

**MECKLENBURG COUNTY
PROCUREMENT MANAGEMENT
SHARED SERVICES
600 EAST FOURTH STREET
CHARLOTTE, NORTH CAROLINA 28202
(704) 336-2256**

Date: August 7, 2013

Bid Number: 269-2014-005

Subject: Invitation to Bid on the following apparatus, supplies, materials, equipment and/or services for:

2014 FORD ESCAPE SUVs

This letter extends an invitation for the submission of a bid to supply Mecklenburg County with apparatus, supplies, materials, equipment and/or services as indicated above. Sealed bids for the above will be received at the office of the Charlotte Mecklenburg Procurement Management, Charlotte-Mecklenburg Government Center, 9th floor, 600 East Fourth Street, Charlotte, North Carolina 28202, **until 2:00 p.m. on August 22, 2013** at which time they will be opened and publicly read.

A pre-Bid conference for the purpose of reviewing the ITB and answering questions regarding the Project, will be held on **August 15, 2013 at 11:00 a.m.** at the Charlotte-Mecklenburg Government Center, 600 East Fourth Street, Procurement Management, 9th floor large conference room, Charlotte, North Carolina 28202. You are encouraged to attend and to bring a copy of the ITB with you at that time.

Instructions for the preparation and submission of a bid are contained in the attached packet. Please read them carefully. If you do not desire to offer a bid, we ask that you let us know by signing in the appropriate space on the Bid Response Form, and returning it to us, according to the instructions found in Section 1.6. Otherwise, your name may be removed from our list of potential Bidders considered for future participation.

Any changes to the terms, conditions or specifications stated in this Invitation to Bid will be documented in a written addendum, issued by Procurement Management. These addenda will be posted on the Internet, at www.ips.state.nc.us, and may be accessed at this website by searching for bid number **269-2014-005**. We require each Bidder to acknowledge receipt of all addenda using the space provided on the enclosed Bid Response Form. **Please note that we will not consider any bid that fails to acknowledge receipt of each issued addendum.**

A response from your firm to this Invitation to Bid would be appreciated. Questions should be directed to **Janice Walters** at **(704) 336-5669**.

Sincerely,

Kay Elmore
Procurement Management Manager
cc: file

1.1 Review and Comply: This Invitation To Bid consists of the following components:

"Cover Letter:" the letter that appears on the first two pages of this Invitation To Bid;

Section 1: General instructions regarding the bid process (called "*Instructions To Bidders*");

Section 2: The County's standard contractual terms and conditions (called the "*Terms and Conditions*")

Section 3: Special conditions that apply to this procurement (called "*Special Conditions*");

Section 4: Specifications that describe the functions or features of the products and services for which the County seeks bids (called "*Specifications*");

Section 5: Insurance and indemnity requirements (called "*Insurance Requirements*");

Section 6: The forms that a Bidder is required to complete and return as its Bid (called the "*Bid Response Forms*");

Section 7: The form contract that the County and the successful Bidder will sign upon award of a contract by The Board of County Commissioners (called the "Form Contract");

Addenda: refers to any and all modifications or additions to this Invitation to Bid that are issued in writing by the County's Procurement Management.

Each reference to this Invitation to Bid (also referred to as "ITB") includes all components listed above. Please review each of them carefully. Bidders will be held accountable for having full knowledge of the contents of this ITB and for performing any due diligence that may be necessary to submit a binding Bid.

1.2 Definitions:

Bid: A bid submitted in response to this ITB. A Bid shall be made on the Bid Response Forms included in **Section 6** of this ITB.

Bidder: A person or entity that submits a Bid.

County: Mecklenburg County, North Carolina.

Company: A Bidder that enters into a Contract with the County for all or part of the Products and Services covered by this ITB.

Contract: A contract under which a Bidder agrees to provide all or part of the Products and Services to the County. A Contract shall include the Form Contract set forth in Section 7 of this ITB, together with all attachments referenced therein.

ELP: Refers to Mecklenburg County's Environmental Leadership Team.

EPPG: Refers to Mecklenburg County's Environmental Purchasing Guide.

ESP: Refers to Mecklenburg County's Environmental Sustainability Plan.

<i>Environmentally Preferable Products:</i>	Products that have a lesser or reduced effect on human health and the environment when compared with competing products that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.
<i>Post Consumer Recycled Material:</i>	Refers to material and by-products which have served their intended end-use by a consumer and have been recovered or diverted from solid waste. It does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.
<i>Products:</i>	All products that the Bidder agrees to provide to the County as part of its Bid.
<i>Recyclability:</i>	Refers to Products or materials that can be collected, separated or otherwise recovered from the solid waste stream for reuse, or used in the manufacture or assembly of another package or product, through an established recycling program. For products that are made of both recyclable and non-recyclable components, the recyclable claim should be adequately qualified to avoid consumer deception about which portions or components are recyclable.
<i>Recycled Material:</i>	Refers to material and by-products which have been recovered or diverted from solid waste for the purpose of recycling. It does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.
<i>Services</i>	All services that the Bidder agrees to provide to the County as part of its Bid, including but not limited to training, warranty and maintenance.

- 1.3 Contract Documents:** Each Bid constitutes an offer to become legally bound to a Contract with the County incorporating the ITB and the Bidder's Bid. Upon Contract award by County Council, the County will send the successful Bidder the Contract, which shall consist of the Form Contract contained in **Section 7** of this ITB, together with all attachments referenced therein.
- 1.4 Exceptions:** Each Bid submitted in response to this Invitation to Bid constitutes a binding offer to comply with all terms, conditions, special conditions, specifications, and requirements stated in this Invitation to Bid (including but not limited to the Form Contract), except to the extent that a Bidder takes exception to such provisions in the manner required by this Section. To take exception to a provision of this Invitation to Bid, the Bidder must clearly identify in **Form 2** of the Bid Response Forms each of the following: (a) the number

and title of each section of this ITB that the Bidder takes exception to; (b) the specific sentence within such section that the Bidder takes exception to; and (c) any alternate provision proposed by the Bidder. Bidders are reminded that a material variance from the terms of this Invitation to Bid may result in the Bid being rejected by the County.

1.5 Multiple/Alternate Bids: No Bidder shall submit more than one bid unless multiple or alternate bids are requested in the Special Conditions. Unless specifically stated in the Special Conditions, any multiple or alternate bids must be brought to the County's attention either during the pre-bid conference or submitted in writing at least five (5) days prior to the opening of the bid.

1.6 How to Prepare Bid Responses: All bids shall be prepared as follows:

- (A) Complete the Bid Response Forms provided in Section 6 of this Invitation to Bid. **Bid responses must be submitted only on these forms.**
- (B) Bid responses must be typewritten or completed in ink, signed by the Bidder or the bidding firm's authorized representative. All erasures or corrections must be initialed and dated by the person who signs the Bid Response Form on behalf of the Bidder.
- (C) Bids must be accompanied by accurate descriptions of the exact materials, supplies, vehicles, and/or equipment offered for purchase. The Specifications may require that copies of detailed factory specifications, ratings, technical data, etc. be submitted along with the Bidder's response package.

1.7 How to Submit Bid Responses: All Bidders shall:

- (A) Submit their Bid in a sealed opaque envelope with the following information written on the outside of that envelope:
 - (1) The Bidder's company name,
 - (2) The bid number as indicated on the cover letter to this Invitation to Bid, and
 - (3) Identification of the equipment, supply and/or service for which the Bid is submitted as indicated at the top of the cover letter to this Invitation to Bid.
- (B) Mail or Deliver one (1) unbound original Bid signed in ink by a company official authorized to make a legal and binding offer and four (4) electronic copies on CD in PDF format to the address listed below, to be received no later than **August 22, 2013 at 2:00 p.m. EST**. The original Bid shall be complete and unabridged, and shall not refer to any other copy of the signed and sealed original for any references, clarifications, or additional information. When received, all Bids and supporting materials, as well as correspondence relating to this ITB, shall become the property of the County.

Please be advised that the electronic copies on CD must be identical to the unbound original. The CDs are for evaluation purposes only and will not be accepted as the official original Bid. **The original Bid signed in ink by a company official must be submitted to be considered a responsive and valid Bid.** Bids sent by facsimile will not be accepted.

Mail or Deliver to:

Charlotte/Mecklenburg Government Center
Procurement Management, 9th Floor

600 East Fourth Street, 9th. Floor- CMGC
Charlotte, NC 28202
Attn: Janice Walters

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

- (C) **Bids not received by the time and date specified in the Cover Letter of this Invitation to Bid will not be opened or considered, unless the delay is a result of the negligence of the County, its agents, or assigns.**
- (D) Note that the Bid opening date listed above is based on the assumption that one or more Bidders will submit samples of alternate products for evaluation by the County. In the event no samples are submitted, or in the event the evaluation does not require as much time as anticipated, the County may move up the Bid opening date by issuing a written addendum to this ITB. The County reserves the right to change the Bid opening date, or any other dates relevant to this procurement process, at any time in its sole discretion.

- 1.8 Trade Secrets/Confidentiality:** Upon receipt at the Procurement Management, your Bid 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 Bid opening your Bid will be provided to County staff and others who participate in the evaluation process, and to members of the general public who submit public records requests. To properly designate material as trade secret under these circumstances, each Bidder must take the following precautions: (a) any trade secrets submitted by a Bidder must be submitted in a separate, sealed envelope marked "Trade Secret - Confidential and Proprietary Information - Do Not Disclose Except for the Purpose of Evaluating this Bid," and (b) the same trade secret/confidentiality designation must be stamped on each page of the trade secret materials contained in the envelope.

Do not attempt to designate your entire Bid as a trade secret, and do not attempt to designate pricing information as a trade secret. Doing so may result in your Bid being disqualified.

In submitting a Bid, each Bidder agrees that the County may reveal any trade secret materials contained in such response to all County staff and County officials involved in the selection process, and to any outside consultant or other third parties who assist the County in the selection process. Furthermore, each Bidder agrees to indemnify and hold harmless the County 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 Bidder has designated as a trade secret.

- 1.9 Questions:** The County is committed to providing all prospective Bidders with accurate and consistent information in order to ensure that no Bidder obtains an unfair competitive advantage. To this end, from the date of this Invitation to Bid until the time of Bid opening, no interpretation or clarification of the meaning of any part of this Invitation to Bid will be made orally to any prospective Bidder. Requests for information or clarification of this Invitation to Bid must be made in writing and addressed to Janice Walters at the address, fax, or email address listed below, with e-mail being the preferred method of communication. Questions should reference the Invitation to Bid page and topic number. In order for questions to be

answered at the pre-bid meeting, they must be submitted by 2:00 p.m. **EST on August 13, 2013.**

Janice Walters
Procurement Management
ITB # 269-2014-005
600 East Fourth Street, 9th Floor
Charlotte, North Carolina 28202
Phone: (704) 336-5669
Fax: (704) 632-8483
E-mail: Jwalters@charlottenc.gov

The County will post answers to questions posed by prospective Bidders and/or general information concerning this Invitation to Bid in the form of an addendum to the Invitation to Bid on the Internet at www.ips.state.nc.us. Invitation to Bid information can be accessed at the website by searching for bid number **269-2014-005**. **It is the responsibility of the prospective Bidder to check the website for any addenda issued for this Invitation to Bid.** The County reserves the right to disqualify any prospective Bidder who contacts a County employee, or agent concerning this Invitation to Bid, other than in accordance with this Section.

1.10 How to Submit an Objection Relating to This Invitation To Bid:

- (A) When a pre-bid conference is scheduled, Bidders should either present their objection at that time (either verbally or in writing), or submit a written objection prior to the scheduled pre-bid conference.
- (B) When a pre-bid conference is not scheduled, Bidders must submit objections in writing at least ten (10) days prior to the opening of the bid.
- (C) Except for objections raised at the pre-bid conference, all objections must be in writing directed to the Procurement Services contact designated in the preceding section.
- (D) **Failure to object in the manner specified above shall constitute a waiver of any objections the Bidder may have to the terms of this Invitation to Bid, or anything that occurred in the bid process through the end of the pre-bid conference.**

1.11 Binding Offer: Each Bid shall constitute a firm offer that is binding for one hundred twenty (120) calendar days from the date of the Bid opening.

1.12 Errors in Bids: In case of error in extension of prices in the Bid, the unit prices shall govern.

1.13 County's Rights and Options: The County reserves the following rights, which may be exercised at the sole discretion of Mecklenburg County:

- 1.13.1** to supplement, amend, substitute or otherwise modify this ITB at any time;
- 1.13.2** to cancel this ITB with or without the substitution of another ITB;
- 1.13.3** to take any action affecting this ITB, this ITB process, or the Products or Services subject to this ITB that would be in the best interests of the County;
- 1.13.4** to issue additional requests for information;

- 1.13.5 to require one or more Bidders to supplement, clarify or provide additional information in order for the County to evaluate the Bids submitted;
 - 1.13.6 to conduct investigations with respect to the qualifications and experience of each Bidder;
 - 1.13.7 to change the Bid opening date or any other dates relevant to this ITB;
 - 1.13.8 to waive any defect or irregularity in any Bid received;
 - 1.13.9 to reject any or all Bids;
 - 1.13.10 to award all, none, or any part of the items that is in the best interest of the County, with one or more of the Bidders responding, which may be done with or without re-solicitation; and
 - 1.13.11 to enter into any agreement deemed by the County to be in the best interest of the County, with one or more of the Bidders responding.
- 1.14 **Bids on All or Part:** Unless otherwise specified by the County or by the Bidder, the County reserves the right to make award on all or part of the items to be purchased. Bidders may restrict their bids to consideration in the aggregate by so stating in the bid. However, bids restricted to consideration in the aggregate must also include a unit price on each item bid.
- 1.15 **Invitation to Bid Not an Offer:** This Invitation to Bid does not constitute an offer by the County. No recommendations or conclusions from this Invitation to Bid process 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.
- 1.16 **Equal Opportunity:** The County has an equal opportunity purchasing policy. The County seeks to ensure that all segments of the business community have access to supplying the products and services needed by County programs. The County provides equal opportunity for all businesses and does not discriminate against any Bidders regardless of race, color, religion, age, sex, and national origin or disability.
- 1.17 **No Collusion or Conflict of Interest:** By responding to this ITB, the Bidder shall be deemed to have represented and warranted that the Bid is not made in connection with any competing Bidder submitting a separate response to this ITB, and is in all respects fair and without collusion or fraud.
- 1.18 **Anti-lobbying Provision:** Maintaining the integrity of its Invitation to Bid process is of paramount importance for the County. To this end, we ask each Bidder's cooperation in voluntarily refraining from contacting any members of the Charlotte County Council until the award of this contract is presented to them for approval.
- 1.19 **MWBE Requirements:** The County has an equal opportunity purchasing policy. The County seeks to ensure that all segments of the business community have access to supplying the goods and services needed by County programs. The County affirmatively works to encourage utilization of minority business enterprise in our procurement activities. The County provides equal opportunity for all businesses and does not discriminate against any Suppliers regardless of race, color, religion, age, sex, and national origin or disability. The Successful Suppliers shall comply with the County's purchasing policy.

- 1.20 Certified Test Report:** If the Specifications or Special Conditions require a certified test report, Bidders shall provide such report at their expense, prior to or with their sealed bids. The certified test report shall be from a recognized independent testing laboratory or manufacturer's quality control laboratory and shall show all test results and full compliance with the applicable Specifications.
- 1.21 Brand Name:** If and whenever brand names, makes, names of manufacturers, trade names, bidder catalogs or model numbers are stated in this ITB, they are for the purpose of establishing a grade or quality of material. The County will evaluate any approved alternates to specified brand names as provided in Section 1.22 of this ITB, except for items identified in Section 4 as Products for which no substitute is acceptable.
- 1.22 To Submit a Proposed Alternate Product In Lieu of a Specified Brand:** No alternate products will be considered for this contract.
- 1.23 Statutory Requirements:** Any Bid submitted in response to this ITB shall be deemed to include full conformance with all statutory requirements of North Carolina and all statutory requirements of the Federal Government, to the extent applicable. It is up to each Bidder to conduct its own due diligence as to what statutory requirements may apply.
- 1.24 Guarantor:** If the Bidder is a subsidiary of another entity, the County requires that the Bidder's parent entity provide a guarantee of payment of all of the Bidder's obligations under the Contract. The County may also require that the Bidder obtain a guaranty from an entity other than the parent if the County concludes that such guaranty would be beneficial to protect the County's interest. If the Bidder is not a subsidiary, the County may require that the Bidder obtain a guaranty of payment from another entity if the County concludes that such guaranty would be beneficial to protect the County's interest. If a guarantor is required, the Bidder must: (a) identify a guarantor that is acceptable to the County, (b) provide the County with the same financial information about the guarantor that the Bidder is required to provide about itself under this ITB; and (c) provide the County with a signed, legally binding guaranty agreement from the approved guarantor that is acceptable to the County in the County's sole discretion. Failure to comply with the forgoing shall be grounds for rejection of the Bidder's Bid.
- 1.25 Award Criteria:** The County reserves the right to award a Contract to the lowest responsive responsible bidder taking into consideration vendor qualifications and experience, quality, delivery, workmanship, services, facility requirements, inventory control and reporting. The County reserves the right to reject any bid on the basis of function, compatibility with user requirements of utility as well as cost.
- 1.26 Environmental Preferable Purchasing:** The County requires inclusion of environmental considerations in purchasing decisions for goods and services.

In 2004, the Board of County Commissioners ("BOCC" created an Environmental Leadership Team to advise and guide the County in environmental initiatives that will set an example for public and private sector organizations in our region. An Environmental Leadership Policy (ELP), Environmental Sustainability Plan (ESP), and Environmentally Preferable Purchasing Guide (EPPG) provide the principles and guidance for recurring activities of the County that will improve its environmental performance. These documents further the County's goal to be the "best local government service provider."

You may find the Environmental documents at the following link:

<http://charmeck.org/MECKLENBURG/COUNTY/LUESA/SUSTAINABILITY/Pages/default.aspx>

- 1.27 Environmental Reporting Requirements:** The successful Bidder shall furnish quarterly usage reports showing a summary of the ordering and/or history of each County department for the previous quarter to the Procurement Management. The report must show at minimum, description and total quantity of each item ordered during the period, reporting period, County agency, and total dollars per agency. The County reserves the right to request additional information, if required, when reviewing contract activity.
- 1.29 Contract Award by Board of County Commissioners (BOCC):** The Contract to be awarded under this ITB must be approved by the Mecklenburg County Board of County Commissioners. If such approval is granted, the Procurement Management will provide the Contract to the Bidder for the Bidder to sign and return. In the event BOCC approval is not received within one hundred twenty (120) calendar days after opening of the Bids, the Bidder may request that it be released from the Bid.
- 1.28 Post Award Conference:** A Post-Award Conference will be scheduled as soon as practical after the award of the Contract. The Company shall attend the conference along with the Company's prospective Project Manager and any anticipated major subcontractors, and shall provide at such conference a written schedule for the delivery of any Products or Services for which no delivery dates have been specified in this ITB. The Company shall provide at least two (2) local telephone numbers that may be used to contact the Company's authorized representative in the event of an emergency after normal business hours.

Each Bid submitted in response to this ITB constitutes an offer to become legally bound to a Contract incorporating terms and conditions set forth in this Section 2. For purposes of this Section, a Bidder that enters into a Contract with the County may be referred to as the “successful Bidder” or the “Company.”

2.1 Contract Types: The Contract resulting from this Invitation to Bid will be of the type indicated below:

___ **Definite Quantity:** The Contract will be a fixed-price contract that provides for delivery of a specified quantity of Products and Services either at specified times or when ordered.

X **Indefinite Quantity:** The Contract will be a unit price contract for an indefinite amount of Products and Services to be furnished at specified times, or as ordered. In some cases, indefinite quantity contracts may state a minimum quantity that the County is obligated to order. The County may make available to Bidders information regarding the County’s purchase history or projected estimates of the approximate quantity of Products that will be needed. The County makes no representations as to the accuracy of such information. Each Bidder is required to perform its own due diligence on which to base its bid. Inaccuracy of purchase history or projected quantity estimates provided by the County will not give rise to any claim against the County, or entitle any Bidder to rescind its bid or terminate or amend the Contract.

2.2 Terms of Contract:

X (A) **Unit Price Contract:** Contract awarded is for a unit price when product and service needs are based upon indefinite quantities, and where orders will be based on actual needs that may exceed or be less than projections. All expenditures under a unit price contract are contingent upon appropriations having been made by the Board of County Commissioners.

Contract Terms and Renewal Options: The contract term shall be for a period of three (3) years from the date of award. The County at its option may extend the contract for up to two (2) additional one-year extensions unless the Bidder objects in writing at least ninety (90) days prior to the beginning of the extension term.

___ (B) **One Time Purchase:** Contract awarded is for a specific quantity purchased at one time.

2.3 Notice to Proceed: The successful Bidder shall not commence work or make shipment under this Invitation to Bid until duly notified by receipt of an executed Contract from the County. If the successful Bidder commences work or makes shipment prior to that time, such action is taken at the Bidder's risk, without any obligation of reimbursement by the County.

2.4 Delivery Time: When delivery time is requested in this Invitation to Bid, (whether in the form of a specific delivery date or maximum number of days for delivery) **time is of the essence.** Each Bid shall be deemed a binding commitment of the Bidder to meet the delivery time stated herein unless the Bid specifically takes exception. If such delivery time is not met, the County shall be entitled to terminate the Contract immediately for default and/or exercise any other remedies available at law or in equity.

- 2.5 Prices Are Firm:** Each Bidder warrants the bid price(s), terms and conditions quoted in its bid shall be firm for acceptance by the County for a period of one hundred twenty (120) **calendar days** from the date of the Bid opening. Once award is made and a Contract is in place, prices shall remain firm and fixed for the entire Contract period, unless otherwise allowed in the Special Conditions and stated in the Bid. If your Bid includes price increases over the term of the Contract, such increases must be clearly designated on Form Three of the Bid Response Package (Pricing Sheet).
- 2.6 Prompt Payment Discounts:** Bidders are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
- 2.7 Quality:** Unless this Invitation to Bid specifically states otherwise for a particular item, all components used to manufacture or construct any supplies, materials or equipment or Products provided under this Invitation to Bid shall be: (a) new; (b) the latest model; (c) of the best quality and highest grade workmanship; and (d) in compliance with all applicable federal, state and local laws, regulations and requirements. By “new”, the County means that the item has been recently produced and has not been previously sold or used.

Whenever this Invitation to Bid or any other part of the Contract states that a Product or Service shall be in accordance with laws, ordinances, building codes, underwriter’s codes, applicable A.S.T.M. regulations or similar expressions, the requirements of such laws, ordinances, etc., shall be construed to be minimum requirements that are in addition to any other requirements that may be stated in this Invitation to Bid or the Contract.

- 2.8 Inspection at Bidder’s Site:** The County reserves the right to inspect the equipment, plant, store or other facilities of a Bidder prior to Contract award, and during the Contract term from time to time as the County deems necessary to confirm that such equipment, plant, store or other facilities conform with the Specifications and are adequate and suitable for proper and effective performance of the Contract. Such inspections shall be conducted during normal business hours and upon at least three (3) days notice to the Bidder (except that a store may be inspected at any time during regular store hours without notice).
- 2.9 Preparation For Delivery:**
- (A) **Condition and Packaging.** All containers/packaging shall be suitable for handling, storage or shipment, without damage to the contents. The Bidder shall make shipments using the minimum number of containers consistent with the requirements of safe transit, available mode of transportation routing. The Bidder will be responsible for confirming that packing is sufficient to assure that all the materials arrive at the correct destination in an undamaged condition ready for their intended use.
 - (B) **Marking.** All cartons shall be clearly identified with the County purchase order number and the name of the department or key business making the purchase. Packing lists must be affixed to each carton identifying all contents included in the carton. If more than one carton is shipped, each carton must be numbered and must state the number of that carton in relation to the total number of cartons shipped (i.e. 1 of 4, 2 of 4, etc).
 - (C) **Shipping.** The Bidder shall follow all shipping instructions included in this Invitation to Bid, the County’s purchase order or in the Contract with the County.

- 2.10 Acceptance of Products/Services:** The Products delivered under this Invitation to Bid shall remain the property of the successful Bidder until the County physically inspects, actually uses and accepts the Products. In the event Products provided to the County do not comply with the Contract, the County shall be entitled to terminate the Contract upon written notice to the successful Bidder and return such Products (and any related goods) to the Bidder at the Bidder's expense. In the event the Services provided under this Invitation to Bid do not comply with the Contract, the County reserves the right to cancel the Service and rescind any related purchase of products upon written notice to the successful Bidder. The remedies stated in this Section are in addition to and without limitation of any other remedies that the County may have under the Contract, at law or in equity.
- 2.11 Guarantee:** Unless otherwise specified by the County, the Bidder unconditionally guarantees the materials and workmanship on all Products and Services. If, within the guarantee period any defects occur due to a faulty Product or Services (including without limitation a failure to comply with the Specifications), the Bidder at its expense, shall repair or adjust the condition, or replace the Product and/or Services to the complete satisfaction of the County. These repairs, replacements or adjustments shall be made only at such time as will be designated by the County to ensure the least impact to the operation of County business.
- 2.12 Manufacturer or Dealer Advertisement:** No manufacturer or dealer shall advertise on Products delivered to the County without prior approval by the County.
- 2.13 Right to Cover:** If the successful Bidder fails to comply with any term or condition of the Contract or the Bidder's response to this Invitation to Bid, the County may take any of the following actions with or without terminating the Contract, and in addition to and without limiting any other remedies it may have:
- (A) Employ such means as it may deem advisable and appropriate to obtain the applicable Products and/or Services (or reasonable substitutes) from a third party; and
 - (B) Recover from such Bidder the difference between what the County paid for such Products and/or Services on the open market and the price of such Products and/or Services under the Contract or the Bidder's response to this Invitation to Bid.
- 2.14 Right to Withhold Payment:** If a Bidder breaches any provision of the Contract, the County shall have the right to withhold all payments due to the Bidder until such breach has been fully cured.
- 2.15 Certification of Independent Price Determination:** By submission of a Bid, the Bidder certifies, and in the case of a joint Bid each party thereto certifies as to its own organization, that in connection with this procurement:
- (A) The prices in the Bid 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 any other Bidder or with any competitor; and
 - (B) Unless otherwise required by law, the Bidder has not knowingly disclosed the prices that have been quoted in this bid directly or indirectly to any other Bidder or to any competition prior to the opening of the bid.
 - (C) No attempt has been made or will be made by the Bidder to induce any other person or firm to submit or not to submit a Bid for the purpose of restricting competition.

- 2.16 Subcontracting:** The Company shall not subcontract any of its obligations under this Contract without the County's prior written consent. In the event the County does consent in writing to a subcontracting arrangement, Company shall be the prime contractor and shall remain fully responsible for performance of all obligations which it is required to perform under this Contract. Any subcontract entered into by Company shall name the County as a third party beneficiary.
- 2.17 Compliance with Laws:** All Products and Services delivered under this Invitation to Bid shall be in compliance with all applicable federal, state and local laws, regulations and ordinances. In performing the Contract, the successful Bidder shall obtain and maintain all licenses and permits, and comply with all federal, state and local laws, regulations and ordinances.
- 2.18 County License Requirement:** A current City of Charlotte and/or Mecklenburg County Business License is required for a successful Bidder who either personally or through agents, solicits business within County limits; or picks up and/or delivers Products or delivers Services within County limits. All questions regarding licensing should be directed to the Business Tax Collections Office, 704-336-6315.
- 2.19 No Liens:** All Products shall be delivered and shall remain free and clear of all liens and encumbrances.
- 2.20 Other Remedies:** Upon breach of the Contract, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.
- 2.21 Amendment:** No amendment or change to the Contract shall be valid unless in writing and signed by both parties to the Contract.
- 2.22 Governing Law and Jurisdiction:** North Carolina law shall govern the interpretation and enforcement of the Contract, and any other matters relating to the Contract (all without regard to North Carolina conflicts of law principles). All legal actions or other proceedings relating to the Contract shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By submitting a response to this Invitation to Bid, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections that they may have with respect to venue in any court sitting in Mecklenburg County, North Carolina.
- 2.23 Binding Nature and Assignment:** The Contract shall bind the parties and their successors and permitted assigns. Neither party may assign the Contract without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void. For purposes of this Section, a Change in Control, as defined in this Invitation to Bid shall constitute an assignment.
- 2.24 No Delay Damages:** Under no circumstances shall the County be liable to the successful Bidder for any damages arising from delay, whether caused by the County or not.
- 2.25 Force Majeure:** Neither party shall be liable for any failure or delay in the performance of its obligations pursuant to the Contract, and such failure or delay shall not be deemed a default of the Contract or grounds for termination hereunder if all of the following conditions are satisfied:
- (A) If such failure or delay:
1. could not have been prevented by reasonable precaution;

2. cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and
 3. 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 that satisfies all of the conditions set forth above shall be referred to as a "Force Majeure Event." Upon the occurrence of a Force Majeure Event, the affected party shall be excused from any further performance of those of its obligations which are affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) the affected party continues to use reasonable efforts to recommence performance whenever and to whatever extent possible without delay.
- (C) Upon the occurrence of a Force Majeure Event, the affected party shall promptly notify the other by telephone (to be confirmed by written notice within five (5) 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 successful Bidder from performing its obligations for more than fifteen (15) days, the County shall have the right to terminate the Contract by written notice to the successful Bidder.
- (D) Notwithstanding anything contained herein to the contrary, strikes, slow-downs, walkouts, lockouts, and industrial disputes of the successful Bidder or its subcontractors shall not constitute "Force Majeure Events" and are not excused under this provision. Nothing in the preceding Force Majeure provisions shall relieve the successful Bidder of any obligation it may have regarding disaster recovery, whether under the Contract or at law.
- 2.26 Severability:** The invalidity of one or more of the phrases, sentences, clauses or sections contained in the Contract shall not affect the validity of the remaining portion of the Contract so long as the material purposes of the Contract can be determined and effectuated. If any provision of the Contract is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and the Contract shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.
- 2.27 No Publicity:** No advertising, sales promotion or other materials of the successful Bidder or its agents or representations may identify or reference the Contract or the County in any manner without the prior written consent of the County. Notwithstanding the foregoing, the parties agree that the successful Bidder may list the County as a reference in responses to requests for Bids, and may identify the County as a customer in presentations to potential customers.
- 2.28 Waiver:** No delay or omission by either party to exercise any right or power it has under the Contract shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of the Contract 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 Contract shall be effective unless in writing and signed by the party waiving the rights.
- 2.29 Survival of Provisions:** Those Sections of the Contract and the Exhibits, which by their nature would reasonably be expected to continue after the termination of the Contract shall

survive the termination of the Contract, including but not limited to all definitions and a list of surviving Sections which will be included in the final Contract.

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

In this Section of the ITB, a Bidder that enters into a Contract with the County may be referred to as the “successful Bidder” or the “Company.”

3.1 Price Adjustment As Part of the Bid: To submit price adjustments as part of your Bid, you must: (a) comply with any limitations or instructions that are stated in this ITB; and (b) state very clearly in the Price Sheet of your Bid Response Forms the proposed price adjustments or, if permitted, the price adjustment formula. Restrictions and instructions regarding price adjustments are provided in the Bid Response Forms. It is important that you check for these restrictions and instructions carefully. In some instances price adjustments are not permitted as part of the Bid. In other instances formula price increases are prohibited due to the difficulty they create in comparing Bid prices.

3.2 Price Adjustment If Not Included As Part of the Bid: If price adjustments are not included in your Bid, the price(s) stated in your Bid shall apply for the entire term of the Contract unless the County approves a price adjustment in writing in accordance with the following terms:

- A. Price increases shall only be allowed when justified in the County’s sole discretion based on legitimate, bona fide increases in the cost of materials. No adjustment shall be made to compensate a Bidder for inefficiency in operation, increase in labor costs, or for additional profit.
- B. To obtain approval for a price increase, the Bidder shall submit a written request to the Procurement Management representative, at the address listed below, together with written documentation sufficient to demonstrate that the increase is necessary based on a legitimate increase in the cost of materials. The request must state and fully justify the proposed price increase per unit over the price originally bid.

Charlotte Mecklenburg
Procurement Management
600 East Fourth Street
Charlotte, NC 28202

- C. No proposed price increase shall be valid unless accepted by the County in writing. The County may approve such price increase for the remaining term of the Contract or for a shorter specified period, in the County’s sole discretion. If the County rejects such price increase, the Bidder shall continue performance of the Contract.
- D. If the County approves a price increase pursuant to this Section and the market factors justifying the increase shift so that the increase is no longer justified, the County shall have the right to terminate the price increase and revert back to the prices that were in effect immediately prior to the increase. The Company shall notify the County in writing if the market factors on which the County granted the increase change such that the County’s reasons for granting the increase longer apply.

3.3 Options and Accessories: The County may in its discretion purchase from the successful Bidder options and accessories beyond what is called for in the Specifications, provided that such purchase does not create unfairness so as to defeat the purpose of the bid statutes, and provided the County is authorized by law to make such purchases without a formal bid process.

- 3.4 Documentation:** The successful Bidder will provide for all Products purchased under this Invitation to Bid written or electronic documentation that is complete and accurate, and sufficient to enable County employees with ordinary skills and experience to utilize such Products for the purpose for which the County is acquiring them.
- 3.5 Design and/or Manufacturer Requirement:** All Products and Services shall meet the Specifications set forth in **Section 4** of this ITB.
- 3.6 Contract Monitoring:** The County shall have the right to audit the Company's compliance with the terms and conditions of the Contract at such times as the County deems appropriate. Unless the County elects to terminate the Contract, the successful Bidder shall develop a written action plan to correct any Contract deficiency identified during these compliance audits, and shall submit such plan to the County within thirty (30) days of notification of non-compliance.
- 3.7 Site Visit:** At the option of the County, a plant and facility inspection may be required as described under **Section 2.8** of this Invitation to Bid.
- 3.8 Reporting:** The Company shall provide such written reports of purchasing and expenditures as may be requested by the County from time to time, including without limitation any reports described in the Specifications.
- 3.9 Audit:** During the term of the Contract and for a period of three (3) years after termination or expiration of this Contract for any reason, the County 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 Contract or the County's payment obligations. The County 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 County in excess of \$5,000 but for the audit, then the Company shall be required to reimburse the County for the cost of the audit.
- 3.10 Background Checks.**
The Company agrees that it has conducted or will conduct background checks on all personnel who will be working at the Charlotte service facility or delivering Products or Services under the Contract. The Company will conduct such background checks prior to the personnel commencing work hereunder, whether as part of the Company's standard pre-employment screening practices or otherwise. The Company will complete a background check on an annual basis for each person working at the Charlotte facility. Background check will include at a minimum:
- a. Criminal records search,
 - b. Identification verification; and
 - c. Proof of authorization to work in the United States.

The Company agrees if any personnel does not meet the background qualifications, he/she shall not be assigned to perform services under this Contract. The Company will notify the County immediately if a background check reveals any conviction(s). If there is any question as to whether any personnel meets the background qualifications, prior to assignment of any Services under this Contract, the Company shall contact the County immediately.

3.11 Multiple Contract Awards: The County reserves the right to award multiple Contracts for the Products and Services required by this ITB if the County deems multiple Contracts to be in the County's best interest.

In this Section of the ITB, a Bidder that enters into a Contract with the County may be referred to as the “successful Bidder” or the “Company.”

- 4.1 Scope of Work:** The successful Bidder shall provide twenty-six (26) Ford Escape “S” Model Sport Utility Vehicles (SUVs) in a customized and timely manner as may be required for a period of three (3) years after the Contract effective date. The County at its option may extend the Contract for up to two (2) additional one-year extensions unless the Company objects in writing at least ninety (90) days prior to the beginning of the extension term.

The Company will provide the specific brands of Products as listed in these Specifications.

All Products and component parts furnished under the Contract shall be new, shall meet all requirements of these Specifications and shall operate in full compliance with these Specifications

- 4.2 Manufacturer/Model:** Ford Escape SUVs have been road tested, evaluated and utilized by the County’s Land Use and Environmental Services Department (LUESA). The Ford Escape SUV has been determined to be the best multi-use passenger vehicle for the Department at this time and is specified due to its compatibility with the existing fleet. Therefore, the Ford Escape SUV is the only manufacturer make/model that will be acceptable for this solicitation. Bid responses offering manufacturer make/models other than the stated requirement will not be considered.

- 4.3 Quantities:** The County will issue purchase orders for quantities of Products as needed during the term of the Contract. The County reserves the right to purchase products and services according to actual need and does not guarantee quantities. The quantities listed in this ITB are estimates only, and may differ substantially from actual quantities ordered. Multiple orders will be placed on an as-needed basis during the term of the Contract.

- 4.4 Warranty:** All Products supplied under the Contract shall be covered by a manufacturer’s written guarantee and/or warranty that such Products will be: free from defects in materials, workmanship and performance for the lifetime of the Product; merchantable and in full conformity with the Specifications set forth in this ITB, industry standards, dimension charts and Bidder’s descriptions, representations and samples. The Company shall administer the warranty on the County’s behalf, and shall ensure that the manufacturer repairs or replaces at no charge to the County all Products that violate either the above warranty or the applicable manufacturer’s warranty.

4.4.1 The Company shall provide the County with two copies of the manufacturer’s written warranty for each vehicle.

4.4.2 It shall be the responsibility of the manufacturer to pay all shipping and delivery costs associated with warranty repairs.

- 4.5 Installation:** Only experienced professionals should install all products. All work must be performed according to the standards established by the terms, specifications, and drawings and meet manufacturer’s specifications and industry standards. It shall be the obligation of the Installer to obtain clarification from the County’s Project Manager concerning questions or conflicts in the specifications or drawings in a timely manner as to not delay the progress of the work.

- 4.6 Pricing:** Bids shall be submitted as a fixed unit cost per item, which includes shipping and delivery, any discounts, vendor mark up/profit, item cost and storage. No other charges are allowed.
- 4.7 Delivery:** All vehicles provided under this contract must be delivered F.O.B. Destination within 90 days from the placement of order. Workdays are Monday through Friday, excluding County, State and Federal recognized holidays. Delivery and freight charges are to be included in discount price. Failure to comply with this requirement shall be cause to terminate this contract unless such failure is confined to infrequent and isolated instances, which do not involve major purchases.
- 4.7.1 Deliveries must be made to:
- Fleet Management
Commission/Decommission Shop
5550 Wilkinson Blvd.
Charlotte NC 28208
- 4.7.2 Each order delivered must have a packing slip enclosed. The packing slip must clearly show the items ordered, unit of measure, contract pricing, items enclosed and identify any items on backorder.
- 4.8 Invoices:** The Company must submit invoices to the individual County Departments that place the order unless otherwise noted on the purchase order. Invoices must include the item number, description, unit cost, quantity and extended price, and contract or purchase order number of each item purchased. Every invoice must also include the County department that placed the order.
- 4.8.1 It is acknowledged and agreed that having correctly priced invoices is a material element of the proposal to the County. Failure by the Company to submit correct invoices may be grounds for termination of the contract. Without limiting the County's right to terminate the contract for incorrect pricing on invoices, the Company agrees to pay the County a service fee for correcting invoices equal to twenty-five dollars (\$25) for each item incorrectly priced on an invoice. Payment must be in the form of a deduction from other amounts owed to the Company.
- 4.8.2 Invoices must include only Products and Services that have been delivered and completed.
- 4.8.3 As a condition of payment, the Company must invoice the County for Products and Services within 60 days after such Products and Services are delivered. THE COMPANY WAIVES THE RIGHT TO CHARGE THE COUNTY FOR ANY PRODUCTS OR SERVICES THAT HAVE NOT BEEN INVOICED TO THE COUNTY WITHIN 60 DAYS AFTER SUCH PRODUCTS OR SERVICES WERE DELIVERED.
- 4.9 Items Under Contract:** The County reserves the right to add or delete items to this Contract if particular items should become discontinued or an upgraded item becomes available to the industry market. Any new or replacement items added will be subject to bid statute requirements. The County may also delete product items included in this Contract if items are no longer needed or no longer issued as part of uniforms.

4.10 Environmental Requirements.

The Company shall comply with applicable sections of County's Environmentally Preferable Purchasing Guide, which can be found at: <http://charmeck.org/MECKLENBURG/COUNTY/LUESA/SUSTAINABILITY/Pages/default.aspx> for products and services provided to the County.

Should the Company be unable to continue providing the product or Service meeting the EPPG requirements, it shall notify the County and provide written justification for why compliance is not practical. Prior written consent from an authorized County representative shall be required before substituting any alternative product or Service in addition to all other detailed contract amendment procedures.

4.10.1 Biodegradable.

Products must be capable of decomposing under natural conditions.

4.10.2 Ecosystem Impacts.

Please state any adverse impacts your product or service may have on the ecosystem; for example, endangered species, wetlands loss, fragile ecosystems, and erosion.

4.10.3 Energy Consumption.

Please include the total amount of energy consumed for product or service manufacture, use and disposal. Different sources of energy are associated with different environmental impacts.

4.10.4 Energy Efficiency.

Products must meet or exceed the Department of Energy (DOE)/Federal Energy Management Program's product energy efficiency recommendations which identify the top twenty five percent (25%) of energy efficiency for all similar products, or that meet the energy efficiency criteria of the Environmental Protection Agency (EPA)/DOE Energy Star program.

4.10.5 Pollution Prevention.

Please state your company's policy on "source reduction." The Pollution Prevention Act defines source reduction to mean any practice that: (1) Reduces the amount of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment or disposal, and (2) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants or contaminants. The term includes: equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training or inventory control.

4.10.6 Reusability.

Please state how many times your product may be reused. (Since reusable products generally require more upfront costs than disposable products, they are often subjected to a cost/benefit analysis in order to determine the life cycle cost).

4.10.7 Take-back.

Will the manufacturer or designee accept the product back at the end-of-life?

4.10.8 Waste Prevention.

Please state any design, manufacturing, purchase or use of materials or products (including packaging) associated with your product that reduces the amount or toxicity before the product becomes municipal solid waste.

- 4.11 Applicable Laws:** The Suppliers must be familiar with, have a working knowledge of, and comply with all federal, state, and local laws, statutes, ordinances and regulations as applicable to the service requirements of this ITB. These shall include the rules, regulations and interpretations of the North Carolina Department of Labor relative to Occupational Safety and Health Standards.
- 4.12 Permitting Responsibilities:** All permits and inspections are the sole responsibility of the successful Bidder.
- 4.13 No Limitations on Disclosure.** All Bidders agrees that the County shall be able to disclose and distribute to any persons or entities, without restriction, all uniforms, samples and other Products provided under in the course of this bid process or under the Contract. The Company specifically agrees that the County can and will provide samples of the uniforms and other Products provided under this Contract to the Company's competitors in any future procurement process.
- 4.14 County Department Participation:** Other County Departments shall be permitted to purchase items defined in this Contract. The Company shall be responsible for obtaining valid identification of such employees, and for verifying that such individuals are employed by the County and are authorized to make such purchases.
- 4.15 Returns and Restocking Charges:** The Company or applicable manufacturer must pick up any merchandise to be returned within five (5) days after the County notifies the Company of the return. The County will not pay restocking fees for merchandise that has been returned unless it is subject to minimum inventory requirements under this ITB or is a specialty item and the County has been notified, at the time of placement of order, of the potential restocking charge. The Company will issue a credit memo to the County within seven (7) calendar days of the return.
- 4.16 Placement of Orders:** All orders will be placed by County personnel on an as needed basis for the quantity required at the time during the term of the Contract. Orders will be placed by means of an approved authorization method.

4.17 Specifications for the 2014 Ford Escape SUV

REQUIREMENT: Ford Escape "S" Model Front Wheel Drive SUV for Mecklenburg County

GENERAL: The unit shall be new and unused, the latest current "S" model in production and shall have all standard equipment normally furnished on such models including the following below-listed specifications.

BIDDER MUST FILL IN THE Yes/No BOXES IN THE TABLE BELOW, IN ORDER TO INDICATE THEIR COMPLIANCE WITH THE SPEIFICATION LISTED. OTHERWISE, BIDDERS SHALL STATE THEIR SPECIFIC EXCEPTION FOR THE COUNTY'S REVIEW. FAILURE TO COMPLY WITH THIS REQUIREMENT MAY RENDER YOUR BID NON-RESPONSIVE.

To Be Completed By Bidder and returned with Bid Response:

	Comply		EXCEPTIONS
	Yes	No	
ENGINE:			
1. Minimum 4 cylinder gasoline powered			
2. Dry type air cleaner with replaceable element			
TRANSMISSION:			
1. Minimum six speed automatic			
2. Front wheel drive			
INTERIOR:			
1. To be equipped with a minimum of manual locks, windows, and exterior mirrors			
2. Cloth bucket front seats			
3. Cloth split bench rear seat			
4. Front and rear floor mats			
5. Carpet interior			

STEERING:			
1. Power steering equipped			
2. Adjustable tilt steering wheel			
BRAKES:			
1. Power assisted four wheel brakes			
2. Four wheel antilock braking system			
WHEELS AND TIRES:			
1. Minimum steel wheels with wheel covers			
2. Identical steel belted radial tires			
3. Temporary / Spare tire			
CAB:			
1. Manual air conditioning			
2. Minimum am/fm radio			
3. Seat belts, both sides			
4. Right and left hand sun visors			
5. All glass tinted			
6. Windshield wiper, 2-speed electric motor with intermittent feature and washer			
7. Minimum 4 keys capable of unlocking and starting the vehicle			
8. All-Weather floor Mats option code 50C to be included and installed			

COLORS:			
1. Vehicle – White exterior, black interior			
WARRANTY:			
1. Bumper to bumper: Minimum (3) years/36,000 miles			
2. Drivetrain: Minimum five (5) years/60,000 miles			
DELIVERY:			
1. These units shall be delivered to: Fleet Management Commission/Decommission Facility, 5550 Wilkinson Blvd., Charlotte NC 28208; and shall be new, complete and in operating condition.			
2. The inspection and acceptance of the vehicle will be performed by Mecklenburg County.			
3. The successful bidder shall be responsible to furnish the following materials upon or before delivery:			
(1) Copy of Dealer invoice			
(1) MSO/Certificate of origin			
(1) MVR-1 Title application			
(1) MVR-180 mileage/odometer statement			
(1) Copy of the P.O. issued to vendor			
(1) Warranty card and booklet per vehicle			
(1) Copy of manufacturer build sheet per vehicle			
(1) Copy of operator's manual per vehicle			
(1) Copy of Delayed Warranty Start Form			
4. North Carolina State Inspection shall be performed and printout delivered with vehicle.			
5. Original Invoice to be mailed to: Karla Garris Mecklenburg County 3205 Freedom Drive, Suite 101 Charlotte, NC 28208			
6. Vehicles to be delivered with a full tank of fuel.			

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

If an Infringement Claim occurs, the Company shall either: (i) procure for the County the right to continue using the affected Product or Service; or (ii) repair or replace the infringing Product or Service so that it becomes non-infringing, provided that the performance of the overall Product(s) and Service(s) provided to the County shall not be adversely affected by such replacement or modification. If the Company is unable to comply with the preceding sentence within thirty days after the County provides notice to the Company that it has been directed to cease use of a Product or Service, then such failure shall be deemed a Major Performance Failure and the County shall have the right to pursue any legal or equitable remedies it may have.

5.2 Insurance: Throughout the term of the Contract, the successful Bidder shall comply with the insurance requirements described in this Form. In the event the successful Bidder fails to procure and maintain each type of insurance required by this Form, or in the event the successful Bidder fails to provide the County with the required certificates of insurance, the County shall be entitled to terminate the Contract immediately upon written notice to the successful Bidder.

The successful Bidder agrees to purchase and maintain the following insurance coverage during the life of the Contract with an insurance company acceptable to Mecklenburg County, authorized to do business in the State of North Carolina:

A) **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 each occurrence/aggregate.

- B) **Commercial General Liability:** Bodily injury and property damage liability as shall protect the successful Bidder and any subcontractor performing work under the Contract from claims of bodily injury or property damage which arise from performance of the Contract, whether such work is performed by the successful Bidder, 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, services, completed operations, personal injury liability and contractual liability assumed under the indemnity provision of the Contract.
- C) **Workers' Compensation:** Meeting the statutory requirements of the State of North Carolina and Employers Liability - \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit, providing coverage for employees and owners.

The County shall be named as additional insured under the commercial general liability insurance for operations or services rendered under this Contract. The Company's insurance shall be primary to any self-funding and/or insurance otherwise carried by the County for all loss or damages arising from the Consultant's operations under this agreement. The Company and each of its subcontractors shall and does waive all rights of subrogation against the County and each of the Indemnitees, as defined in **Section 5.1**.

The successful Bidder shall not commence any work in connection with the Contract until it has obtained all of the types of insurance set forth in this Form, and such insurance has been approved by the County. The successful Bidder shall not allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been obtained and approved.

All insurance policies shall be with insurers qualified and doing business in North Carolina recognized by the Secretary of State and the Insurance Commissioner's Office. The successful Bidder shall furnish the County with proof of insurance coverage by certificates of insurance accompanying the Contract and shall name the County as an additional named insured under the commercial general liability.

Certificates of all required insurance shall contain the provision that the County will be given (30) days written notice of any intent to amend or terminate by either the insured or the insuring company.

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

**BID SUBMISSION FORM
ITB # 269-2014-005
2014 Ford Escape SUV**

This Bid is submitted by:

Company Name: _____

Representative (printed): _____

Representative (*signed*): _____

Address: _____

County/State/Zip: _____

Telephone: _____
(Area Code) Telephone Number

Facsimile: _____
(Area Code) Fax Number

E-Mail Address: _____

It is understood by the Vendor that the County reserves the right to reject any and all Bids, to make awards on all items or on any items according to the best interest of the County, to waive formalities, technicalities, to recover and re-bid this ITB. Bids are valid for one hundred twenty (120) calendar days from Bid Opening.

Company Name

Date

Authorized Signature

Please type or print name

Addenda Acknowledgement Form
ITB # 269-2014-005
Ford Escape SUV

1. **Bid/Bid Submission Check List:** Confirm by placing a check mark in the space provided that as the bidder or proposer the information listed below has been reviewed and complied with in the submission of a response to this Invitation to Bid/Request for Bids.

- (A) _____ Addenda acknowledgement. Please contact the Procurement Management representative to verify the number of addenda issued.

Procurement Services Rep. Name	Telephone Number
Janice Walters	(704) 336-5669

Addenda Receipt: The following confirms receipt of any and all addenda issued for this Invitation to Bid/Request for Bids:

Addendum #	Date Issued
_____	_____
_____	_____
_____	_____

- (B) _____ Bid/Bid document has been signed by authorized bidder/proposer official.
- (C) _____ Bid/Bid package has been properly labeled per the instructions. (See Section 1.6, page 3)
- (D) _____ Bid/Bid Response Package Forms
- Bid Submission Form One
 - Addenda Acknowledgement Form Two
 - Pricing Sheet Form Three
 - M/W/SBE Compliance Form Four
 - Vendor References Attachment 1
 - Specification Compliance Pages

2. **Exceptions:** The undersigned Bidder agrees to provide all Products and Services requested in the ITB for the price(s) set forth in the Pricing Sheet, all in strict conformance with the terms, conditions and specifications set forth in the ITB (including any addenda or amendments), subject only to the exceptions stated in the chart below. Exceptions representing material changes to Bid terms are grounds for rejection of the Bidder's Bid.

ITB Section Number	ITB Section Title	Exception and Proposed Change to ITB

The signature below certifies that: (a) the Bidder's Bid complies with the requirements of this Invitation to Bid; (b) that items 1(A) through 1(D) of the above checklist have been verified as complete, and (c) that the Bidder takes no exception to the terms of the ITB other than those listed in the chart contained in this Form.

Date: _____

Bidder: _____
Print name of Bidder

By: _____
Print name and title of signatory

Signature: _____

PRICING SHEET
ITB # 269-2014-005
Ford Escape SUV

The undersigned proposes to furnish the following items in strict conformance to the bid specifications and bid invitation issued by Mecklenburg County for this bid. Any exceptions are clearly marked in the attached copy of bid specifications.

BIDS ARE DUE NO LATER THAN 2:00P.M., AUGUST 22, 2013

<u>Items</u>	<u>Estimated Quantities</u>	<u>Delivery Time</u>	<u>Unit Cost</u>	<u>Extended Cost</u>
Ford Escape "S" SUV	26			
TOTAL BID				
			\$	\$

The Total Bid Price must be inclusive of all equipment, labor, delivery, fuel, installation, consultation, vendor profit, any incidentals and all other costs associated with this project. No additional cost will be allowed.

The County reserves the right to award multiple Contracts for the Products and Services required by this ITB if the County deems multiple Contracts to be in the County's best interest. For example, the County may award a Contract for all uniforms and uniform related services to one vendor, and a contract for all equipment and leather goods to another vendor. Likewise, the County may award a Contract for all Products except the utility uniform to one vendor, and a Contract for the utility uniform to another vendor. The Pricing Sheet in Section 6 provides options for the Bidder to propose alternative pricing if the Bidder is not awarded various portions of the Contract.

Payment Terms: _____

The undersigned hereby certifies the Bidder has read the terms of this bid document, including the sample contract Section 7 and is authorized to bind the firm to the information herein set forth.

Date: _____

 Legal Name of Firm

BY: _____

 Name and Title of Person Signing (please print)

Name of Company	BBE NBE ABE HBE WBE SBE	Description of Work	Dollar Value

A list of County certified M/W/SBE bidders available to offer quotes and prices as subcontractors is available on the Internet at <http://smallbiz.charmeck.org>. If you need additional firms, which offer other services, or if you have any questions concerning the M/W/SBE provision, contact the M/W/SBE office at 704-336-6186.

The County reserves the right to request verification of these payments.

The County's Minority, Women, & Small Business Enterprise Program (revised June 15, 2005) is hereby incorporated into these Specifications by reference.

The undersigned hereby certifies that the bidder has read the terms of this compliance and is authorized to bind the firm to the information herein set forth.

Date: _____

Name of Company

Name, Title and Signature

Proposed Product or Service

Total Dollar Amount Bid

**THIS IS A SAMPLE CONTRACT FOR REFERENCE ONLY
ACTUAL CONTRACT MAY DIFFER**

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

CONTRACT NO. _____

**CONTRACT TO PROVIDE
2014 Ford Escape Model "S" SUVs**

This Contract (the "Contract") is entered into as of this ___ day of _____ 2013 (the "Effective Date"), by and between (insert Company name), a corporation doing business in North Carolina (the "Company"), and Mecklenburg County, a political subdivision of the State of North Carolina (the "County").

Statement of Background and Intent

- A. The County issued An Invitation to Bid 269-2014-005 dated July requesting bids from qualified firms to provide the County with 2014 Ford Escape SUVs, hereafter referred to as ("Products"). This Invitation to Bid, together with all attachments and any amendments, is referred to herein as the "ITB".
- B. The Company submitted a bid in response to ITB # 269-2014-005 on August 22, 2013. This bid, together with all attachments and separately sealed confidential trade secrets, is referred to herein as the "Proposal."
- C. The County awarded this contract on _____, 2013 to Company to provide 2014 Ford Escape SUVs to the County all in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and conditions contained in this Contract, the parties agree as follows:

A G R E E M E N T

1. **INCORPORATION OF EXHIBITS.** The following Exhibits are attached to this Agreement and incorporated into and made a part of this Contract by reference:
 - Exhibit A: **Pricing Sheet** (Bid Response Form 3 as submitted by the Company)
 - Exhibit B: **Terms and Conditions (Section 2** of the ITB and all addenda thereto, marked to show any exceptions taken by the Company on Bid Response Form 2)
 - Exhibit C: **Special Conditions (Section 3** of the ITB and all addenda thereto, marked to show any exceptions taken by the Company on Bid Response Form 2)
 - Exhibit D: **Specifications** (Section 4 of the ITB and all addenda thereto, marked to show any exceptions taken by the Company in its Bid)
 - Exhibit E: **Insurance Requirements** (Section 5 of the ITB)
 - Exhibit F: **Bid Response Forms** (the Bid Response Forms contained in **Section 6** of the ITB and submitted by the Company, except for Form 3, the Pricing Sheet)

Each reference to the Contract shall be deemed to include all Exhibits. Any conflict between language in an Exhibit to this Contract and the main body of this Contract shall be resolved in favor of the main body of this Contract. The materials in **Exhibit G** shall be deemed incorporated into this Contract only to the extent they do not conflict with the main body of this Contract or any of the other Exhibits. Any conflict between **Exhibit G** and any other Exhibit shall be resolved in favor of the other Exhibit. Any limitations of liability, limitations of warranty, exclusion of damages or similar terms contained in **Exhibit G** shall be deemed in conflict and shall be excluded. Each reference to (Company Name) in the Exhibits and Appendices shall be deemed to mean the Company.

2. **DEFINITIONS.** The following terms shall have the following meanings for purposes of this Contract (including all Exhibits):

2.1. *EFFECTIVE DATE.* The term "Effective Date" refers to the effective date identified in the first paragraph of this Contract.

2.2. *PRODUCTS.* The term "Products" shall mean Police Uniforms and Related Equipment and all other related items the Company agreed to provide to the County in its Bid.

2.3. *SERVICES.* The term "Services" shall include all services that the Company agreed to provide to the County in its Bid.

3. **TERM.**

The initial term of this Agreement will be for three (3) years from the Effective Date with an option to renew for two (2) additional one-year terms. This Agreement may be extended only by a written amendment to the contract signed by both parties.

4. **AGREEMENT TO PROVIDE PRODUCTS AND SERVICES.**

The Company shall provide the Products and Services in accordance with the terms and conditions set forth in this Contract and the attached Exhibits. Except as set forth on **Exhibit A**, the prices set forth in **Exhibit A** constitute all charges payable by the County for the Products and Services, and all labor, materials, equipment, transportation, facilities, storage, information technology, permits, and licenses necessary for the Company to provide the Products and Services.

5. **COMPENSATION.**

The County shall pay the Company for the Products and Services delivered in compliance with the Specifications at the **unit prices** set forth in **Exhibit A**. This amount constitutes the maximum fees and charges payable to the Company in the aggregate under this Contract and will not be increased except by a written amendment duly executed by both parties in compliance with the price adjustment provisions set forth in **Exhibit C**. The Company shall not be entitled to charge the County any prices, fees or other amounts that are not listed in **Exhibit A**.

6. **BILLING.**

Each invoice sent by the Company shall include all reports, information and data required by this Contract (including the Exhibits) necessary to entitle the Company to the requested payment. The Company shall mail all invoices to:

Mecklenburg County
LUESA
Attn.: Amy Hollingsworth, Project Manager

Hal – Marshall Bldg.
700 N Tryon Street
Charlotte, NC 28202

Payment of invoices shall be due within thirty (30) days after the County has received all of the following: (a) an accurate, properly submitted invoice, (b) all reports due for the month covered by the invoice; and (c) any other information reasonably requested by the County to verify the charges contained in the invoice. Invoices must include state and local sales tax.

7. **GENERAL WARRANTIES.**

Company represents and warrants that:

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

8. **ADDITIONAL REPRESENTATIONS AND WARRANTIES.**

Company represents warrants and covenants that:

- 8.1 The Products and Services shall comply with all requirements set forth in this Contract, including but not limited to the attached Exhibits;
- 8.2 All work performed by the Company and/or its subcontractors pursuant to this Contract shall meet industry accepted standards, and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;
- 8.3 Neither the Services, nor any Products provided by the Company under this Contract will infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party; and
- 8.4 The Company shall comply in all material respects with all applicable federal, state and local laws, regulations and guidelines in providing the Products and the Services, and shall obtain all necessary permits and licenses.

9. **TERMINATION.**

9.1 *TERMINATION WITHOUT CAUSE.* The County may terminate this Contract at any time without cause by giving sixty (60) days written notice to the Company. The Company may terminate this Contract at any time without cause by giving one hundred and eighty (180) days written notice to the County.

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

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

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

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

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

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

9.4 *NO EFFECT ON TAXES, FEES, CHARGES, OR REPORTS.* Any termination of the Contract shall not relieve the Company of the obligation to pay any fees, taxes or other charges then due to the County, nor relieve the Company of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve the

Company from any claim for damages previously accrued or then accruing against the Company.

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

9.6 **NO SUSPENSION.** In the event that the County disputes in good faith an allegation of default by the Company, notwithstanding anything to the contrary in this Contract, the Company agrees that it will not terminate this Contract or suspend or limit the delivery of Products or Services or any warranties or repossess, disable or render unusable any Software supplied by the Company, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.

9.7 **AUTHORITY TO TERMINATE.** The County Manager or their designee is authorized to terminate this Contract on behalf of the County.

10. **TRANSITION SERVICES UPON TERMINATION.** Upon termination or expiration of this Contract, the Company shall cooperate with the County to assist with the orderly transfer of the Products, Services, functions and operations provided by the Company hereunder to another provider or to the County as determined by the County in its sole discretion. The transition services that the Company shall perform if requested by the County include but are not limited to:

- a. Working with the County to jointly develop a mutually agreed upon transition services plan to facilitate the termination of the Services; and
- b. Notifying all affected vendors and subcontractors of the Company of transition activities;
- d. Performing the transition service plan activities;
- e. Answering questions regarding the products and services on an as-needed basis; and
- f. Providing such other reasonable services needed to effectuate an orderly transition to a new system.

11. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties established by this Contract is solely that of independent contractors, and nothing contained in this Contract shall be construed to (i) give any party the power to direct or control the day-to-day activities of the other; (ii) constitute such parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking; (iii) make either party an agent of the other for any purpose whatsoever, or (iv) give either party the authority to act for, bind, or otherwise create or assume any obligation on behalf of the other. Nothing herein shall be deemed to eliminate any fiduciary duty on the part of the Company to the County that may arise under law or under the terms of this Contract.

12. **NON-DISCRIMINATION.** The County has adopted a Commercial Non-Discrimination Policy that is described in Section 2, Article V of the Charlotte County Code, and is available for review on the County's website (the "Non-Discrimination Policy"). The Company agrees to comply with the Non-

Discrimination Policy, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the Company shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, suppliers, or commercial customers in connection with a County contract or contract solicitation process, nor shall the Company retaliate against any person or entity for reporting instances of such discrimination. The Company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on County contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace. The Company understands and agrees that a violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of the Company from participating in County contracts or other sanctions.

As a condition of entering into this Contract, the Company agrees to: (a) promptly provide to the County all information and documentation that may be requested by the County from time to time regarding the solicitation, selection, treatment and payment of subcontractors in connection with this Contract; and (b) if requested, provide to the County within sixty days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Company has used on County contracts in the past five years, including the total dollar amount paid by Contractor on each subcontract or supply contract. The Company further agrees to fully cooperate in any investigation conducted by the County pursuant to the County's Non-Discrimination Policy as set forth in Section 2, Article V of the County Code, to provide any documents relevant to such investigation that are requested by the County, and to be bound by the award of any arbitration conducted under such Policy. The Company understands and agrees that violation of this clause shall be considered a material breach of this Contract and may result in contract termination, disqualification of the Company from participating in County contracts and other sanctions.

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

13. **COMPANY WILL NOT SELL OR DISCLOSE DATA.** The Company will treat as confidential information all data provided by the County in connection with this agreement. County data processed by the Company shall remain the exclusive property of the County. The Company will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the County in any manner except that contemplated by this agreement.
14. **WORK ON COUNTY'S PREMISES.** The Company will ensure that its employees and agents shall, whenever on the County's premises, obey all instructions and directions issued by the County's project manager with respect to work on the County's premises. The Company agrees that its personnel and the personnel of its subcontractors will comply with all rules, regulations and security procedures of the County when on the County's premises.
15. **DRUG-FREE WORKPLACE.** The County is a drug-free workplace employer. The Company hereby certifies that it has or it will within thirty (30) days after execution of this Contract:

- 15.1 Notify employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substance is prohibited in the workplace and specifying actions that will be taken for violations of such prohibition;
- 15.2 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;
- 15.3 Notify each employee that as a condition of employment, the employee will (i) abide by the terms of the prohibition outlines in (a) above, and (ii) notify the Company of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction;
- 15.4 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;
- 15.5 Make a good faith effort to continue to maintain a drug-free workplace for employees; and
- 15.6 Require any party to which it subcontracts any portion of the work under the contract to comply with the provisions of this Section.

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

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

Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment, or waiver of any provision of this Contract shall be sent to:

For The Company:	For The County:
	Janice Walters
	Procurement Management
	600 East Fourth Street
	Charlotte, NC 28202
	Phone: (704) 336-5669
	Fax: (704) 632-8483
	E-mail: jwalters@charlottenc.gov
With Copy To:	With Copy To:
	Tyrone Wade
	Deputy County Attorney
	600 East Fourth Street
	Charlotte, NC 28202
	Phone: 704-336-4135
	Fax:
	E-mail: TyroneC.Wade@mecklenburgcountync.gov

All other notices shall be sent to the other party's Project Manager at the most recent address provided in writing by the other party.

17. MISCELLANEOUS

- 17.1 ENTIRE AGREEMENT. This Contract, including all Exhibits and Attachments constitute the entire agreement between the parties with respect to the subject matter herein. There are no other representations, understandings, or agreements between the parties with respect to such subject matter. This Contract supersedes all prior agreements, negotiations, representations and proposals, written or oral. Notwithstanding the forgoing, the parties agree that the ITB and the Bid are relevant in resolving any ambiguities that may exist with respect to the language of this Contract
- 17.2 AMENDMENT. No amendment or change to this Contract shall be valid unless in writing and signed by the party against whom enforcement is sought. Amendments that involve or increase in the amounts payable by the County may require execution by a Key Business Executive, the County Manager, or an Assistant County Manager; depending on the amount. Some increases may also require approval by County Council.
- 17.3 GOVERNING LAW AND JURISDICTION. North Carolina law shall govern the interpretation and enforcement of this Contract, and any other matters relating to this Contract (all without regard to North Carolina conflicts of law principles). All legal actions or other proceedings relating to this Contract shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By execution of this Contract, the parties submit to the jurisdiction of such 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.
- 17.4 BINDING NATURE AND ASSIGNMENT. This Contract shall bind the parties and their successors and permitted assigns. Neither party may assign this Contract without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void. For purposes of this Section, a Change in Control, as defined in **Section 23.10** constitutes an assignment.
- 17.5 SEVERABILITY. The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Contract or the Exhibits shall not affect the validity of the remaining portion of this Contract or Exhibits so long as the material purposes of this Contract can be determined and effectuated. If any provision of this Contract or Exhibit is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Contract shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.
- 17.6 NO PUBLICITY. No advertising, sales promotion or other materials of the Company or its agents or representations may identify or reference this Contract or the County in any manner without the prior written consent of the County. Notwithstanding the forgoing, the parties agree that the Company may list the County as a reference in responses to requests for proposals, and may identify the County as a customer in presentations to potential customers.
- 17.7 WAIVER. No delay or omission by either party to exercise any right or power it has under this Contract shall impair or be construed as a waiver of such right or power. A waiver by

either party of any covenant or breach of this Contract shall not constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Contract shall be effective unless in writing and signed by the party waiving the rights.

- 17.8 **CHANGE IN CONTROL.** In the event of a change in “Control” of the Company (as defined below), the County shall have the option of terminating this Contract by written notice to the Company. The Company shall notify the County within ten days of the occurrence of a change in control. As used in this Contract, the term “Control” shall mean the possession, direct or indirect, of either (i) the ownership of or ability to direct the voting of, as the case may be fifty-one percent (51%) or more of the equity interests, value or voting power in the Company or (ii) the power to direct or cause the direction of the management and policies of the Company whether through the ownership of voting securities, by contract or otherwise.
- 17.9 **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 County in connection with this Contract.
- 17.10 **FAMILIARITY AND COMPLIANCE WITH LAWS AND ORDINANCES.** The Company agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Services. The Company further agrees that it will at all times during the term of this Contract be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to workers’ compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all OSHA regulations applicable to the work.
- 17.11 **TAXES.** The Company shall pay all applicable federal, state and local taxes which may be chargeable against the performance of the Services.
18. **NON-APPROPRIATION OF FUNDS.** If the Board of County Commissioners does not appropriate the funding needed by the County to make payments under this Contract for a given fiscal year, the County 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 County will promptly notify the Company of the non-appropriation and this Contract will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by the County, which is attributable to non-appropriation of funds shall constitute a breach of or default under this Contract.
19. **CONFIDENTIALITY.**
- 19.1 **DEFINITIONS.** As used in this Contract, The term “Confidential Information” shall mean any information, in any medium, whether written, oral or electronic, not generally known in the relevant trade or industry, that is obtained from the County or any of its suppliers, contractors or licensors which falls within any of the following general categories:
- 19.1.1. *Trade secrets.* For purposes of this Contract, trade secrets consist of information of the County 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.

- 19.1.2. *Information of the County or its suppliers, contractors or licensors marked "Confidential" or "Proprietary."*
- 19.1.3. *Information relating to criminal investigations conducted by the County, and records of criminal intelligence information compiled by the County.*
- 19.1.4. *Information contained in the County's personnel files, as defined by N.C. Gen. Stat. 160A-168. This consists of all information gathered by the County about employees, except for that information which is a matter of public record under North Carolina law.*
- 19.1.5. *Citizen or employee social security numbers collected by the County.*
- 19.1.6. *Computer security information of the County, 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.*
- 19.1.7. *Local tax records of the County that contains information about a taxpayer's income or receipts.*
- 19.1.8. *Any attorney / client privileged information disclosed by either party.*
- 19.1.9. *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.*
- 19.1.10. *The name or address of individual home owners who, based on their income, have received a rehabilitation grant to repair their home.*
- 19.1.11. *Building plans of County-owned buildings or structures, as well as any detailed security plans.*
- 19.1.12. *Billing information of customers compiled and maintained in connection with the County providing utility services*
- 19.1.13. *Other information that is exempt from disclosure under the North Carolina public records laws.*

Categories **19.1.3** through **19.1.13** above constitute "Highly Restricted Information," as well as Confidential Information. The Company acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Contract, and agrees that: (a) all provisions in this Contract applicable to Confidential Information shall apply to Highly Restricted Information; and (b) the Company will also comply with any more restrictive instructions or written policies that may be provided by the County from time to time to protect the confidentiality of Highly Restricted Information.

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

- 19.2. *RESTRICTIONS*. Company shall keep the Confidential Information in the strictest confidence, in the manner set forth below:
- 19.2.1. Company shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information, except as authorized by the County in writing.
 - 19.2.2. 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 County or Company having a need to know such Confidential Information for purpose of performing work contemplated by written agreements between the County and the Company, and who has executed a confidentiality agreement incorporating substantially the form of this the Contract. Company shall not directly or indirectly, disclose, divulge, reveal, report or transfer Highly Restricted to any third party without the County's prior written consent.
 - 19.2.3. 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 this Contract or other written agreements between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.
 - 19.2.4. Company shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information.
 - 19.2.5. 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 this Contract.
 - 19.2.6. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, Company shall assert this Contract as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.
 - 19.2.7. All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to the County or destroyed upon satisfaction of the purpose of the disclosure of such information.
 - 19.2.8. Company shall restrict employee access to the Confidential Information to those employees having a need to know for purposes of their jobs.
 - 19.2.9. Company shall take reasonable measures to prevent the use or disclosure of Confidential Information by its employees in a manner not permitted by this Contract. The Company shall have each of its employees who will have access to the Confidential Information sign a confidentiality agreement which provides the County and its vendors, licensors, subcontractors, employees and taxpayers the same level of protection as provided by this Contract.

19.3. EXCEPTIONS. The County agrees that Company shall have no obligation with respect to any Confidential Information that the Company can establish:

19.3.1. Was already known to Company prior to being disclosed by the County;

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

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

19.3.4. Was used or disclosed by Company with the prior written authorization of the County;

19.3.5. 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 County notice of such requirement or request;

19.3.6. Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the Company shall take reasonable steps to obtain an agreement or protective order providing that this Contract will be applicable to all disclosures under the court order or subpoena.

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

(INSERT COMPANY NAME)

BY: _____

TITLE: _____

ATTESTED:

COUNTY CLERK'S OFFICE

MECKLENBURG COUNTY

BY: _____

BY: _____

TITLE: _____

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

**MECKLENBURG COUNTY
FINANCE DEPARTMENT**

BY: _____
(signature)

TITLE: _____

APPROVED AS TO INSURANCE REQUIREMENTS:

BY _____

**EXHIBIT A
PRICING SHEET
FORM 3 OF 269-2014-005**

**EXHIBIT B
TERMS AND CONDITIONS
SECTION 2 OF 269-2014-005**

Exhibit C
SPECIAL CONDITIONS
SECTION 3 OF 269-2014-005

**EXHIBIT D
SPECIFICATIONS
SECTION 4 OF 269-2014-005 AND ALL ADDENDA**

EXHIBIT E
INSURANCE REQUIREMENTS
SECTION 5 OF 269-2014-005

**EXHIBIT F
BID RESPONSE FORMS
SECTION 6 OF 269-2014-005**

REFERENCES

Company Name: _____

List three (3) clients, for whom you have provided services similar to those outlined in this Invitation to Bid, for reference check:

NAME OF FIRM:
ADDRESS OF FIRM: _____ _____
CONTACT PERSON:
TELEPHONE NUMBER:
FAX NUMBER:
NAME OF FIRM:
ADDRESS OF FIRM: _____ _____
CONTACT PERSON:
TELEPHONE NUMBER:
FAX NUMBER:
NAME OF FIRM:
ADDRESS OF FIRM: _____ _____
CONTACT PERSON:
TELEPHONE NUMBER:
FAX NUMBER: