has accepted it in writing.

In developing the Project Plan, and on a weekly basis throughout the Project, the Company shall identify and request from the City: (i) all information reasonably required by the Company to effectively implement the Project; (ii) the City's personnel whose presence or assistance reasonably may be required by the Company to perform each task required for the implementation effort; and (iii) any other equipment, facility or resource reasonably required by the Company for the development effort. The Company shall not be relieved of any failure to perform 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

Section 7

Contracting Requirements

City pursuant to this Section; or (ii) which the City is not required to provide pursuant to the Agreement.

The Project Plan shall be maintained by the Company, and shall be updated and submitted to the City on a weekly basis throughout the Project to reflect the current status of all work. Aside from updates to show tasks accomplished, no changes to the Project Plan shall be made without the prior written approval of the City.

7.3. Exhibits.

Any Exhibits shall be incorporated into and made a part of the Agreement. In interpreting the Agreement and resolving any ambiguities, the main body of the Agreement will take precedence over the Exhibits.

7.4. Description of the Services.

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

7.4.1. The Company shall be responsible for providing all consulting, project management, technical and other services necessary for the delivery of the Services in accordance with the Scope of Work. Without limiting the foregoing, the Company will perform the work and meet the requirements as set forth in the Project Plan. However, the Company shall not be responsible for tasks specifically assigned to the City in the Agreement or in the Project Plan.

7.4.2. The Company shall perform for the City the Neighborhood and Business Services Legal Services described in the Scope of Work to be attached to the Agreement as an exhibit and incorporated by reference (the “Services”). The Company shall perform the Services on site at the City’s facility in Charlotte, North Carolina, except as mutually agreed upon in writing in specific instances by the City.

7.4.3. The Company will complete all tasks and deliver all Deliverables within the completion dates set forth in the Scope of Work. The parties acknowledge and agree that time is of the essence in having the Company comply with the completion dates set forth in the Project Plan, which is to be included as part of the Scope of Work. Unless specifically stated in a particular Section of the Agreement, all references to days in the Agreement (including the exhibits) shall refer to calendar days rather than business days unless otherwise indicated.

7.5. Payment for Services.

7.5.1. Total Fees and Charges.

The Company shall invoice the City on a time and materials basis. The City agrees to pay the Company for the Services at the hourly and per item rate(s) set forth in the Scope of Work, which shall remain firm for the duration of the Agreement.

A Payment Cap (the “Payment Cap”) will be set, which shall constitute the maximum total fees and charges payable to the Company under the Agreement and will not be increased except by a written instrument duly executed by both parties.

Section 7

Contracting Requirements

The City will pay accurate, undisputed, properly submitted invoices within thirty- (30) days after the receipt of the Company's invoice, provided that the invoice has been submitted at the appropriate time.

7.5.2. **Employment Taxes and Employee Benefits.**

The Company represents and warrants that the Consultant(s) 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 Consultant(s) are not employees of the City.

7.6. 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 the Agreement, and shall not be required to pay for Services which did not occur, or which occurred in breach of the Agreement. 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.

7.7. Duty of the Company to Identify and Request Information, Personnel and Facilities.

Throughout the duration of this Agreement, the Company shall identify and request in writing from the City Project Manager all City resources that may reasonably be required by the Company to perform the Services (the "City Resources"), including all information, City staff, equipment, facility or other resource needed by the Company. The Company shall request City Resources far enough in advance to allow adequate planning and availability on the City's part and to avoid unnecessary expense or overtime. Notwithstanding the foregoing, the Company shall not be entitled to request that the City provide City Resources other than those identified as a City responsibility in the Scope of Work unless the City can do so at no significant cost. If the City Project Manager fails to provide within a reasonable time period a City Resource that the Agreement requires the City to provide, the Company will notify the responsible City Key Business Executive of such failure. The Company shall not be relieved of any failure to perform under the Agreement by virtue of the City's failure to provide any City Resource: (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 the Agreement. To the extent the Company is excused from performance under the terms of this Section, the Company will only be excused for delays that occur after it has given notice to the City Key Business Executive of the City's failure.

7.8. Non-Exclusivity.

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

Section 7

Contracting Requirements

7.9. Non-Appropriation of Funds.

If Council does not appropriate the funding needed by the City to make payments under this Agreement for a 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 Agreement will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by the City, which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

7.10. Time is of the Essence.

The Company will complete all tasks and deliver all Deliverables within the completion dates set forth in the Project Plan. Except as specifically stated in the Statement of Work attached to the final Agreement, there shall be no extensions of the time periods and completion dates set forth in the Project Plan without the City's written consent. Unless specifically stated in a particular Section of the Agreement, all references to days in the Agreement (including the Exhibits) shall refer to calendar days rather than business days.

7.11. Company Project Manager.

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

- 7.11.1. Coordination of Project schedules and the Company's resource assignment based upon the City's requirements and schedule constraints;
- 7.11.2. 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 Project Plan deviations occur and by documenting all such plan deviations in accordance with agreed upon change control procedures;
- 7.11.3. 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;
- 7.11.4. Acting as the Company's point of contact for all aspects of contract administration, including invoicing for Services, and status reporting;
- 7.11.5. Facilitation of review meetings and conferences between the City and the Company's executives when scheduled or requested by the City;
- 7.11.6. Communication among and between the City and the Company's implementation staff;
- 7.11.7. Promptly responding to the City's Project Manager when consulted in writing or by E-mail with respect to Project Plan deviations and necessary documentation;
- 7.11.8. Identifying and providing the City with timely written notice of all issues that may threaten the Company's performance in the manner contemplated by the Agreement (with "timely" meaning immediately after the Company becomes aware of them);

Section 7

Contracting Requirements

- 7.11.9. Ensuring that adequate quality assurance procedures are in place through the Project; and
- 7.11.10. Meeting with other Service Providers working on City projects that relate to this effort as necessary to resolve problems and coordinate the work.

7.12. City Project Manager.

The duties of the City Project Manager are to (1) ensure that the Company delivers all requirements and specifications in the Agreement; (2) coordinate the City's resource assignment as required to fulfill the City's obligations pursuant to the Agreement; (3) promptly respond to the Company's Project Manager when consulted with respect to project issues; and (4) act as the City's point of contact for all aspects of the Project including contract monitoring 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.

7.13. Progress Reports.

Throughout the development and implementation period, the Company shall prepare and submit weekly written reports to the City Project Manager. The weekly reports shall:

- 7.13.1. Update the Project Plan indicating progress for each task;
- 7.13.2. Identify and report the status of all tasks that have fallen behind schedule and the reason and cure period;
- 7.13.3. Identify and summarize all risks and problems identified by the Company which may affect the Project;
- 7.13.4. For each risk and problem, identify the action and person(s) responsible for mitigating the risk and resolving the problem;
- 7.13.5. For each risk and problem identified, state the impact on the Project Plan; and
- 7.13.6. 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.

7.14. Company Personnel Removal, Replacement, or Promotion.

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.

The City must approve in writing the addition or promotion of any personnel to key positions on the Project, and the City shall have the right to interview and approve all personnel whom the Company proposes to promote or add to key positions. As used in the Agreement, the term "Key Personnel" shall mean the Company Project Manager and any other personnel of the Company or its subcontractors fulfilling a key role in the Project, whom the City designates to the Company as "Key Personnel." Unless approved by the City in writing, the Company will not: (i) remove the Company's Key Personnel from the Project or permit its subcontractors to remove Key Personnel from the Project; or (ii) materially reduce the involvement of the Company's Key Personnel in the Project or allow its subcontractors to materially reduce the involvement of Key Personnel in the Project. The Company will replace

Section 7

Contracting Requirements

any personnel who leave the Project with equivalently qualified persons. Such replacement will occur within thirty- (30) days after the Company first learns that an individual will be leaving the Project. All replacement personnel must be approved by the City in writing, and the City shall have the right to interview and approve all replacement personnel proposed by the Company for positions on the Project.

7.15. Each Party to Bear Its Own Negotiation Costs.

Each party shall bear its own cost of negotiating this Agreement 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.

7.16. General Warranties.

Company represents and warrants that:

- 7.16.1. 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;
- 7.16.2. It has all the requisite corporate power and authority to execute, deliver and perform its obligations under the Agreement;
- 7.16.3. The execution, delivery, and performance of the Agreement have been duly authorized by Company;
- 7.16.4. 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 the Agreement;
- 7.16.5. In connection with its obligations under the Agreement, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses; and
- 7.16.6. The Company shall not violate any agreement with any third party by entering into or performing the Agreement.

7.17. Additional Representations and Warranties.

The Company represents, warrants and covenants that:

- 7.17.1. The Services shall satisfy all requirements set forth in the Agreement, including but not limited to the attached Exhibits;
- 7.17.2. All work performed by the Company and/or its subcontractors pursuant to the Agreement shall meet highest industry standards, and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;
- 7.17.3. Neither the Services provided by the Company under the Agreement will infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party; and

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 the Agreement by virtue of interruptions in the computer systems used by the Company. ;

Section 7

Contracting Requirements

7.18. **Substitute Performance.**

The parties acknowledge that time is of the essence in performing the Services, and that if the Company fails to meet any completion date set forth in the **Project Plan**, the City may take any of the following actions with or without terminating this Agreement, and in addition to and without limiting any other remedies it may have:

- a. Employ such means as it may deem advisable and appropriate to continue operations until the matter is resolved and the Company is again able to perform its obligations under this Agreement; and
- b. Deduct any and all expenses incurred by the City in continuing the work from any money then due or to become due the Company and, should the City's cost of continuing the operation exceed the amount due the Company, collect the amount due from the Company.

7.19. **Term and Termination of Agreement.**

The Agreement shall commence on the Effective Date and shall continue in effect until the Project has been completed to the City's satisfaction.

7.19.1. Termination Without Cause.

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

7.19.2. Termination for Default by Either Party.

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

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

Section 7

Contracting Requirements

Agreement 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.

- 7.19.3. Additional Grounds for Default Termination by the City.
By giving written notice to the Company, the City may also terminate the Agreement upon the occurrence of one or more of the following events (which shall each constitute grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):
- a. Failure of the Company to complete a particular task by the completion date set forth in this Agreement or the Project Plan;
 - b. The Company makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Agreement, Company's Proposal, or any covenant, agreement, obligation, term or condition contained in this Agreement; or
 - c. The Company takes or fails to take any action which constitutes grounds for immediate termination under the terms of the Agreement, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by the Agreement, or failure to provide the proof of insurance as required by the Agreement.
- 7.19.4. 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 the Agreement, the Company agrees that it will not terminate the Agreement 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.
- 7.19.5. Cancellation of Orders and Subcontracts.
In the event this Agreement is terminated by the City for any reason prior to the end of the term, the Company shall upon termination immediately discontinue all service in connection with this Agreement and promptly cancel all existing orders and subcontracts, which are chargeable to this Agreement. As soon as practicable after receipt of notice of termination, the Company shall submit a statement to the City showing in detail the services performed under this Agreement to the date of termination.
- 7.19.6. Authority to Terminate.
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; or (b) the Key Business Executive of the City Key Business Unit responsible for administering this Contract.
- 7.19.7. No Effect on Taxes, Fees, Charges, or Reports.
Any termination of the Agreement shall not relieve the Company of the obligation to pay any fees, taxes or other charges then due to the City, nor relieve the Company of the obligation to file any daily, monthly, quarterly

Section 7

Contracting Requirements

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.

7.19.8. **Specific Performance and Injunctive Relief.**

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

7.19.9. **Other Remedies.**

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

7.20. Service Provider's Equipment, Facilities, and Records.

In the event of termination of the Agreement for breach, default or bankruptcy as specified above, the City shall have the right to forthwith select and take possession of all the Service Provider's equipment, facilities and records used, in whole or in part in the performance of the Agreement. These measures are required in order to ensure the continued completion of the Services. In the event that the Service Provider's equipment and/or facilities are secured, the City shall have the right to negotiate a lease arrangement with the security holder for the use of the equipment and/or facilities.

7.20.1. The City shall have the right to retain control of said equipment, facilities and records until other such item is acquired by the City for operation of the services or another Service Provider is engaged to perform the Services;

7.20.2. The City shall have the right at its option to purchase the Service Provider's equipment and facilities at the fair market value thereof, at the time of termination;

7.20.3. The City shall pay the Service Provider the reasonable rental value of such equipment and facilities during the time the same are used by the City should the City elect not to purchase. Liability of the City to the Service Provider during this period shall be that of a bailee for hire, ordinary wear and tear specifically exempt from such liability; and

7.20.4. Within twenty-one (21) days of taking control of said equipment, the City shall inform the Service Provider of its intent to lease or buy said equipment and facilities. At the time, the City will initiate negotiations with the Service Provider to determine the fair market price for such lease or purchase.

Section 7

Contracting Requirements

Within forty-five (45) days of taking control of said equipment, the City will make an offer to the Service Provider for lease or purchase, and shall escrow the amount offered until negotiations are completed.

Nothing in the above section prevents the City from exercising any and all legal rights including the use of performance bond proceeds to hire a third party or provide Services on a short term or long term basis, the use of the Service Provider's equipment, and pursuing Service Provider reimbursement of the City for any expenditures which result from the Service Provider's default, including any and all attorney and professional fees that the City may incur.

7.21. Transition Services Upon Termination.

Upon termination or expiration of this Agreement, the Company shall cooperate with the City to assist with the orderly transfer of the Neighborhood and Business Services Legal Services functions and operations provided by the Company hereunder to another service provider or to the City as determined by the City in its sole discretion. Prior to termination or expiration of this Agreement, the City may require the Company to perform and, if so required, the Company shall perform certain transition services necessary to shift the support work of the Company to another provider or to the City itself as described below (the "Transition Services"). Transition Services may include but shall not be limited to the following:

- 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.

7.22. Audit.

During the term of the Agreement and for a period of one (1) year after termination or expiration of this Agreement for any reason, the City shall have the right to audit, either itself or through a third party, all books and records (including but not limited to the technical records) and facilities of the Company necessary to evaluate Company's compliance with the terms and conditions of the Agreement or the City's payment obligations. The City shall pay its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs of the Company. However, if non-compliance is found that would have cost the City in excess of \$5,000 but for the audit, then the Company shall be required to reimburse the City for the cost of the audit.

7.23. Company Will Not Sell or Disclose Data.

The Company will treat as Confidential Information all data in connection with the Agreement. City data processed by the Company shall remain the exclusive property of the City. The Company will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the City in any manner except that contemplated by the Agreement.

Section 7

Contracting Requirements

7.24. Licensing.

The Company shall provide notarized copies of all valid licenses and certificates required for performance of the work. The notarized copies shall be delivered to the City no later than ten (10) days after the Company receives the notice of award from the City. Current notarized copies of licenses and certificates shall be provided to the City within twenty-four (24) hours of demand at any time during the Agreement term. Licenses and certificates required for this Agreement include, by way of illustration and not limitation, the following: 1) a business license valid in North Carolina; 2) any additional licenses pertaining to or that may be required to be held by field professionals participating in the contract work.

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.

7.25. Compliance with Laws and Codes.

The Company shall ensure that the Services are in compliance with all local, state and federal laws and regulations. In performing the Services, the Company shall comply with all local, state and federal laws and regulations.

7.26. Work on City's Premises.

The Company will ensure that its employees and agents shall, whenever on the City's premises, obey all instructions and directions issued by the City's Project Manager with respect to work on the City's premises. The Company agrees that its personnel and the personnel of its subcontractors will comply with all rules, regulations and security procedures of City when on City's premises.

7.27. Damage Claims.

The Company shall be responsible for any damage to real or personal property arising out of an act or omission of the Company's employees, agents or subcontractors in performing the Services under this Agreement.

7.28. Relationship of the Parties.

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

7.29. Indemnification.

The Company shall indemnify, defend and hold harmless the City and the City's officers, employees and agents from and against any and all losses, damages, costs,

Section 7

Contracting Requirements

expenses (including reasonable attorneys' fees), obligations and other liabilities (including settlement amounts) that arise directly or indirectly from:

- 7.29.1. Any infringement of any copyright, trademark, patent, or other proprietary rights, or any misappropriation of any trade secrets, in connection with any software, documentation, services or other products supplied directly or indirectly by the Company in connection with the Agreement, or any allegation of any of the foregoing (collectively referred to as "Infringement Claims");
- 7.29.2. Any act(s) of negligence or willful misconduct by the Company or any of its agents, employees or subcontractors (or any allegations of any of the foregoing), including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal;
- 7.29.3. Any acts or omissions of the Company with respect to any of the Services provided by the Company under the Agreement (or any allegations of any of the foregoing);
- 7.29.4. The City's refusal to produce any item of "Confidential Information" (as defined in the Confidentiality and Non-Disclosure Agreement) of the Company after receiving a request for such item and after being instructed by the Company not to produce it; or
- 7.29.5. Any claims by any persons or entities supplying labor or material to the Company in connection with the performance of the Company's obligations under the Agreement.

If an Infringement Claim occurs, the Company shall either: (i) procure for the City the right to continue using the affected product or service; or (ii) repair or replace the infringing product or service so that it becomes non-infringing, provided that the performance of the Services or any component thereof shall not be adversely affected by such replacement or modification. If the Company is unable to do (i) or (ii) within thirty (30) days after receiving notice of the Infringement Claim the City shall have the right to terminate all Agreement documents and receive as a pro rata refund of all amounts paid under the Agreement documents calculated monthly based on a five (5) year useable life.

7.30. Subcontracting.

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

7.31. Restrictions.

The term "Restricted Period" shall mean the period beginning on the Effective Date and terminating five (5) years after the termination of the Agreement. During the Restricted Period, the Company shall keep the Confidential Information in the strictest confidence, in the manner set forth below:

- 7.31.1. Company shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information, except as authorized by the City in writing.

Section 7

Contracting Requirements

- 7.31.2. Company shall not, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information to any third party, other than an agent, subcontractor or vendor of the City or Company having a need to know such Confidential Information for purpose of performing work contemplated by written agreements between the City and the Company, and who has executed a confidentiality agreement incorporating substantially the form of this the Agreement. Company shall not directly or indirectly, disclose, divulge, reveal, report or transfer Highly Restricted to any third party without the City's prior written consent.
- 7.31.3. Company shall not use any Confidential Information for its own benefit or for the benefit of a third party, except to the extent such use is authorized by the Agreement or other written agreements between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.
- 7.31.4. Company shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information.
- 7.31.5. Company shall use reasonable efforts (including but not limited to seeking injunctive relief where reasonably necessary) to prohibit its employees, vendors, agents and subcontractors from using or disclosing the Confidential Information in a manner not permitted by the Agreement.
- 7.31.6. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, Company shall assert the Agreement as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.
- 7.31.7. 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.
- 7.31.8. Company shall restrict employee access to the Confidential Information to those employees having a need to know for purposes of their jobs.

Company shall take reasonable measures to prevent the use or disclosure of Confidential Information by its employees in a manner not permitted by the Agreement. The Company shall have each of its employees who will have access to the Confidential Information sign a confidentiality agreement which provides the City and its vendors, licensors, subcontractors, employees and taxpayers the same level of protection as provided by the Agreement.

7.32. Exceptions.

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

- 7.32.1. Was already known to Company prior to being disclosed by the City;
- 7.32.2. Was or becomes publicly known through no wrongful act of Company;

Section 7

Contracting Requirements

- 7.32.3. Was rightfully obtained by Company from a third party without similar restriction and without breach hereof;
- 7.32.4. Was used or disclosed by Company with the prior written authorization of the City;
- 7.32.5. Was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, Company shall first give to the other party notice of such requirement or request;
- 7.32.6. Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the Company shall take reasonable steps to obtain an agreement or protective order providing that the Agreement will be applicable to all disclosures under the court order or subpoena.

7.33. 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.

7.34. 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.

7.35. Insurance.

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

- 7.35.1. Automobile Liability.
Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit - bodily injury and property damage.
- 7.35.2. Commercial General Liability.
Bodily injury and property damage liability as shall protect the Company and any subcontractor performing work under the Agreement, from claims of bodily injury or property damage which arise from operation of the Agreement, whether such operations are performed by the Company, any subcontractor, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate, or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products/completed operations, personal injury

Section 7

Contracting Requirements

liability and contractual liability, assumed under the indemnity provision of the Agreement.

- 7.35.3. Professional Liability.
Professional Liability as shall protect the contractor and its employees for negligent acts, errors or omissions in performing professional services under this contract. The amount of such insurance shall not be less than \$1,000,000 each claim.
- 7.35.4. Worker's Compensation and Employers Liability.
The Company shall meet the statutory requirements of the State of North Carolina, \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit.
- 7.37.5 Fidelity Bond.
The Fidelity Bond shall - providing employee dishonesty coverage on all employees at a limit of not less than \$500,000.

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

7.36. Other Insurance Requirements.

- 7.36.1. 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.
- 7.36.2. The City shall be named as an additional insured for operations or services rendered under the general liability coverage. The Company's insurance shall be primary of any self-funding and/or insurance otherwise carried by the City for all loss or damages arising from the Company operations under this agreement.
- 7.36.3. 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 or terminate by either the insured or the insuring company.
- 7.36.4. 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.

If any part of the work under the Agreement is sublet, the subcontractor shall be required to meet all insurance requirements set forth in the Agreement. Nothing contained herein shall relieve the Company from meeting all insurance requirements or otherwise being responsible for the subcontractor.

7.37. Notices.

Any notice, consent or other communication required or contemplated by the Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by

Section 7

Contracting Requirements

overnight courier, by electronic mail or by telefax to the intended recipient at the address set forth below:

For The Company:

To Be Determined

For The City:

Kay Elmore
Procurement Services Division
600 East Fourth Street, CMGC 9th Floor
Charlotte, NC 28202-2850
Phone : 704 336 2524
Fax : 704 336 2258
E-mail: kelfmore@ci.charlotte.nc.us

With Copy To:

To Be Determined

Anna Schleunes
City Attorneys Office
600 East Fourth Street, CMGC 15th Floor
Charlotte, NC 28202-2850
Phone : 704 336 5802
Fax : 704 632 8332
E-mail : aschleunes@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. Changes to the Project Plan may be submitted and approved by the written consent of each parties Project Manager, and are not subject to the notice requirements of this section.

7.38. Non-Discrimination.

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

As a condition of entering into the Agreement, the Company further agrees to: (a) promptly provide to the City all information and documentation that may be

Section 7

Contracting Requirements

requested by the City from time to time regarding the solicitation and selection of subcontractors; and (b) provide to the City within sixty (60) days after completion of performance under the Agreement a Final Payment Affidavit in the form attached to the Agreement as an Exhibit. Failure to maintain or failure to provide such information constitutes grounds for the City to terminate or withhold payment under the Agreement.

7.39. Drug-Free Workplace.

The City is a drug-free workplace employer. The Council has adopted a policy requiring City Service Providers to provide a drug-free workplace in the performance of any City contract. The Company hereby certifies that it has or it will within thirty (30) days after execution of the Agreement:

- 7.39.1. Notify employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace and specifying actions that will be taken for violations of such prohibition;
- 7.39.2. Establish a drug-free awareness program to inform employees about (i) the dangers of drug abuse in the workplace, (ii) the Company's policy of maintaining a drug-free workplace, (iii) any available drug counseling, rehabilitation, and employee assistance programs, and (iv) the penalties that may be imposed upon employees for drug abuse violations;
- 7.39.3. Notify each employee that as a condition of employment, the employee will (i) abide by the terms of the prohibition outlined above, and (ii) notify the Company of any criminal drug statute conviction for a violation occurring in the workplace not later than five (5) days after such conviction;
- 7.39.4. Impose a sanction on, or requiring the satisfactory participation in a drug counseling, rehabilitation or abuse program by, an employee convicted of a drug crime;
- 7.39.5. Make a good faith effort to continue to maintain a drug-free workplace for employees; and
- 7.39.6. Require any party to which it subcontracts any portion of the work under the contract to comply with the above provisions.

A false certification or the failure to comply with the above drug-free workplace requirements during the performance of the Agreement shall be grounds for suspension, termination or debarment.

7.40. Miscellaneous.

- 7.40.1. Entire Agreement.
This Agreement and the Agreement Documents, including all exhibits, and Attachments, all of which are hereby incorporated herein by reference, constitute the entire agreement between the parties with respect to its subject matter, and there are no other representations, understandings, or agreements between the parties with respect to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations and Proposals, written or oral.

Section 7

Contracting Requirements

- 7.40.2. Amendment.
No amendment or change to the Agreement shall be valid unless in writing and signed by both parties to the Agreement.
- 7.40.3. Governing Law and Jurisdiction.
The parties acknowledge that the Agreement is made and entered into in Charlotte, North Carolina, and will be performed in Charlotte and Mecklenburg County, North Carolina. The parties further acknowledge and agree that North Carolina law shall govern all the rights, obligations, duties and liabilities of the parties under the Agreement, and that North Carolina law shall govern the interpretation and enforcement of the Agreement and any other matters relating to the Agreement (all without regard to North Carolina conflicts of law principles).
- The parties further agree that any and all legal actions or proceedings relating to the Agreement shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By execution of the Agreement, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections, which they may have with respect to venue in any court sitting in Mecklenburg County, North Carolina.
- 7.40.4. Binding Nature and Assignment.
This Agreement 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. The sale of a majority of the Company's assets or stock shall constitute an "assignment" for purposes of this Section. Any assignment by the Service Provider approved by the City shall not relieve or excuse the Service Provider from responsibility for performance to the City in the event the assignee does not fully perform all work or other obligations of the Service Provider under the Agreement.
- 7.40.5. 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.
- 7.40.6. Force Majeure.
Neither party shall be liable for any failure or delay in the performance of its obligations pursuant to this Agreement and such failure or delay shall not be deemed a default of this Agreement or grounds for termination hereunder if all of the following conditions are satisfied:
- (a) if such failure or delay:
 - (i) could not have been prevented by reasonable precaution;
 - (ii) cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and

Section 7

Contracting Requirements

(iii) if and to the extent such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, or court order.

- (b) An event which satisfies all of the conditions set forth above shall be referred to as a “Force Majeure Event”. Upon occurrence of a Force Majeure Event, the Company shall be excused from any further performance of those of its obligations pursuant to this Agreement affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) the Company continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.
- (c) Upon the occurrence of a Force Majeure Event, the Company shall immediately notify the City by telephone (to be confirmed by written notice within two (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 Agreement by written to the Company.
- (d) Notwithstanding anything contained herein to the contrary, strikes, slow-downs, walkouts, lockouts, and industrial disputes of the Company or its subcontractors are not excused under this provision. Nothing in the preceding Force Majeure provisions shall relieve the Company of any obligation it may have regarding Disaster Recovery, whether under this Agreement or at law.
- (e) Notwithstanding anything contained herein to the contrary, the City shall not be required to pay for any Products or Services that the Company fails to provide as a result of Force Majeure.

7.40.7. Severability.

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

7.40.8. No Publicity.

No advertising sales promotion or other materials of the Company or its agents or representations may identify or reference this Agreement or the City in any manner without the prior written consent of the City.

7.40.9. Approvals.

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

Section 7

Contracting Requirements

- 7.40.10. Waiver.
No delay or omission by either party to exercise any right or power it has under the Agreement shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of the Agreement shall not constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of the Agreement shall be effective unless in writing and signed by the party waiving the rights.
- 7.40.11. Survival of Provisions.
Those Sections of the Agreement and the Exhibits which by their nature would reasonably be expected to continue after the termination of the Agreement shall survive the termination of the Agreement, including but not limited to all definitions and, a list of surviving Sections which will be included in the final Agreement.
- 7.40.12. 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 the Agreement.
- 7.40.13. 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 the Agreement.
- 7.40.14. Change in Control.
In the event of a change in "Control" of the Company (as defined below), the City shall terminate the Agreement for default unless the City has granted prior written consent. Such consent shall not be unreasonably withheld. Any approval by the City of transfer of ownership or control shall be contingent upon the perspective controlling party becoming a signatory to the Agreement and otherwise complying with all the terms and conditions of the Agreement. The Company shall notify the City within ten (10) days after it becomes aware that a change in Control will occur. As used in the Agreement, the term "Control" shall mean the possession, direct or indirect, of either:
- 7.40.14.1. The ownership of or ability to direct the voting of, as the case may be fifty-one percent (51%) or more of the equity interests, value or voting power in Company; or
- 7.40.14.2. The power to direct or cause the direction of the management and policies of Company whether through the ownership of voting securities, by contract or otherwise.
- 7.40.15. Familiarity and Compliance with Laws and Ordinances.
The Company agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Services. Company further agrees that it will at all times during the term of the Agreement be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include,

Section 7

Contracting Requirements

but shall not be limited to workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all Occupational Safety and Health Administration (OSHA) regulations applicable to the work.

7.40.16. Taxes.

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

7.40.17. Harassment.

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

Section 8
Required Forms – Form One

REQUEST FOR PROPOSALS ACKNOWLEDGEMENT

The Service Provider hereby certifies receipt of the Request for Proposals for the City of Charlotte, North Carolina RFP #269-2010-153, Neighborhood and Business Services Legal Services. This form should be completed upon receipt of the City's Request for Proposals and faxed in time for the City to receive it by or before **MARCH 2, 2010**. Please fax the completed Request for Proposals Acknowledgement Form to the attention of:

Amelia Beonde
Procurement Services Division
Fax: 704-632-8268

Date: _____

Authorized Signature: _____

Title: _____

Company Name: _____

Contact Name: _____

Contact E-mail address: _____

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

_____ **We plan on submitting a Proposal**

Reason: _____

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

Reason: _____

Section 8
Required Forms – Form Two

ADDENDA RECEIPT CONFIRMATION

RFP # 269-2010-153

Neighborhood and Business Services Legal Services

Please acknowledge receipt of each addendum posted to www.ips.state.nc.us by faxing this form to Amelia Beonde at 704-632-8268. This form, acknowledging all addenda, must also be included with your Proposal.

ADDENDUM #:

DATE ADDENDUM POSTED:

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

(Please Print Name)

Date

Authorized Signature

Title

Company Name

Section 8
Required Forms – Form Three

PROPOSAL SUBMISSION FORM

RFP # 269-2010-153

Neighborhood and Business Services Legal Services

This Proposal is submitted by:

Service Provider Name: _____

Representative (printed): _____

Representative **(signed)**: _____

Address: _____

City/State/Zip: _____

Telephone: _____

(Area Code) Telephone Number

Facsimile: _____

(Area Code) Fax Number

It is understood by the Service Provider that the City reserves the right to reject any and all Proposals, to make awards on all items or on any items according to the best interest of the City, to waive formalities, technicalities, to recover and re-bid this RFP. Proposal is valid for one hundred and eighty (180) calendar days from Proposal Opening.

Service Provider

Date

Authorized Signature

Please type or print name

PRICING WORKSHEET

The City is requesting an Hourly Rate and/or a Packaged Rate from the Service Providers. The Hourly Rate for each Type of Service would be the Rate charged throughout the life of the Contract for those Legal Services. The Item Rate would be a rate charged per Item done in that Type of Service. The City is only requesting a per Item rate for Title Searches. The Packaged Rate would be a flat rate for all services in that given Type for one year. The City also requests the names of those staff members that would be working on each Type of Service.

The City acknowledges that law firms may specialize in certain fields of the law. **Service Providers that may specialize in one or more Types of Service may submit a Proposal for that Type of Service.** The City reserves the right to award a single contract or multiple contracts for Legal Services in accordance with the Terms of this RFP.

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

Service Providers may submit pricing for the Services listed in Sections 3.1 AND 3.2, and/or 3.3 through 3.6

NOTE: If you propose pricing for the Services listed in Section 3.1, you must also propose for the Services listed in 3.2.

Similarly, you must propose for the Services listed in Section 3.3 if you wish to propose for the Services listed in Section 3.3.6.

Sections 3.4, 3.5, and 3.6 can be proposed for individually or in combination with each other or with the above grouped Sections.

Section 8

Required Forms – Form Four

	Type of Service						
	Civil Penalty and Liens Collection Services as defined by Section 3.1	Title Searches as defined by Section 3.2	Housing Services Programs as defined by Section 3.3	Miscellaneous Services as defined by Section 3.3.6	HouseCharlotte Loan Program Services as defined by Section 3.4	Community and Commerce as defined by Section 3.5	Economic Development as defined by Section 3.6
Hourly Partner Rate	\$ _____	N/A	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Staff Providing Services		N/A					
Hourly Associate Rate	\$ _____	N/A	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Staff Providing Services		N/A					
Hourly Paralegal Rate	\$ _____	N/A	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Staff Providing Services		N/A					
Per Item Rate	N/A	\$ _____	N/A	N/A	N/A	N/A	N/A
Package Rate For One Year	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Comments							

Section 8
Required Forms – Form Five

PROPOSAL CERTIFICATION

AGREEMENT TITLE: **Neighborhood and Business Services Legal Services**

SERVICE PROVIDER: _____

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

1. In preparing its proposal, the Service Provider has considered all proposals submitted from qualified, potential subcontractors and suppliers; and has not engaged in or condoned prohibited discrimination.
2. For purposes of this section, *prohibited discrimination* means discrimination against any person, business or other entity in contracting or purchasing practices on the basis of race, color, sex, or national origin. Without limiting the foregoing, *prohibited discrimination* also includes retaliating against any person, business or other entity for reporting any incident of prohibited discrimination.
3. Without limiting any other provision of the solicitation for proposals on this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the City to reject the bid submitted by the Bidder on this project and to terminate any contract awarded based on such bid.
4. As a condition of contracting with the City, the Service Provider agrees to maintain documentation sufficient to demonstrate that it has not discriminated in its solicitation or selection of subcontractors. The Service Provider further agrees to promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation and selection of subcontractors. Failure to maintain or failure to provide such information constitutes grounds for the City to reject the bid submitted by the Service Provider or terminate any contract awarded on such bid.

NAME OF FIRM

BY: _____
SIGNATURE OF AUTHORIZED OFFICIAL

TITLE

ATTEST/WITNESS:

Secretary/Name of Witness

Sworn to and subscribed before me this
____ day of _____, YEAR.

Notary Public Commission expires: _____

EXHIBIT A-CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality Agreement (the "Agreement") is made and entered into as of this ____ day of _____, 2010 (the "Effective Date"), by and between the City of Charlotte, a North Carolina municipal corporation ("the City") and _____, a corporation doing business in North Carolina, (the "Company")

RECITALS

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

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

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

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

AGREEMENT

1. **CONFIDENTIAL INFORMATION.** "Confidential Information" means any information in any medium (whether written, oral or electronic), obtained from the City or any of its suppliers, contractors or licensors which falls within any of the following general categories:
 - 1.1. *Trade secrets.* For purposes of this Agreement, trade secrets consist of information of the City or any of its suppliers, contractors or licensors: (a) that derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.
 - 1.2. *Information of the City or its suppliers, contractors or licensors marked "Confidential" or "Proprietary."*
 - 1.3. *Information relating to criminal investigations conducted by the City, and records of criminal intelligence information compiled by the City.*
 - 1.4. *Information contained in the City's personnel files, as defined by N.C. Gen. Stat. 160A-168.* This consists of all information gathered by the City about employees, except for that information which is a matter of public record under North Carolina law.
 - 1.5. *Personal identifying information about individuals* that the City is prohibited from disclosing by law, including:
 - (a) Social security or employer taxpayer identification numbers.

EXHIBIT A -

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

- (b) Drivers license (drivers license numbers are not included if the number appears on law enforcement records), State identification card, or passport numbers.
 - (c) Checking account numbers.
 - (d) Savings account numbers.
 - (e) Credit card numbers.
 - (f) Debit card numbers.
 - (g) Personal Identification (PIN) Code as defined in G.S. 14-113.8(6).
 - (h) Digital signatures.
 - (i) Any other numbers or information that can be used to access a person's financial resources.
 - (j) Biometric data.
 - (k) Fingerprints.
 - (l) Passwords.
- 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.
- 1.7. *Local tax records of the City that contains information about a taxpayer's income or receipts.*
- 1.8. *Any attorney / client privileged information disclosed by either party.*
- 1.9. *Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.*
- 1.10. *The name or address of individual home owners who, based on their income, have received a rehabilitation grant to repair their home.*
- 1.11. *Building plans of city-owned buildings or structures, as well as any detailed security plans.*
- 1.12. *Billing information of customers compiled and maintained in connection with the City providing utility services*
- 1.13. *Other information that is exempt from disclosure under the North Carolina public records laws.*

Categories 1.1 through 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 Agreement, and agrees that: (a) all provisions in this Agreement applicable to Confidential Information shall apply to Highly Restricted Information; and (b) the Company will also comply with any more restrictive instructions or written policies that may be provided by the City from time to time to protect the confidentiality of Highly Restricted Information.

EXHIBIT A -

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

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

2. **RESTRICTIONS.** Company shall keep the Confidential Information in the strictest confidence, in the manner set forth below:
- 2.1. Company shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information, except as authorized by the City in writing. Company shall not, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information to any third party, other than an agent, subcontractor or vendor of the City or Company having a need to know such Confidential Information for purpose of performing work contemplated by written agreements between the City and the Company, and who has executed a confidentiality agreement incorporating substantially the form of this the Agreement. Company shall not directly or indirectly, disclose, divulge, reveal, report or transfer Highly Restricted to any third party without the City's prior written consent.
 - 2.2. Company shall not use any Confidential Information for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Agreement or other written agreements between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.
 - 2.3. Company shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information.
 - 2.4. Company shall use reasonable efforts (including but not limited to seeking injunctive relief where reasonably necessary) to prohibit its employees, vendors, agents and subcontractors from using or disclosing the Confidential Information in a manner not permitted by this Agreement.
 - 2.5. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, Company shall assert this Agreement as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.
 - 2.6. All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to the City or destroyed upon satisfaction of the purpose of the disclosure of such information.
 - 2.7. Company shall restrict employee access to the Confidential Information to those employees having a need to know for purposes of their jobs.
 - 2.8. Company shall take reasonable measures to prevent the use or disclosure of Confidential Information by its employees in a manner not permitted by this Agreement. The Company shall have each of its employees who will have access to the Confidential Information sign a confidentiality agreement which provides the City and its vendors, licensors, subcontractors, employees and taxpayers the same level of protection as provided by this Agreement.

EXHIBIT A -

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

3. **EXCEPTIONS.** The City agrees that Company shall have no obligation with respect to any Confidential Information that the Company can establish:
- 3.1. was already known to Company prior to being disclosed by the City;
 - 3.2. was or becomes publicly known through no wrongful act of Company;
 - 3.3. was rightfully obtained by Company from a third party without similar restriction and without breach hereof;
 - 3.4. was used or disclosed by Company with the prior written authorization of the City;
 - 3.5. was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, Company shall first give to the other party notice of such requirement or request;
 - 3.6. was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the Company shall take reasonable steps to obtain an agreement or protective order providing that this Agreement will be applicable to all disclosures under the court order or subpoena.
4. **REMEDIES.** Company acknowledges that the unauthorized disclosure of the Confidential Information will diminish the value of the proprietary interests therein. Accordingly, it is agreed that if Company breaches its obligations hereunder, the City shall be entitled to equitable relief to protect its interests, including but not limited to injunctive relief, as well as monetary damages.
5. **DATA.** The Company will treat as Confidential Information all data provided by the City or processed for the City or for citizens under this Agreement (including metadata). Such data shall remain the exclusive property of the City. The Company will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the City in any manner except that contemplated by this Contract.
6. **NOTICES.** Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by telefax to the intended recipient at the address set forth below:

For the Company:

Name
Title
Company
Address
City, State, Zip
PHONE:
FAX:
E-MAIL:

With Copy to:

For the City:

Name
Title
City of Charlotte
600 East Fourth Street
Charlotte, NC 28202-2850
PHONE:
FAX:
E-MAIL:

With Copy To:

Anna Schleunes
City of Charlotte
City Attorney's Office
600 East Fourth Street, CMGC 15th Fl
Charlotte, NC 28202
PHONE: 704.336.5802

EXHIBIT A -

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

FAX: 704.632.8332

EMAIL: aschleunes@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.

7. MISCELLANEOUS.

- 7.1. *AMENDMENT.* No amendment or change to this Agreement shall be valid unless in writing and signed by both parties to this Agreement.
- 7.2. *GOVERNING LAW AND JURISDICTION.* North Carolina law shall govern the interpretation and enforcement of this Agreement, and all other matters relating to this Agreement (all without regard North Carolina conflicts of laws principles). Any and all legal actions or proceedings relating to this Agreement shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By execution of this Agreement, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections which they may have with respect to venue in any of the above courts.
- 7.3. *BINDING NATURE AND ASSIGNMENT.* This Agreement shall bind the parties and their successors and permitted assigns. Neither party may assign this Agreement without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void.
- 7.4. *SEVERABILITY.* The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of the Agreement can be determined and effectuated. If any provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.
- 7.5. *WAIVER.* No delay or omission by either party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this Agreement shall not constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party waiving the rights.

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