



REQUEST FOR QUALIFICATIONS

FOR

ON-CALL MATERIALS TESTING AND SPECIAL INSPECTION SERVICES

DATE: February 28, 2024

(FEDERAL and NON-FEDERAL TASK ORDER PROJECTS)

INTRODUCTION

A. INVITATION TO PROPOSE

Pursuant to this Request for Qualifications (“RFQ”), Charlotte Douglas International Airport (“CLT” or “Airport”), which is owned and operated by the City of Charlotte, North Carolina, is seeking statement of qualifications (“SOQ”) from qualified and experienced firms (individually or collectively referred to as “Firm” or “Company”) interested in providing On-Call Materials Testing and Special Inspection Services for the Airport (the “Services”). The Scope of Services is attached hereto as **Exhibit A**.

CLT anticipates selecting multiple service providers based on qualifications presented in response to this RFQ. Selected Firms will provide the Services to CLT on an as-needed basis pursuant to and in accordance with the terms of a professional services agreement, a sample form copy of which is included as **Exhibit H** (the “Agreement”). Firms are advised to carefully read and review the Agreement as they prepare their SOQs in response to this RFQ. CLT reserves the right to revise the terms of the Agreement at any time during the RFQ process and to negotiate different terms with the selected Firm.

The Agreement(s) between the City of Charlotte (Sponsor of the Airport) and the selected Firms will be subject to all applicable Federal Rules and Regulations as identified in AC 150/5100-14E. The most recent version of the Federal Contract Provisions for Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects can be found at https://www.faa.gov/documentLibrary/media/Advisory_Circular/150-5100-14E.pdf

Firms are encouraged to also carefully review all sections of this RFQ including all attachments and exhibits as they prepare their SOQs. Failure to comply with the terms, conditions and requirements of this RFQ may result in disqualification of the Firm in the sole discretion of CLT. Firms will only be eligible for Services if their SOQs clearly include the experience necessary to complete the general duties for the specific type of projects set forth in Exhibit A or other substantially similar projects.

B. RFQ EXHIBITS

The following exhibits are attached to this RFQ and made part hereof:

Exhibit A	Scope of Services
Exhibit B	Sample Task Order Document (TOD)
Exhibit C-1	DBE Compliance Instructions and DBE Form #3
Exhibit C-2	CBI Program Instructions and CBI Form #3
Exhibit D	City Non-Discrimination Certification
Exhibit E	Certification of Offeror Regarding Tax Delinquency and Felony Convictions
Exhibit F	Certification of Offeror Regarding Lobbying and Influencing Federal Employees
Exhibit G	Proposed Project List – Not Applicable and Intentionally Omitted
Exhibit H	Sample Form Professional Services Agreement

C. RFQ SCHEDULE

DATE	ACTIVITY (All times are ET)
February 28, 2024	Issue RFQ
March 13, 2024	Deadline for Submission of Written Questions at 5pm
March 27, 2024	Statement of Qualifications are due at 5pm

CLT reserves the right to modify the deadline set forth in the above table in its sole discretion. Any such modifications will be stated in an addendum as described in Section II. B below.

D. DISADVANTAGED BUSINESS ENTERPRISE (“DBE”) PROGRAM and CHARLOTTE BUSINESS INCLUSION (“CBI”) PROGRAM

The City complies with two different programs: the Disadvantaged Business Enterprise (“DBE”) Program and the Charlotte Business INclusion (“CBI”) Program, depending on the funding source associated with the Services for each project.

The DBE Program is subject to the requirements of 49 CFR Part 26 – *Participation by DBE in Department of Transportation Financial Assistance Programs* and the City’s DBE Program. A complete copy of the City’s DBE program can be found at www.cltairport.com. Instructions regarding compliance with the DBE Program and form copies of DBE Form #3 – Utilization Commitment – are attached as **Exhibit C-1**.

The CBI Program is based on the City’s long history of creating and implementing strategies to support and encourage local business growth. In 2013, the City Council adopted the CBI Policy to promote diversity, inclusion, and local business opportunities in the City’s contracting and procurement process for Minority, Women, and Small Business Enterprises (“MWSBEs”). A complete list of City of Charlotte certified Small Business Enterprises (“SBEs”) and City of Charlotte registered Minority and Women Business Enterprises (MWBEs) is available on the City’s InclusionCLT website: <http://charlotte.diversitycompliance.com>. Instructions regarding compliance with the CBI Program and copies of CBI Form #3 – Utilization Commitment – are attached as **Exhibit C-2**.

A DBE participation goal (“DBE Goal”) or a CBI participation goal (“CBI Goal”) will be negotiated for each Task Order assigned under the Firm’s Agreement. The type of goal will be dependent on the funding source of the Services that are assigned to the selected Firm. This requirement will be made part of the selected Firm’s Agreement.

Since the assigned Services may be federally or non-federally funded, the City would like to see the DBE and CBI firms that Proposers intend to utilize on assigned Services under this Agreement. Firms are required to complete and attach Form #3 – DBE/MWSBE Utilization Commitment to their SOQ. **Please note, Form #3 is the ONLY form that should be attached to the SOQ.**

The selected Firm will be required to submit DBE/CBI Form #4 – Letter of Intent for each DBE/MWSBE the selected Firm commits to use on assigned Services to meet the DBE requirements. Letters of Intent are due no later than three (3) business days from the time they are requested by CLT, unless otherwise

agreed by the parties. During the term of the Agreement, the selected Firm shall be required to submit payment information into the City's InclusionCLT system.

E. TITLE VI SOLICITATION NOTICE

CLT, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all Firms that it will affirmatively ensure that any contract entered into pursuant to this RFQ, disadvantaged business enterprises will be afforded full and fair opportunity to submit proposals in response to this request and will not be discriminated against on the grounds of race, color, or national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.

F. FEDERAL FAIR LABOR STANDARDS ACT SOLICITATION NOTICE

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The Consultant has full responsibility to monitor compliance to the referenced statute or regulation. The Consultant must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

G. TRADE RESTRICTION CERTIFICATION

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror –

- 1) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);
- 2) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
- 3) has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18 USC § 1001.

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide

immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR § 30.17, no contract shall be awarded to an Offeror or subcontractor:

- 1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR; or
- 2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list; or
- 3) who incorporates in the public works project any product of a foreign country on such USTR list.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

II. RFQ SELECTION PROCESS

A. POINT OF CONTACT

The point of contact for all submissions and correspondence regarding this RFQ will be as follows:

RFQ Project Manager – Ryan Lingholm

Email: Ryan.Lingholm@cltairport.com

Information related to this RFQ, including any addenda, will be posted to eBuilder Bid Portal using the link below. Written request for clarification must be submitted electronically through the eBuilder Bid Portal Q&A Board:

<https://gateway.app.e-builder.net/app/bidders/landing?accountid=80fe0a4a-0c8f-4fcd-ac93-cc9db65522cb&projectid=5d56a1f5-a212-49cb-8b36-009b9d822b7a&bidpackageid=a468cd00-af53-4b4a-ac9c-bb5c30b1a0f3>

B. INTERPRETATION AND ADDENDA

No interpretation or clarification regarding this RFQ will be made verbally to any Firm. Requests for interpretation or clarification must be submitted electronically to the RFQ Project Manager. When submitting a request for interpretation or clarification, Firms are encouraged to reference the RFQ page and topic number pertinent to the question(s). All questions must be submitted no later than the date and time stated in the RFQ Schedule as the deadline for submission of questions. Any questions received after that time will not be addressed.

Interpretations, clarifications and supplemental instructions from CLT will be in the form of a written addendum, which will be posted to the CLT website at www.cltairport.com, select “Advertising for Bids and Proposals,” select “Business with CLT.”

Only the written interpretations, clarifications or supplemental instructions set forth in the posted addenda shall be binding, and Firms are warned that no other source is authorized to give information concerning, explaining or interpreting this RFQ.

C. ATTEMPTS TO INFLUENCE THE SELECTION PROCESS

With the exception of written requests for interpretation or clarification submitted to the RFQ Project Manager as described in Section II.B. above, Firms, including any and all persons acting on their behalf, are strictly prohibited from contacting elected or appointed City officials, officers, or employees, on or regarding any matter relating to this RFQ from the time the RFQ is issued until the start of the open business meeting at which City Council is asked to approve the contract between the City and the selected Firm.

CLT reserves the right to disqualify any Firm who contacts a City or CLT official, employee, representative, contractor, or agent concerning this RFQ other than in accordance with this section.

D. RFQ ACKNOWLEDGMENT

Firms shall thoroughly examine and become familiar with this RFQ, including forms, attachments, exhibits and any addenda that may be issued. The failure or the neglect of a Firm to receive or examine any RFQ document shall in no way relieve it from any obligation with respect to its SOQ or the obligations that flow from the submission and selection of an RFQ. No claim based upon a lack of knowledge or understanding of any provision of this RFQ shall be allowed.

E. SELECTION CRITERIA AND MINIMUM REQUIREMENTS

Upon review and evaluation of all qualifying SOQs, including any interviews that the CLT may require, the Evaluation Committee will select and recommend the Firm or Firms that, in its sole judgment, is most responsive in meeting the requirements and objectives of this RFQ as set forth below.

1. Demonstrated Firm Experience (Weight 30%)

- a. Prime Firm. Demonstrated experience of the Prime Firm in providing similar services for comparable airport projects within previous five (5) years; identify key qualifications, certifications, credentials, and office locations where the work will be performed.
- b. Subconsultant Firm. Demonstrated experience of the Subconsultant Firms in providing similar services for relevant projects in airports, transportation facilities, or similarly scaled or complex facilities within previous five (5) years; identify key qualifications, certifications, credentials, and office locations where the work will be performed
- c. Key Individuals. Demonstrated experience of key individuals, including name, title, professional qualifications, certification and licenses, education, specific role for this project, prior relevant projects. At a minimum include the following individuals: 1. Principal in Charge/Officer, 2. Project Manager, 3. Project Engineer, 4. Lead Designer/Production Lead, 5. Discipline Leads, 6. Chief Estimator, 7. Quality Control Coordinator. Or recommend and include key staff as needed.

2. Understanding of the Project Scope (Weight 25%)

Prepare a statement which describes the Proposer's understanding of the work involved in performing the Scope of Work which is described in Exhibit A. Discuss understanding of the proposed Scope of Work; the complexity, phasing, challenges, and problems involved in planning and performing that work; approaches and philosophy for dealing with problems; sensitivity and experience dealing with key issues; and any additional issues or matters relating to the Scope of Work which the Proposer believes should be addressed.

3. Project Execution (Weight 25%)

- a. Organization Structure. Provide an organizational chart both graphically and in narrative format. The Organizational Chart and narrative must provide a description of how it will organizationally provide the Services, as well as depict the organizational relationship of its key personnel to that of the Principal-in-Charge and other key members of the management team. Provide a description of how this Organizational Structure will facilitate managing the Services requested and how an efficient flow of information will be realized from the Organizational Structure to ensure all products are fully coordinated within the organization when provided.

- b. Quality Control Plan. Discuss how Quality Control will be achieved and how design reviews and Team approvals will be achieved. Discuss the authority of the leader of this process.
 - c. Technical Resources. Describe the ability to provide graphics and renderings suitable for presentation at meetings with elected officials, media events, public meetings, and printed and/or web based publications; and ability to provide plans in AutoCAD and provide the City with drawing files (See “Digital CAD Specifications for Airport Projects” attached to the Agreement); Provide relevant examples.
4. **DBE/CBI Programs. (Weight 10%)**
Provide a description of the Firm’s proposed plan to comply with the DBE/CBI Programs. The Firm is required to submit a DBE/CBI Form #3 for each proposed DBE/MWSBE subcontractor that will participate on the Work.
5. **SOQ responsiveness and completeness (Weight 10%)**
- a. Identify contract terminations within previous 10 years at other airports and explain circumstances.
 - b. Identify bankruptcies within previous 10 years and explain circumstances.
 - c. Identify pending claims or lawsuits within the previous 10 years between Firm and other airports and explain circumstances.

F. EVALUATION COMMITTEE AND AWARD OF CONTRACT

An Evaluation Committee will review all SOQs. As part of the evaluation process, the Evaluation Committee may engage in discussions with any Firm to determine in greater detail the Firm's qualifications and to learn about the Firm's proposed method of performance of the Work.

CLT may in its discretion schedule follow-up interviews with one or more Firms. During such interviews, Firms will be required to present its qualifications and to respond in detail to any questions posed by the Evaluation Committee. Firms will be notified in advance of the time and format of such interviews.

The Evaluation Committee will consider all relevant materials and information in making its selection. The Evaluation Committee will select and recommend the Firm that it determines, in its sole discretion, is best able to provide the Work.

CLT will inform the selected Firm that it has been selected, subject to final agreement between CLT and the Firm on all terms and conditions of the Agreement. Upon Firm's execution of the Agreement, the Aviation Director may submit it to City Council for approval. If CLT and the selected Firm are unable to agree on the final terms, the selected Firm will be excused from further consideration and CLT may, at their option, select another Firm.

The City Council may, in its sole and absolute discretion, accept or reject the recommendation of the Evaluation Committee, Agreement, and supporting ancillary documents. The City shall have no obligations under this RFQ until City Council has formally approved the award of the Agreement to the selected Firm and the Agreement has been executed by both parties.

G. CONSENT TO INVESTIGATE

The selection of the Firm will be based on a thorough investigation of the proposals submitted in response to this RFQ. As part of the selection process, CLT may request that Firms provide additional information, including without limitation, financial records, certified bank statements or other company records relevant to the Evaluation Committees review of the proposals. By submitting an SOQ, each Firm consents to any investigation CLT deems necessary.

H. DISQUALIFICATION OF PROPOSAL

Without in any way limiting CLT's right to reject any or all SOQs, Firms are advised that any of the following may be considered as sufficient cause for the disqualification of a Firm and the rejection of an SOQ: (i) failure to meet the eligibility requirements set forth in the Scope of Work; (ii) submission of more than one SOQ by an individual, firm, partnership or corporation under the same or different names, including the names it does business under; (iii) evidence of collusion among Firms; or (iv) improper communication as described in Section II. B. SOQs will be considered irregular and may be rejected for omission, alterations of form, additions not called for, conditions, limitation, unauthorized alternate proposals or other irregularities of any kind. All of the foregoing notwithstanding CLT reserves the right to waive any irregularities in its sole discretion.

III. PROPOSAL FORMAT AND SUBMISSION REQUIREMENTS

A. SOQ FORMAT

CLT desires all SOQs to be identical in format in order to facilitate the evaluation process. Failure to comply with the format requirements set forth herein may result in rejection of the SOQ. SOQs must be structured as follows:

1. Cover Page should state the firm name and reference this RFQ.
2. Cover Letter, at a minimum, should include:
 - a. Contact information for the firm representative who will negotiate scope and fee.
 - b. Execution by a firm representative authorized to legally bind the firm. Name and email address
 - c. Acknowledgement of addenda, if any.
3. A description of how the firm meets each of the Selection Criteria identified Section II.E. above. Please organize this section of the RFQ to clearly and completely address each of the selection criteria described in Section II.E.
4. DBE Compliance Instructions and DBE Form #3 should be submitted for this section, stating the DBE company(s) that selected Firm intends to use and a description of the scope of work for each DBE company identified, EXCLUDING % or dollar values. See Exhibit C-1
5. CBI Program Instructions and CBI Form #3 should be submitted for this section, stating the MWSBE company(s) that selected Firm intends to use and a description of the scope of work for each MWSBE company identified, EXCLUDING % or dollar values. See Exhibit C-2
6. City Non-Discrimination Certification Exhibit D
7. Certification of Offeror Regarding Tax Delinquency and Felony Convictions Exhibit E
8. Certification of Offeror Regarding Lobbying and Influencing Federal Employees Exhibit F

****DBE and CBI Form #3 should be attached to the SOQ. All forms need to be signed****

B. SUBMISSION REQUIREMENTS

Firms must submit ONE (1) electronic version in searchable Adobe Acrobat .pdf format to the RFQ Project Manager no later than the date and time set forth in the RFQ Schedule above, according to CLT's clock. Unless otherwise indicated, submission must be delivered as follows:

- Electronically through eBuilder eBidding Portal using the following link:

<https://gateway.app.e-builder.net/app/bidders/landing?accountid=80fe0a4a-0c8f-4fcd-ac93-cc9db65522cb&projectid=5d56a1f5-a212-49cb-8b36-009b9d822b7a&bidpackageid=a468cd00-af53-4b4a-ac9c-bb5c30b1a0f3>

All SOQs shall not exceed Ten (10) pages double sided for total of Twenty (20) in 8 1/2" x 11" format, exclusive of cover pages, tab pages, and required forms, with all standard text no smaller than twelve (12) points. Failure of the firms to organize the information required by this RFQ as outlined herein may result in CLT, at its sole discretion, deeming the Firm non-responsive to the requirements of this RFQ. The Firm, however, may reduce the repetition of identical information within several sections of the SOQ by making the appropriate cross-references to other sections of the SOQ. **Appendices shall not be allowed.**

C. WITHDRAWAL OF SOQ; CORRECTION OF ERRORS

Withdrawal of an SOQ may occur at any time prior to the submission deadline as set forth in the RFQ Schedule above, by written request, sent by email to the RFQ Project Manager. A request for withdrawal will not be effective until CLT has confirmed, in writing, the receipt of such request. A request to withdraw an SOQ by telephone or facsimile shall not be considered a valid request to withdraw an SOQ. Withdrawal of an SOQ by a Firm will not preclude the Firm's re-submission of a revised RFQ on or before the submission deadline.

If Firm desires to amend a submitted SOQ before the submission deadline, Firm must follow the withdrawal procedures described in this Section and resubmit the amended SOQ on or before the submission deadline. Where there are corrections prior to submission, the Firm's representative signing the SOQ must initial erasures or other corrections in the SOQ. The Firm further agrees that in the event of any obvious errors, CLT reserves the right to waive such errors in its sole discretion.

D. PROPOSAL TERMS FIRM AND IRREVOCABLE

The signed SOQ shall be considered a firm offer on the part of the Firm. All SOQ responses (including all statements, claims, declarations, prices and specifications in the SOQs) shall be considered firm and irrevocable for purposes of contract negotiations unless specifically waived in writing by CLT. The selected Firm should be prepared to have its SOQ and any relevant correspondence or documentation incorporated into the Agreement, either in part or in its entirety, at CLT's election. Any false or misleading statements found in the SOQ are grounds for disqualification of the Firm and termination of the Agreement.

This RFQ does not constitute an offer by CLT. No binding contract, obligation to negotiate, or any other obligation shall be created on the part of CLT unless CLT and the Firm execute the Agreement following award of such agreement by the City Council.

IV. RFQ TERMS AND CONDITIONS

A. CLT's RIGHTS AND OPTIONS

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

- i. To supplement, amend, substitute, withdraw or otherwise modify this RFQ at any time;
- ii. To issue additional requests for information;
- iii. To require a Firm to supplement, clarify or provide additional information in order for CLT to evaluate its SOQ;
- iv. To conduct investigations with respect to the qualifications and experience of each Firm;
- v. To waive any defect or irregularity in any SOQ received;
- vi. To share the SOQs with City and/or CLT employees other than the Evaluation Committee as deemed necessary;
- vii. To award all, none, or any part of the scope of work set forth in this RFQ that is in the best interest of CLT with or without re-solicitation;
- viii. To discuss and negotiate with selected Firm(s) any terms and conditions in the SOQs;
- ix. To enter into any agreement deemed by CLT to be in the best interest of CLT;
- x. To reject any or all SOQs submitted; and
- xi. To re-advertise for proposals using this RFQ or a different RFQ or solicitation.

B. ACCURACY OF RFQ AND RELATED DOCUMENTS

CLT assumes no responsibility for conclusions or interpretations derived from the information presented in this RFQ, or otherwise distributed or made available during this selection process. In addition, CLT will not be bound by or be responsible for any explanation, interpretation or conclusions of this RFQ or any documents other than those provided by CLT through the issuance of addenda. In no event may a Firm rely on any oral statement in relation to this RFQ.

Should a Firm find discrepancies or omissions in this RFQ or any other documents provided by CLT, the Firm should immediately notify CLT of such discrepancy or omission in writing, and a written addendum may be issued if CLT determines clarification necessary. Each Firm requesting a clarification or interpretation will be responsible for delivering such requests to CLT as directed in Section II.B of this RFQ.

C. FIRM'S COST OF PROPOSAL PREPARATION

Firms are responsible for any and all costs associated with the proposal process including, but not limited to, the creation of the proposal and any interviews (if applicable). CLT will not accept any promotional items as part of the proposal process and any such items included will either be discarded or, if so requested, returned to the Firm at Firm's cost.

D. RIGHT TO TERMINATE NEGOTIATIONS / DISCUSSIONS

The Firm's participation in this process might result in CLT selecting the Firm to engage in further discussions including the negotiation of the Agreement. The commencement of such discussions and negotiations, however, does not signify a commitment by CLT to execute the Agreement or to continue discussions and negotiations. CLT may terminate discussions and/or negotiations at any time and for any reason prior to the award of a binding contract by the City Council, and either abandon the selection

process or select another Firm with whom to enter into negotiations.

E. OWNERSHIP AND PUBLIC RECORDS LAW

All SOQs and supplementary material provided as part of this RFQ will become the property of CLT. Firms are advised that all information included in the material provided is public record except for information that falls under one or more of the statutory exceptions set forth in Chapter 132 and 66-152 *et seq.* of the North Carolina General Statutes. Firms may only designate information confidential that it, in good faith, considers a trade secret or confidential under North Carolina public records and trade secret law. However, CLT reserves the right to review and make any final determination regarding the disclosure of any information submitted in connection with this RFQ in response to a public record request under North Carolina law.

By submitting an SOQ, Firm agrees that the CLT may reveal any information contained in the SOQ to staff, consultants or third parties assisting with this RFQ and the negotiation of the resulting Agreement. Where information is marked "Trade Secret" or "Confidential," Firm agrees to indemnify, defend and hold harmless the City and each of its officers, employees and agents from all costs, damages and expenses incurred in connection with the City choosing to withhold any material based on Firm's designation of said material as a "Trade Secret" or "Confidential."

EXHIBIT A – SCOPE OF SERVICES
ON-CALL MATERIALS TESTING AND SPECIAL INSPECTION TESTING
SERVICES

The selected Firm(s) will provide materials testing and special inspection services (“Services”) for various federal and nonfederal funded projects initiated by Charlotte Douglas International Airport (“CLT”) via an on-call basis. CLT will assign Services to the Firm through individual Task Order Documents (a “TOD”), a sample form copy of which is included as **Exhibit B**. The parties will specifically define a statement of services for each project, identify the funding type, and establish deliverables, negotiated costs, and expectations for the project.

Firms shall conduct general materials testing tasks in accordance with industry accepted standards and practices as well as the requirements of CLT, the Federal Aviation Administration, North Carolina Department of Transportation and City of Charlotte standards. Examples of Federal Aviation Administration standards include but are not limited to P-401/403 (Asphalt) and P-501 (Concrete). Materials testing will be to independently verify site/material conditions to allow work to proceed with confidence. Materials testing services may also include construction observation, report writing and quantity measurements.

The selected Firms shall also provide field data on reproducible media and on electronic file in a format compatible with CLT’s CAD standards, information on which can be found at www.cltcadstandards.info, and provide one copy of field notes or data collector information or lab results.

The selected Firms will use their own equipment, materials, supplies, accessories, office space, etc. to perform the required Services.

Materials testing personnel and equipment shall be furnished as a one (1) or two (2) person field crew on a full, half-day, or hourly basis. Such personnel must be eligible for an unrestricted airport badge.

The selected Firms shall be able to provide services 24 hours per day, seven days per week, inclusive of holidays. Some services may be scheduled at least one week in advance, while other services may be needed on a quicker turn-around basis. Services may also be required during the overnight hours to minimize impact on airfield operations.

CLT will pay for services based on a negotiated fee structure.

The scope of services includes materials testing and construction materials inspections and testing on the following anticipated items:

- Soil
- Footing/ slab-on-grade (SOG) subgrade
- Pavement subgrade
- Backfill
- Proctor analysis
- Soil bearing
- Compaction moisture content

- Atterberg limits testing
- Cast-in-place concrete including:
 - 3, 7, and/or 21-day breaks
 - Rebar inspection
- Steel
- Welded connections
- Bolted connections
- Floor Flatness and Levelness (FFL) testing
- Pressure testing – water/sewer
- Structural interior masonry (if required)
- Fireproofing adhesion (if required)
- Paint thickness (if required)
- Paving concrete/asphalt (if required)
- Vapor barrier thickness
- Below-grade waterproofing
- Special inspections as required by Code Enforcement

EXHIBIT B

**Task Order Document – Aviation Department
Request and Price Proposal for On-Call Materials Testing
and Special Inspection Services**

Please provide a Price Proposal for the Company’s cost and time to perform the Materials Testing and Special Inspection Services required for the Task Order Project described below within ten (10) business days of the Request Date. Your Price Proposal shall be a lump sum all-inclusive amount that covers every aspect of work required to provide the services and all of the Deliverables associated therewith in accordance with the terms and conditions of your Professional Services Agreement with the City. **Your Price Proposal must identify all costs for which the City will be responsible.**

SERVICE REQUEST DETAILS (Provided by Airport)

REQUEST DATE	
PROJECT LOCATION	TERMINAL; LAND-SIDE; AIR FIELD; ETC.
FUNDING SOURCE	FEDERAL or NON-FEDERAL
DESCRIPTION OF PROJECT	

PRICE PROPOSAL (Provided by Company)

DELIVERABLES: All Deliverables that will be needed to complete the services required for the project shall be identified in the table below. Company may use as many lines as necessary to capture the costs associated with all Deliverables and Expenses required to perform the project work. Company’s Price Proposal shall be based upon and use the hourly rates set out in Exhibit B to the Agreement. Company may submit its Price Proposal in another format if, at a minimum, the information requested below is included.

ITEM	CATEGORY	DESCRIPTION	TARGET COMPLETION DATE	COST
1	Deliverable			
2	Deliverable			
3	Deliverable			
4	Expenses			

TOTAL AMOUNT OF COMPANY’S PRICE PROPOSAL: \$ _____

Diversity and Business Inclusion Programs:

By signing this Task Order Request and Price Proposal, Company agrees that it will comply with the requirements of the applicable Diversity and Business Inclusion Program as set out in further detail in the Agreement depending upon whether the project is funded with Federal or Non-Federal funds.

The DBE or CBI goal for this Task Order Project is _____%. Upon execution of the Task Order Request and Price Proposal, Company is expected to provide completed copies of the DBE or CBI Form 4 – Letters of Intent for all participating DBE or CBI subconsultants.

Every aspect of the Company’s Price Proposal must be complete and appear on this Task Order Request and Price Proposal form. The form, together with any attachments or supplemental pages, must be emailed to xxxxxx@cltairport.com on or before the Proposal Deadline listed above.

Company submits this Price Proposal to perform the Services requested in this Task Order Document. Upon acceptance of Company’s Price Proposal, the Task Order Document shall be incorporated into the Company’s Professional Services Agreement with the City, and the terms and conditions thereof shall apply and govern the performance of Services hereunder.

COMPANY NAME

BY: _____

SIGNATURE: _____

TITLE: _____

DATE: _____

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

By: _____
Finance Officer

EXHIBIT C-1

DBE PROGRAM INSTRUCTIONS AND DBE FORM #3

This project will have a negotiated DBE goal with the selected firm.

This project is subject to the Disadvantaged Business Enterprise (DBE) The City will negotiate a DBE with the Firm. Firm will be required to adhere to the DBE Program guidelines and should be familiar with the guidelines for the DBE Program.

CLT's DBE Program can be found here: <https://www.cltairport.com/business/business-diversity-programs/dbe-program/>

A list of DBE firms can be found on NCDOT's website:
<https://www.ebs.nc.gov/VendorDirectory/search.html?s=fn&a=new>

Although the DBE Program allows CLT to negotiate a goal with the Firm, CLT would like to see how the Proposer expects to utilize DBE firms throughout the course of the Work. Therefore, Proposers are required to complete and attach Form #3- Utilization Commitment to their submission.

This Contract is subject to the requirements of 49 CFR Part 26 *Participation by DBE in Department of Transportation Financial Assistance Programs*

I. CONTACT

Questions regarding the City's DBE Program should be directed to:

Jasmyne Turman, Airport DBE Liaison Officer (DBELO)
P.O. Box 19066
Charlotte, NC 28219
Telephone: (980) 348-8477
Email: jasmyne.turman@cltairport.com

II. BACKGROUND

The City of Charlotte, North Carolina (City) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the United States Department of Transportation (USDOT), 49 CFR Part 26. The City has received direct Federal financial assistance from the USDOT, for the Charlotte Douglas International Airport (CLT) and the Charlotte Area Transit System (CATS), as well as indirect Federal financial assistance for the Charlotte Department of Transportation (CDOT) as a sub-recipient through the North Carolina Department of Transportation (NCDOT). As a condition of receiving this assistance, the City has signed an assurance that it will comply with 49 CFR Part 26. Should any other City department become a recipient of USDOT funding they will act in compliance with 49 CFR Part 26 and will operate within the following Program's parameters.

It is the policy of the City to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts

3. *To ensure that the DBE Program is narrowly tailored in accordance with applicable law;*
4. *To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;*
5. *To help remove barriers to the participation of DBEs in USDOT-assisted contracts; and*
6. *To assist the development of firms that can compete successfully in the market place outside the DBE Program.*

The City's Disadvantaged Business Enterprise Program ("DBE Program") is incorporated into and made a part of the Bid/Proposal Documents and resulting Contract. A copy of the DBE Program and subsequent DBE requirements and documentation pertaining to this contract may be obtained online at www.cltairport.com or at the Office of the City Clerk.

Pursuant to 49 CFR Part 26 and the DBE Program, all Bidders/Proposers must affirmatively ensure that in any contract entered into with the City for applicable projects, DBEs will be afforded equal opportunity to participate in subcontracting opportunities.

A Bid/Proposal will not be considered responsive unless the Bidder/Proposer complies with 49 CFR Part 26 and the DBE Program. Failure to carry out the pre-award requirements stated in the DBE Contract Provisions will be sufficient grounds to reject the Bid/Proposal. Moreover, failure by any contractor to comply with the DBE Program after award shall constitute a breach of the Contract. Failure to cure the breach within fifteen (15) days after written notice of the breach shall entitle the City to terminate the Contract and/or exercise other appropriate rights and remedies including, without limitation, withholding of funds until such time as Contractor complies with all the DBE requirements.

Submission of a Bid/Proposal shall constitute as an acknowledgement that the Bidder/Proposer has thoroughly examine and is familiar with, the provisions set forth in 49 CFR Part 26 (DBE Program). Failure or neglect of a Bidder/Proposer to receive or examine any of these government regulations and contract requirements shall in no way relieve them from any obligations with respect to their Bid/Proposal or this Contract.

III. REQUIRED DOCUMENTATION

The applicable forms listed in this section MUST be completed and included with the submission of the Bid/Proposal .

1. **DBE Form 3** (Subcontractor / Supplier Utilization Commitment Form) must list subcontractors and suppliers that will be providing goods and services (including construction), their respective scope of work/service to be performed, the dollar values of each subcontract, and the dollar value of total DBE participation for the Contract.

A copy of each DBE company's NCDOT Directory printout may be attached to the form as backup documentation for proof of certification. The NCDOT Directory can be found here: <https://www.ebs.nc.gov/VendorDirectory/default.html>

Once the Bidder/Proposer is determined, additional forms will be required to be turned into the City by the apparent low bidder/selected firm. These forms may include, but may not be limited to:

- 1) Letter of Intent (DBE Form #4)
- 2) Payment Affidavit (DBE Form #6)
- 3) Documentation of Good Faith Efforts

For more information about these forms or any others, please go to www.cltairport.com or contact CLT's DBELO.

Any alterations, substitutions, deletions, etc., to data provided to the City must have prior approval of the DBELO.

IV. CONTRACT ASSURANCE CLAUSES

The Contractor shall include in each subcontract the Contractor signs with a subcontractor the following provisions:

Non-Discrimination

"The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 46 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate."

Prompt Payment

"The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each periodic or final payment the full amount the prime contractor receives from the City of Charlotte for each subcontractor's work and materials under the subcontract. Any delay or postponement of payment from the above referenced time frame may result in liquidated damages and/or sanctions as stipulated in bid/contract documents. Exceptions may occur only for good cause following written approval by the City. This clause applies to both DBE and non-DBE subcontractors"

Retainage

"The prime contractor agrees to return retainage payments to each subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors."

V. REMEDIES FOR VIOLATION OF THE DBE PROGRAM

A violation of the City's DBE Program by a Contractor shall constitute a material breach of the Contract, and shall entitle the City to:

- a) Exercise all rights and remedies that it may have at law or at equity for violation of the DBE Program;
- b) Terminate the Contract for default;
- c) Suspend the Contract for default;
- d) Withhold all payments due to the Contractor under the Contract until such violation has been fully cured or the City and the Contractor have reached a mutually agreeable resolution;
- e) Assess liquidated damages as provided in City of Charlotte Disadvantage Business Enterprise Program, Section 26.53; and/or
- f) Offset any liquidated damages and/or any amounts necessary to cure any violation of the DBE Program from any retainage being held by the City on the Contract, or from any other amounts due to the Contractor under the Contract.

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.

VI. LIQUIDATED DAMAGES APPLICABLE TO VIOLATIONS OF THE DBE REQUIREMENTS OF THIS CONTRACT

By entering into a Contract that is subject to the DBE Program, the Contractor agrees to the following:

The City and the Contractor acknowledge and agree that the City will incur damages if the Contractor violates the DBE Program in one or more of the ways set forth below, including but not limited to loss of goodwill and reputation with the general public, loss of goodwill and reputation with federal agencies that fund CLT projects, risk to current and future federal grant funding, detrimental impact on airport development, and diversion of internal staff resources. The parties further acknowledge and agree that the damages the City might reasonably be anticipated to accrue as a result of such failures are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the Contractor agrees to pay the liquidated damages assessed by the City at the rates set forth below for each category of violations of the DBE Program. The Contractor further agrees that for each specified violation the agreed upon liquidated damages are reasonably proximate to the loss the City will incur as a result of such violation:

1. Failure to meet a subcontracting goal. The City may assess the lesser of (a) \$200,000 or (b) the dollar difference between the subcontracting goal amount and the dollar amount actually paid to DBE subcontractors.
2. If the Contractor lists a DBE for a subcontracting goal with knowledge that the DBE will be acting as a Conduit or will not be performing a Commercially Useful Function, the City may assess the greater of (a) \$100,000 per incident or (b) the dollar amount stated on the DBE's letter of intent.
3. If the Contractor terminates or replaces a DBE Subcontractor without prior DBELO approval, the City may assess for the first violation the lesser of (a) \$50,000 per incident or (b) the dollar amount of the prospective work to be performed by the DBE Subcontractor. For any subsequent violation on the same project the assessment shall be the greater of the two above amounts. Assessments under this subsection 3 do not apply if an assessment is appropriate under subsection 4 below.
4. If the Contractor terminates or replaces a DBE Subcontractor without prior DBELO approval, but is otherwise in compliance with the DBE Program and 49 CFR Part 26 and the DBELO later approves and ratifies the action, the City may assess the lesser of (a) \$1,000 per incident or (b) the dollar amount of the prospective work to be performed by the DBE Subcontractor.
5. If the Contractor knowingly makes a false statement, material misrepresentation, or material misleading omission regarding any DBE matter, then the City may assess the lesser of (a) \$50,000 per incident or (b) the dollar amount affected or caused by the falsehood.
6. If the Contractor fails to provide any report, documentation, affidavit, certification or written submission required under the DBE Program within the time period set forth therein, the City may assess \$40 per Day until receipt of the item.
7. If the Contractor violates any requirement of the DBE Program and 49 CFR Part 26 not addressed in the above six (6) subsections, the City may assess \$40 per Day until the violation is cured in the case of on-going violations that are subject to cure or, the City may assess \$1,000 per incident for violations that are not on-going or are not subject to cure.

VII. DBE FINANCIAL INSTITUTIONS

The City encourages prime contractors on FAA-assisted contract to make use of DBE financial institutions. For a list of DBE financial institutions, please contact the DBELO.

VIII. DBE DOCUMENT DESCRIPTIONS

	Document	Document Description	Submission Requirements
Due after Bid Opening/Proposal Submission if established DBE Goal is not met	DBE Form 1 Identification of Subcontracting Opportunities	Identifies the subcontracting or supplier opportunities intended to be utilized by the Bidder/Proposer on the Contract.	Required when Bidder/Proposer did not meet the DBE goal as part of documenting Good Faith Efforts. Due within three (3) business days after requested by the City.
	DBE Form 2 Solicitation Form	Identifies all DBEs the Bidder/Proposer contacted or those who contacted the Bidder. It also describes scope of work for which they were contacted. Includes date and method of contact for DBE firms.	Required when Bidder/Proposer did not meet the established DBE goal as part of documenting Good Faith Efforts. Due within three (3) business days after requested by the City.
DUE WITH BID/ PROPOSAL SUBMISSION	DBE Form 5 Schedule of DBE Unavailability	Identifies DBE firms that were contacted, but not utilized for the corresponding project.	With Bid/Proposal Package
	DBE Form 3 Utilization Commitment	Identifies all subcontractors, suppliers, manufacturers, brokers and/or members of a joint venture to be utilized on the contract, percentages and dollar amounts committed to DBEs.	With Bid/Proposal Package
After-Bid Opening / Proposal Review	DBE Form 4 Letter of Intent	Bidders/Proposers must submit an executed Letter of Intent with each separate DBE firm listed on DBE Form 3.	The City will request this form from the apparent low bidder/successful proposer. Must be submitted within three (3) business days after requested by the City.
	Copy of subcontract Agreements	Copy of signed contract for each DBE subcontractor utilized on the corresponding project. Highlight text that mentions the non-discrimination, retainage, and prompt payment assurances.	Must be submitted before each subcontractor begins work.
	DBE Form 6 Payment Affidavit	Contractor shall provide a payment affidavit showing payments made to all subcontractors, suppliers,	Upon award of Contract, Form 6 should be included with each pay request submitted

manufacturers, brokers, and to the City. List **ALL** subcontractors members of a joint venture in (DBEs and non-DBEs). connection with the Contract (DBEs and non-DBEs).

The above referenced DBE Forms 1-6, along with the documentation listed below, can be found on CLT's website (www.cltairport.com) under the "Doing Business with CLT" tab – "Business Diversity Programs" – "DBE Program".

Documentation located on CLT's website:

DBE Forms 1 through 6
Counting DBE Participation
DBE Reporting and Record Keeping Requirements
DBE Program Good Faith Efforts
City's DBE Program

DBE Form 3: Subcontractor / Supplier Utilization Commitment

v.9.10.14 .

Bidder/Proposer Name:			
Bidder/Proposer Address:			
Bidder/Proposer Annual Gross Receipt:	Less than \$500K <input type="checkbox"/> \$500K-\$1M <input type="checkbox"/> \$1M-\$2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> More than \$5M <input type="checkbox"/>		
Bidder/Proposer Age (in years):			
Project Name:			
Project Number:		Established DBE Goal:	N/A

1. List below all **DBEs** that you intend to use on this contract

DBE Vendor Name & Address	Description of work / materials	NAICS Code	Reporting Number	Total Projected Utilization (\$)
Annual Gross Receipt: <input type="checkbox"/> < \$500K <input type="checkbox"/> 500K-1M <input type="checkbox"/> 1M-5M <input type="checkbox"/> >\$5M	Firm Age (in years):			N/A
Annual Gross Receipt: <input type="checkbox"/> < \$500K <input type="checkbox"/> 500K-1M <input type="checkbox"/> 1M-5M <input type="checkbox"/> >\$5M	Firm Age (in years):			N/A
Annual Gross Receipt: <input type="checkbox"/> < \$500K <input type="checkbox"/> 500K-1M <input type="checkbox"/> 1M-5M <input type="checkbox"/> >\$5M	Firm Age (in years):			N/A

2. List below all **Non-DBEs** that you intend to use on this contract

Vendor Name & Address	Description of work / materials	NAICS Code	Reporting Number	Total Projected Utilization (\$)
Annual Gross Receipt: <input type="checkbox"/> < \$500K <input type="checkbox"/> 500K-1M <input type="checkbox"/> 1M-5M <input type="checkbox"/> >\$5M	Firm Age (in years):			N/A
Annual Gross Receipt: <input type="checkbox"/> < \$500K <input type="checkbox"/> 500K-1M <input type="checkbox"/> 1M-5M <input type="checkbox"/> >\$5M	Firm Age (in years):			NA

Your signature below indicates that the undersigned Company certifies and agrees that It has complied with all provisions of the DBE Program

Signature of Authorized Official Printed Name Title Submitted Date

EXHIBIT C-2

CBI PROGRAM INSTRUCTIONS AND CBI FORM #3

This project is subject to the requirements of the City's Charlotte Business INclusion (CBI) Program to promote diversity, inclusion, and local business opportunities in the City's contracting and procurement process for Minority, Women, and Small Business Enterprises headquartered in the Charlotte Combined Statistical Area.

For this project, CBI goals will be negotiated with the selected firm.

Proposers are required to complete and attach CBI Form 3: Subcontractor / Supplier Utilization Commitment to their submission to show how they expect to utilize CBI certified MWSBE firms on the Project.

A complete list of City of Charlotte certified Small Business Enterprises (SBEs) and City of Charlotte registered Minority-Owned Business Enterprises (MBEs) and Women-Owned Business Enterprises (WBEs) (SBE, MBE, and WBE, collectively MWSBE) is available on the City's InclusionCLT system: <http://charlotte.diversitycompliance.com>

In order to count toward the project goal, MWSBE firms must be certified with the City of Charlotte at the time of bid. For more information around certification requirements, please review the CBI Manual.

CBI Program Background:

The Charlotte Business INclusion (CBI) Program seeks to enhance competition and participation of Minority, Women, and Small Business Enterprises (MWSBEs) in City contracting.

Leveraging the commitment of city leadership, CBI's goal is to be a national model in the business inclusion space. To accomplish this, all City departments have increasingly examined their procurements and set specific MWSBE participation goals on a contract-by-contract basis.

In addition, CBI makes a concerted effort to expand its certified MWSBE vendor pool and assist city-certified firms in growing, enhancing, and developing their businesses. CBI currently offers numerous development programs that support certified businesses in organizational training, strategic development, and networking opportunities.

1. APPLICATION:

The City's Charlotte Business INclusion (CBI) Policy is incorporated into and made a part of this solicitation and the resulting contract (the "Contract"). Copies of the CBI Policy and CBI Manual may be obtained by:

Internet: www.charlottebusinessinclusion.com

Mail: Charlotte Business INclusion Office
600 East Fourth Street, 9th Floor
Charlotte, North Carolina 28202

For this solicitation, where scopes of work are undefined prior to solicitation, CBI Policy requires that you provide prospective MWSBE utilization on the contract.

2. THE MWSBE UTILIZATION GOAL:

You must submit your proposed MWSBE utilization for this Contract on CBI Form 3 (Subcontractor/Supplier Utilization Commitment Form) listing subcontractors and suppliers that will be providing goods or services. CBI Form 3 MUST be submitted with your proposal. Failure to submit CBI Form 3 with your proposal shall constitute grounds for rejecting the proposal.

Proposers must state prospective MWSBE firms on their CBI Form 3 and indicate the scope of work they anticipate utilizing the listed firms for to count towards MWSBE participation. In the event the Proposer has no MWSBE participation, the Proposer is still required to indicate this on CBI Form 3 by entering the word or number zero. Blank forms will be deemed to represent zero participation. The City will only give Proposers credit toward the MWSBE Goal for MWSBE participation that:

- a. Is listed on CBI Form 3 submitted with the Proposal; and
- b. Is listed on CBI Form 3A (when applicable); and
- c. Is documented by CBI Form 4 (CBI Letter of Intent) which is submitted to the City within three (3) Business Days after the City requests it; and
- d. Meets all of the requirements of the CBI Manual

NOTE: MWSBEs listed on CBI Form 3 must be actively certified with the City of Charlotte as of proposal date and must be performing a Commercially Useful Function as defined in the CBI Manual

Proposals submitted which do not have the above required MWSBE information indicated on CBI Form 3 constitutes grounds for the Proposal to be considered non-responsive and rejected.

The MWSBE goal will represent the total dollars to be spent with MWSBEs as a portion of the total proposal amount, which includes contingency. The MWSBE percentage will be rounded to two decimal places. As an example, if the MWSBE percentage is 3.571, it should be listed as 3.57% or if it is 3.578, it should be listed as 3.58%. The percentage will not be rounded to the next “whole” number, i.e., 4%. A Proposer may round up if the third number after the decimal is a five (5) or greater.

In the event Alternates are selected by the City, the MWSBE Goal for this Contract will apply to the total contract amount, including contingency and the selected Alternates (“Total Contract Amount”). If the selected Proposer would meet the MWSBE Goal on the base proposal amount, but would not meet the MWSBE Goal for the Alternates selected by the City, the Proposer will have three (3) days after the City notifies it of its selected Proposer status to secure enough additional participation to meet the MWSBE Goal calculated on the Total Contract Amount. The selected Proposer will be required to utilize CBI Form 3A to meet this requirement. This in no way exempts the Proposer from the CBI requirements due at proposal time. If the Proposer fails to meet the MWSBE Goal, calculated on the Total Contract Amount, then the Proposer must meet the Good Faith Efforts and Good Faith Negotiation requirements set forth in Part C, Sections 4 and 5 of the CBI Policy. If the Proposer fails to meet the MWSBE Goal on the Total Contract Amount, and fails to earn the required Good Faith Efforts points, the Proposal will be rejected.

The City will request CBI Form 4 Letters of Intent if you are a finalist for contract award. You must submit a separate CBI Form 4 for each MWSBE subcontractor/supplier identified on CBI Form 3 (and CBI Form 3A, if applicable) within three (3) Business Days after the City requests it.

3. GOOD FAITH EFFORTS and GOOD FAITH NEGOTIATION:

If two subcontracting goals are established for this Contract, then the Proposer must meet each goal. For example if a MBE goal and WBE goal are established, Proposer must meet the MBE goal and WBE goal. If you do not meet each established subcontracting goal, then you must earn the minimum

good faith effort (GFE) points and meet the good faith negotiation requirements as set forth in Section 4 of the CBI Manual for the subcontracting goal that was not met.

Detailed information of the City's Good Faith Efforts and Good Faith Negotiation requirements can be found in the CBI Manual, Section 4. Failure to meet the Good Faith Efforts and Good Faith Negotiation requirements will constitute grounds for rejection of your Bid.

Documenting Good Faith Efforts. To demonstrate Good Faith Efforts (GFE) compliance, Proposers must complete and submit CBI Form 5: Good Faith Effort (GFE) and Statement of GFE Compliance. A minimum of fifty (50) GFE Points must be earned for each Subcontracting Goal not met. If more than one Subcontracting Goal is not met, then Proposers will be required to complete and submit a separate form for each unmet Subcontracting Goal.

CBI Form 5 lists GFEs and the number of points attainable for each type of Good Faith Effort. The City will request your Good Faith Effort (GFE) / Statement of GFE Compliance if you are an apparent low Proposer for contract award who did not meet the goal. You must submit CBI Form 5 and all supporting documentation within three (3) Business Days after the City requests it.

In deciding whether to award GFEs, the City will assess whether the efforts employed by the Proposer are those that a prime contractor would reasonably be expected to take if actively and aggressively trying to meet the established Subcontracting Goal for the Contract. This assessment will be made on a case-by-case basis taking all available facts into account. The focus will be on the likely effectiveness of the steps taken. Mere pro forma efforts will not be sufficient.

The City can take into consideration the performance of the other Proposers and their achievement towards the Contract Goal when determining if a Proposer has achieved Good Faith Efforts. Additionally, the Business Inclusion Officer can take into consideration the Proposer's past performance towards meeting Contract Goals on past City contracts.

All actions necessary to earn the required GFE Points must be undertaken prior to Bid Opening. Failure to comply with the requirements set forth in this section shall constitute grounds for rejecting a bid.

Self-Performance.

A Business Enterprise, who intends to perform 100% of the work on a Contract, may submit an affidavit stating that the Proposer: (i) does not customarily Subcontract any element of work; and (ii) normally performs, has the capability to perform, and will perform all elements of work on this Contract with its own current workforces. The affidavit shall be in a form provided by the City as part of the Solicitation. After approval by the Business Inclusion Officer, the Proposer shall not be required to comply with Section 3 of the CBI Manual.

The City may reject a Bid for non-compliance if: (i) the Business Enterprise is not licensed to perform each and every type of work included in the Contract, (ii) based on past practice or other grounds, the Business Enterprise will not be performing all of the work under the Contract with its own current workforce; (iii) the request for approval is submitted more than three (3) Days of Bid Opening; (iv) insufficient documentation is received to support the request; (v) any special skill-based qualification is available to and/or possessed by MWSBEs; (vi) there is no significant increase in the cost to the Business Enterprise for an MWSBE to perform the scope of work.

4. CBI POLICY PROVISIONS APPLICABLE AFTER CONTRACT AWARD:

Should the Proposer be awarded a contract with the City, the Proposer should note Section 5 (Responsibilities After Contract Award) and Section 6 (Remedies and Liquidated Damages) of the CBI Manual

As a condition for receiving payments under this Agreement, the Contractor agrees to submit any payment record into InclusionCLT, or any subsequent system designated by the City, detailing the amounts paid by the Contractor to all subcontractors and suppliers receiving payment in connection with this Contract.

5. CBI CONTRACT PROVISIONS:

The following provisions are incorporated into the contract.

The parties acknowledge and agree that:

- a. That Charlotte Business Inclusion Program Policy (“CBI Policy”) and its Administrative Procedures Manual (“CBI Manual”) are posted on the City’s website and available in hard copy form upon request. Both the CBI Policy and CBI Manual comprise the CBI Program.
- b. The terms of the CBI Program, as revised from time-to-time, are incorporated into this Agreement by reference; and
- c. A violation of the CBI Program shall constitute a material breach of this Agreement and shall entitle the City to exercise any of the remedies set forth in the CBI Program, including but not limited to liquidated damages.
- d. The City will incur damages if the Contractor violates the CBI Program, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources. The parties further acknowledge and agree that the damages the City might reasonably be anticipated to incur as a result of such failures are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the Contractor agrees to pay the liquidated damages assessed by the City at the rates set forth in the CBI Program for each specified violation. The Contractor further agrees that for each specified violation the agreed upon liquidated damages are reasonably proximate to the loss the City will incur as a result of such violation.
- e. Without limiting any of the other remedies the City has under the CBI Program, the City shall be entitled to withhold periodic payments and final payment due to the Contractor under this Agreement until the City has received in a form satisfactory to the City all claim releases, payment affidavits and other documentation required by the CBI Program. In the event payments are withheld under this provision, the Contractor waives any right to interest that might otherwise be warranted on such withheld amount under North Carolina General Statutes Section 143-134.1.
- f. The remedies set forth in the CBI Program shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.
- g. The Contractor agrees to participate in any dispute resolution process specified by the City from time-to-time for the resolution of disputes arising from the CBI Program.
- h. Nothing in this Section shall be construed to relieve a Contractor from any obligation it may have under North Carolina General Statutes Section 143-134.1 regarding the payment of subcontractors.
- i. Payment Reporting. As a condition for receiving payments under this Agreement, the Contractor agrees to submit any payment record into InclusionCLT, or any subsequent system designated by the City, detailing the amounts paid by the Contractor to all subcontractors and suppliers receiving payment in connection with this Contract

Remedies for Violation of CBI Policy. A violation of the CBI Program by a Contractor is deemed to be a material breach of the Contract. The City shall be entitled to:

- a. exercise all rights and remedies at law or at equity;
- b. terminate the Contract for default;
- c. suspend the Contract for default;
- d. withhold all payments due to the Contractor until the violation has been fully cured;
- e. withhold all payments due to the Contractor until a mutually agreeable resolution has been reached

- with the City; and/or
- f. assess any liquidated damages under Section 6.2. 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.

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.

Liquidated Damages. The City and the Consultant acknowledge and agree that the City will incur costs if the Consultant violates the CBI Policy and/or CBI Manual in one or more of the ways set forth below, including but not limited to loss of goodwill, detrimental impact on economic development and diversion of internal staff resources. The parties further acknowledge and agree that the damages the City might reasonably be anticipated to accrue as a result of such failures are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the Contractor agrees to pay the liquidated damages assessed by the City at the rates set forth below for each specified violation of the CBI Policy. The Consultant further agrees that for each specified violation the agreed upon liquidated damages are reasonably proximate to the loss the City will incur as a result of such violation:

- a. **Failure to Meet Committed MWSBE Goal.** If a Contractor will not or did not meet a Contract Goal and such failure is not excused pursuant to Section 5.1.2, then the City may assess the lesser of: (a) \$200,000 or (b) the dollar difference between the Contract Goal and the Contractor's actual MWSBE utilization. This may be assessed only once per Contract.
- b. **Use of a Conduit.** If the Contractor lists an MWSBE for a Contract Goal with knowledge that the MWSBE will be acting as a Conduit or will not be performing a Commercially Useful Function, the City may assess the lesser of: (a) \$100,000 per incident; or (b) the dollar amount stated on the MWSBE's letter of intent.
- c. **Wrongful Termination or Replacement of an MWSBE Subcontractor.** If the Contractor terminates or replaces an MWSBE Subcontractor in violation of Section 5.3.1, then the City may assess the lesser of: (a) \$50,000 per incident; or (b) the dollar amount of the prospective work to be performed by the MWSBE Subcontractor.
- d. **Failure to Perform Modified Good Faith Efforts.** If the Contractor fails to comply with Section 4.2, then the City may assess the lesser of: (a) \$50,000 per incident; or (b) the dollar amount of the prospective work to be performed by the MWSBE Subcontractor.
- e. **False Statements and Misrepresentations.** If the Contractor makes a false statement, material misrepresentation, or material misleading omission regarding any matter, then the City may assess the lesser of: (a) \$50,000 per incident; or (b) the dollar difference between the Contractor represented as payment and what was actually paid. In the event of any overlap between Section 6.2.5 and Section 6.2.2, then the damages set forth in Section 6.2.2 shall apply.
- f. **Failure to Respond to Request for Information.** If the Contractor fails to provide any report, documentation, affidavit, certification, or written submission required under the CBI Program within the time period set forth therein, the City may assess \$40 per Day until receipt of the item.
- g. **Use of An Affiliate to Meet the Contract Goal.** If the Contractor listed an MWSBE for a Contract Goal with knowledge that the MWSBE is an Affiliate and the City cannot invoke Section 5.2.2, then the City may assess the lesser of: (a) \$75,000 per incident or (b) the dollar amount paid to the MWSBE Affiliate. In the event of any overlap between Section 6.2.7 and Section 6.2.2, then the damages set forth in Section 6.2.2 shall apply.
- h. **Quick Pay Commitment.** If a Quick Pay Commitment is offered to any MWSBE Subcontractor in the Vendor Documents but is not subsequently honored, then the City may assess the lesser of: (a) \$50,000 or (b) ten percent (10%) of the dollar amount listed on the MWSBE Subcontractor's letter of intent.
- i. **Violation of Exempt Performance Allowance.** If a Contractor submits an affidavit under Section

3.2 but Subcontracts thereafter, then the City may assess the lesser of: (a) \$25,000 per incident; or (b) the dollar amount of the work performed by any and all Subcontractors.

The City shall be entitled to exercise all remedies and recover all damages set forth in Section 6 directly from each Contractor that the City enters into a Contract with, regardless of whether such remedies or damages are due to a breach by that Contractor or by a Subcontractor on the applicable project. Each Contractor on a Contract shall be responsible for taking appropriate measures to enable it to exercise all remedies and recover all damages set forth in Section 6 directly from each Subcontractor. Additionally, the City shall be a third-party beneficiary to each Contract for the purpose of seeking injunctive relief and other remedies to the extent necessary to enforce the CBI Program directly against Contractors, though the City shall have no obligation to do so.

6. CBI FORMS:

Proposers shall submit the following CBI forms within the timeframes indicated below:

CBI FORM	SUBMISSION REQUIREMENTS
<p>CBI Form 1: Intent to Perform Contract with <u>Own</u> Workforce Affidavit</p> <p>A Proposer that intends to perform 100% of the work on a Contract with its own workforce must submit an Affidavit (CBI Form 1) stating that the Proposer does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all elements of work on this Contract with its own current workforces.</p> <p>If the Proposer is not licensed to perform each and every type of work included in the Contract, or if the City has cause to believe based on past practice or other grounds that the Proposer will not be performing all work under the Contract with its own workforce, then the City may reject the Proposer’s Bid for non-compliance with the CBI Policy.</p>	<p>Due at bid opening if the Proposer intends to perform 100% of the work. In addition to submitting a completed CBI Form 1, the Proposer must also provide, at Bid Opening sufficient supporting documentation for the City to determine that the Proposer does not customarily subcontract work on this type project.</p>
<p>CBI Form 2: Solicitation Form</p> <p>Identifies all MWSBEs the Proposer contacted and any MWSBEs that contacted the Proposer.</p> <p>Documentation content includes: Scope of work, MWSBE contact, date and method of contact, response status, as well as other information.</p> <p>Note: For each scope of work bid by a MWSBE and NOT awarded to a MWSBE, Proposer must complete CBI Form 2A documenting the reason(s) for rejecting the MWSBE’s Bid.</p>	<p>Not due at time of bid.</p> <p>This form will only need to be submitted if the Proposer does not meet the established goal(s). If requested by the City, Proposer must submit form within three (3) Business Days from the initial request.</p> <p>ALL supporting documentation, reflecting the solicitation methods and content, must be submitted at the same time as CBI Form 2.</p>

<p>CBI Form 2A: Good Faith Negotiation Form.</p> <p>Proposers must submit a completed CBI Form 2A for each MWSBE who bid the project and was ultimately not selected by the Proposer to participate on the Contract.</p>	<p>Not due at time of bid.</p> <p>This form will only need to be submitted if the Proposer does not meet the established goal(s). If requested by the City, Proposer must submit form within three (3) Business Days from the initial request.</p>
<p>CBI Form 3: Subcontractor / Supplier Utilization Commitment.</p> <p>Identifies all MWSBE, and non-MWSBE subcontractors and suppliers to be utilized on the Contract and the dollar amounts committed to MWSBEs and non-MWSBEs.</p>	<p>DUE AT BID OPENING. Must be completed and signed.</p>
<p>CBI Form 3A: Subcontractor/Supplier Utilization Commitment – ALTERNATES.</p> <p>Identifies additional MWSBE commitments made after Bid Opening, when there are accepted alternates.</p> <p>This form will only be accepted when the City selects alternates.</p>	<p>Not due at time of bid.</p> <p>This form will be requested if the project contains alternates. If requested by the City, Proposer must submit form within three (3) Business Days from the initial request.</p>
<p>CBI Form 4: Letter of Intent.</p> <p>Proposers must submit a separate Letter of Intent executed for each MWSBE listed on CBI Form 3 and CBI Form 3A (if applicable) that the Proposer commits to utilize on the Contract.</p>	<p>Not due at time of bid.</p> <p>Must be submitted within three (3) Business Days after requested by the City.</p>
<p>CBI Form 5: Good Faith Efforts (GFE) and Statement of GFE Compliance.</p> <p>Identifies the minimum GFE points required for this contract, the GFE Categories, and respective GFE Points value for each GFE Category.</p> <p>Proposer must check each GFE Category for which it has performed the respective effort, as described in Part B Section 5.3 of the CBI Policy.</p>	<p>Not due at time of bid.</p> <p>This form will only need to be submitted if the Proposer does not meet the established goal(s). If requested by the City, Proposer must submit form within three (3) Business Days from the initial request.</p>

All CBI Forms are available online at www.charlottebusinessinclusion.com

MWSBE vendors can be found on the City’s InclusionCLT system:
<https://charlotte.diversitycompliance.com/>

PAYMENT REPORTING: As a condition for receiving payments under this Agreement, the Contractor agrees to submit any payment record into InclusionCLT, or any subsequent system designated by the City, detailing the amounts paid by the Contractor to all subcontractors and suppliers receiving payment in connection with this Contract

Charlotte Business INclusion

CBI FORM 3: Subcontractor / Supplier Utilization Commitment (page 1 of 2)

This form **MUST** be submitted at the time of Proposal Submission Date. *Copy this CBI Form 3 as needed.*

*This form (CBI Form 3), captures information regarding the MWSBEs and other subcontractors and suppliers that the Proposer intends to use on the Contract **FOR ALL TIERS.***

Proposer Name:			
Contract Name:			
Contract N°:	N/A	Established MWSBE Goal:	To Be Negotiated

List below all **MWSBEs** that you intend to use on this contract.

MWSBE Vendor Name (Specify Certification type for each firm)	Description of work	NIGP Code	Vendor #	Total Projected Utilization (\$)
				N/A
				N/A
				N/A
				N/A
				N/A

List below all **non-MWSBEs (subcontractors and suppliers)** that you intend to use on this contract

Firm Name	Description of work	NIGP	Vendor #	Projected Utilization (if known) (\$)
				N/A
				N/A
				N/A
				N/A

Total MWSBE Utilization

\$ N/A

Total Bid Amount (including Contingency)

\$ N/A

Percent MWSBE Utilization* (Total MWSBE Utilization *divided by* Total Bid Amount)

% N/A

** The MWSBE Utilization percentage stated here **MUST** be rounded to (2) decimal places.*

Charlotte Business INclusion
CBI FORM 3: Subcontractor / Supplier Utilization Commitment (page 2 of 2)

Letters of Intent submitted upon notice from the City

Within three (3) Business Days after receiving a request from the City (or within such longer time as may be communicated by the City in writing), Proposers must submit a separate Letter of Intent (**CBI Form 4**) for each MWSBE it commits to use to meet the Contract goal. Each Letter of Intent must be executed by both the MWSBE and the Proposer. The City shall not count proposed MWSBE utilization for which it has not received a Letter of Intent by this deadline.

Adding subcontractors or suppliers after submitting this form

Nothing in this certification shall be deemed to preclude you from entering into subcontracting arrangements after submission of this form. However, per Part D of the CBI Policy, you must comply with the following:

- You must maintain the level of MWSBE participation committed throughout the duration of the Contract, except as specifically allowed in Part D.
- If you need to terminate or replace a MWSBE, you must comply with Part D, Section 5.
- If the scope of work on the Contract increases, or if you elect to subcontract any portion of work not identified on this form as being subcontracted, then you must comply with Part D, Section 6.
- A Letter of Intent (**CBI Form 4**) must also be submitted for each MWSBE you add subsequent to contract award.

All Subcontractors and Suppliers must be registered with the City of Charlotte.

Pursuant to the City’s Vendor Registration Policy, each subcontractor or supplier (non-MWSBE and MWSBEs) that you use on this contract must be registered in the City’s vendor database. You will need to provide the vendor number for each subcontractor or supplier used on this contract as a condition for receiving payment on this Contract.

Per Part C, Section 3.3, a Regular Dealer as defined in the CBI Policy shall only count 60% of all expenditures towards the MWSBE Goal. In addition, a Hauler, Broker, or Packager shall only count fees or commissions charged by the MWSBE toward the MWSBE Goal. The Proposer is still obligated to pay the MWSBE the full amount listed on the Contract with the MWSBE regardless of what percentage is actually counted towards the MWSBE Goal.

Signature

Your signature below indicates that the undersigned firm certifies and agrees that:

- (a) It has complied with all provisions of the CBI Policy; and,
- (b) Failure to properly document such compliance in the manner and within the time periods established by the CBI Policy shall constitute grounds for rejection of your proposal.

Signature of Authorized Official	Printed Name	Title	Submittal Date
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EXHIBIT D

COMMERCIAL NON-DISCRIMINATION CERTIFICATION

Project Name: On-Call Materials Testing and Special Inspection Services

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

1. In preparing the enclosed SOQ, the Firm has considered all bids submitted from qualified, potential subcontractors and suppliers, and has not engaged in discrimination as defined in Section 2 below.
2. For purposes of this Section, discrimination means discrimination in the solicitation, selection, or treatment of any subcontractor, vendor or supplier on the basis of race, ethnicity, gender, age or disability or any otherwise unlawful form of discrimination. Without limiting the foregoing, discrimination also includes retaliating against any person or other entity for reporting any incident of discrimination.
3. Without limiting any other remedies that the City may have for a false certification, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the City to reject the SOQ submitted with this certification, and terminate any contract awarded based on such SOQ. It shall also constitute a violation of the City's Commercial Non-Discrimination Ordinance and shall subject the Firm to any remedies allowed there under, including possible disqualification from participating in City contracts or solicitation processes for up to two years.
4. As a condition of contracting with the City, the Firm agrees to promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation and selection of suppliers and subcontractors in connection with this solicitation process. Failure to maintain or failure to provide such information shall constitute grounds for the City to reject the SOQ and to any contract awarded on such SOQ. It shall also constitute a violation of the City's Commercial Non-Discrimination Ordinance, and shall subject the Firm to any remedies that are allowed there under.
5. As part of its SOQ, the Firm shall provide to the City a list of all instances within the past ten years where a complaint was filed or pending against the Firm in a legal or administrative proceeding alleging that the Firm discriminated against its subcontractors, vendors or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.
6. As a condition of submitting a SOQ to the City, the Firm agrees to comply with the City's Commercial Non-Discrimination Policy as described in Section 2, Article V of the Charlotte City Code, and consents to be bound by the award of any arbitration conducted there under.

Name: _____ Title: _____

Signature: _____ Date: _____

EXHIBIT E

**CERTIFICATION OF OFFEROR REGARDING
TAX DELINQUENCY AND FELONY CONVICTIONS**

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

Certifications

- 1) The applicant represents that it is (✓) is not (✓) a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

- 2) The applicant represents that it is (✓) is not (✓) is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

Note

If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the sponsor has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government’s interests. The applicant therefore must provide information to the owner about its tax liability or conviction to the Owner, who will then notify the FAA Airports District Office, which will then notify the agency’s SDO to facilitate completion of the required considerations before award decisions are made.

Term Definitions

Felony conviction: Felony conviction means a conviction within the preceding twenty four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

Tax Delinquency: A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

By: _____
Signature of Authorized Official

Title: _____
(Certification signature should be same as Contract Signature)

EXHIBIT F

**CERTIFICATION OF OFFERER REGARDING
LOBBYING AND INFLUENCING FEDERAL EMPLOYEES**

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

By: _____
Signature of Authorized Official

Title: _____
(Certification signature should be same as Contract Signature)

EXHIBIT H

SAMPLE FORM COPY OF PROFESSIONAL SERVICES AGREEMENT



AGREEMENT FOR PROFESSIONAL SERVICES

FOR

**ON-CALL MATERIALS TESTING AND SPECIAL
INSPECTIONS SERVICES**

OWNER:
City of Charlotte
c/o Aviation Department

COMPANY:
[Insert Name]

(AIP and Non-AIP Funded Projects)

Rev. 1.06.2023

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This **AGREEMENT FOR PROFESSIONAL SERVICES** (“Agreement”) is made and entered into this _____ day of _____, 2024 (“Effective Date”) by and between the **CITY OF CHARLOTTE** (“City”) and **[INSERT NAME]** (“Company”),

WITNESSETH:

THAT WHEREAS, the City is the owner and operator of the Charlotte Douglas International Airport (“Airport”);

WHEREAS, the City issued a Request for Qualifications dated [insert date] (“RFQ”) seeking proposals from qualified firms interested in providing **On-Call Materials Testing and Special Inspection Services** (“Services”) for various projects at the Airport;

WHEREAS, the Company submitted a proposal in response to the RFQ (“Proposal”) setting forth its qualifications and experience to perform the Services; and

WHEREAS, City desires to accept Company’s Proposal to provide the Services in accordance with the terms and conditions set forth below.

NOW THEREFORE, City and Company, for good and valuable consideration, agree as follows:

AGREEMENT:

ARTICLE 1 - SCOPE OF SERVICES

Company understands and agrees that, in order to expedite design, delivery and completion of various federal and non-federal funded Airport projects, the City is entering into this On-Call Civil Planning Services Agreement with the Company to obtain Services at the City’s discretion for the Scope of Services as provided in **Exhibit A**, attached hereto and incorporated by reference as if fully set forth herein. Company shall be available to commence Services as needs arise, assign qualified personnel necessary to perform and complete the Services, and successfully complete assigned projects within the time specified for the services.

ARTICLE 2 – TIME AND PERIOD OF SERVICES

2.1 Term of Agreement. This Agreement shall commence upon the Effective Date and remain in full force for the period of three (3) years with an option to renew for two (2) additional one-year terms, as described in **Exhibit B**. The Contract may be extended only by a written amendment to the Contract signed by both parties.

2.2 Assignment of Task Orders Documents and Schedule. Services shall be assigned to Company through a Task Order Document (a “TOD”), the terms of which shall define a statement of work for a specific project and establish the deliverables,

negotiated costs, and the schedule duration and deadline, if applicable, for completion of the Services for each Project. Company shall promptly and continuously perform and complete all obligations and services associated with a project so as not to delay the construction of the work for the project in accordance with specific requirements as to location, conditions, procedures and associated services as set out in the TOD. This Agreement shall remain in force for such period of time as City determines to be reasonably required for the completion of services assigned by a Task Order for the design, award of the construction contract, and the completion of a project, including any extra work and required extensions, unless this Agreement is discontinued as provided for elsewhere in this Agreement.

ARTICLE 3 - COMPENSATION AND METHOD OF PAYMENT

3.1 Compensation. As compensation for services performed under this Agreement, Company will be paid based on the scope of services for each project either on the basis of a fixed lump sum not to exceed amount, or on the basis of hourly rates as set forth in **Exhibit C**, attached hereto and incorporated herein by reference. The method of compensation for Services provided, including reimbursable costs as detailed in Section 3.2 below, will be detailed in a TOD for each project once the specific scope of services required for the project is known and agreed upon between the City and the Company. A sample copy of a Task Order Document is attached hereto as **Exhibit D**. An accepted TOD shall be incorporated into and governed by the terms and conditions of this Agreement.

It is anticipated that total compensation for any single project assigned under this Agreement shall not exceed Seventy Five Thousand **Dollars (\$75,000)**.

Company may request increases in labor rates once per year for consideration by the City. Company may add new rate classifications and associated rates, if the need arises. All rate increases require written approval by the City and are not guaranteed. Both parties understand and agree that compensation will be renegotiated and documented in a written amendment executed by both parties if the scope of this Agreement were to change.

3.2 Reimbursable Costs. To be reimbursable, costs (also referred to as “expenses”) must be actual, allowable, reasonable and allocable to the Services provided under this Agreement and must comply with (i) the Travel and Reimbursement Protocol attached hereto as **Exhibit E** and (ii) the requirements of 49 CFR §18.36, FAA Order 5100.38 and OMB Circular A-87. There shall be no mark-up on expenses pursuant to FAA Advisory Circular 150/5100- 14E.

3.3 Payments. Payments to Company shall be made for fees and reimbursable costs, if applicable, upon submission of an invoice consistent with an issued Task Order that complies with the format and procedural requirements set forth in **Exhibit F** attached hereto, and shall be subject to City’s approval. Invoices that do not comply with the format and procedural requirements set forth in **Exhibit F** may be rejected and/or result in

payment delays. Payment will be made to Company on a monthly basis, and, where applicable, shall be in proportion to the Services performed within each phase, on the basis set forth in **Exhibit C**.

The City of Charlotte is not exempt from sales tax. Please include all applicable State and County sales taxes on your invoices. Taxes must be on a separate line(s) on the invoice and not combined with the cost of goods.

3.4 Accounting and Auditing. The Company shall maintain complete and accurate records, using Generally Accepted Accounting Principles (GAAP), of all costs related to this Agreement. Such records shall be open to inspection and subject to audit and/or reproduction, by the City's agent or authorized representative to the extent necessary to adequately permit evaluation and verification of any invoices, payments, or claims submitted by the Company or any of his payees in connection with this Agreement. Records subject to examination will include, but are not limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement.

- a. For the purpose of such inspections, the City's agent or authorized representative shall have access to said records from the Effective Date of this Agreement, for the duration of the Services, and until three (3) years after the date of final payment by the City to the Company pursuant to this Agreement.
- b. If, as a result of an audit hereunder, the Company is determined to have charged the City for amounts that are not allocable or verifiable, the Company shall promptly reimburse the City for said amount.

ARTICLE 4 - PERSONNEL

4.1 Personnel. City has the right to require any additional personnel it deems necessary for the Services. The City also has the right to require removal and replacement of any personnel it deems unsatisfactory.

The Company's employees, agents and sub-consultants who normally and regularly come in direct contact with the public shall be clearly identifiable by name badges, name tags, or identification cards. Company and Company's employees, agents and sub-consultants will abide by all the safety and security rules and regulations at the Airport.

The Company shall ensure that its employees, agents and sub-consultants serve the public in a courteous, helpful, and impartial manner. All employees of the Company in both field and office shall refrain from belligerent behavior and/or profanity. Correction of any such behavior or language shall be the responsibility of the Company.

4.2 Sub-contracting. The Company shall not subcontract the Services without prior written approval of the City.

4.3 Change in Control. The Company shall notify the City within ten (10) days of the occurrence of a change in control. As used in this Agreement, the term "control" shall mean the possession, direct or indirect, of either:

- a. 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
- b. 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.

ARTICLE 5 - NOTIFICATION

The City and the Company shall cooperate with one another to fulfill their respective obligations under this Agreement. Any notice, demand, consent or other formal communication required or contemplated by this Agreement shall be in writing and shall be to City and to Company at the respective addresses set forth below:

For the City:
Aviation Department
City of Charlotte
5601 Wilkinson Blvd.
Charlotte, NC 28208
PO Box 19066
Charlotte, NC 28219
Attn: _____
Phone: 704
Email:

For the Company:
Insert address, etc.
Attn: _____
Phone:
Email:

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.

ARTICLE 6 - INSURANCE

Throughout the term of this Agreement, the Company and any of its subcontractors will comply with the insurance requirements described in this section. The Company shall also provide any other insurance specifically recommended in writing by the City of Charlotte Risk Management Department. In the event that the Company fails to maintain

required insurance, the City shall be entitled to terminate or suspend the Agreement immediately.

The Company agrees to purchase and maintain the following insurance coverage during the life of the Agreement:

- a. **Automobile Liability.** Insurance with a limit of not less than \$1,000,000 per accident combined single limit each occurrence for bodily injury and property damage liability covering all owned, non-owned, and hired vehicles.
- b. **Commercial General Liability**
Insurance with a limit not less than \$1,000,000 per occurrence/aggregate including coverage for bodily injury, property damage, products and completed operations, personal/advertising injury liability and contractual liability.
- c. **Professional Liability.** Insurance with a limit of not less than \$1,000,000 each claim and \$1,000,000 aggregate. The policy may be claims-based, provided Company continuously maintains the policy from the date of the first NTP until six (6) calendar years after the date of substantial completion of the Services rendered under this Agreement.
- d. **Workers' Compensation.** Insurance meeting the statutory requirements of the State of North Carolina and any applicable Federal laws; and, Employers' Liability - \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit.

The City shall be listed as an additional insured under the commercial general liability insurance for operations or services rendered under this Agreement.

The Company shall not commence any work in connection with the resulting contract until it has obtained all of the types of insurance set forth in this section and furnished the City with proof of insurance coverage by certificates of insurance accompanying the Agreement. The Company shall be responsible for notifying the City of cancellation of any of the insurance coverages required above. The Company must give notice in writing to the City within 48 hours of the cancellation.

The Company shall not allow any subcontractor to commence work until all such subcontractors have obtained the same insurance coverages as described above.

All insurance policies shall be written by insurers qualified to do business in the State of North Carolina. If any of the coverage conditions are met by a program of self-insurance, the Company must submit evidence of the right to self-insure as provided by the State of North Carolina.

The City shall be exempt from, and in no way liable for any sums of money that may represent a deductible or self-insured retention in any insurance policy. The payment of

the deductible/retention shall be the sole responsibility of the Company and/or subcontractor.

The Company's insurance shall be primary of any self-funding and/or insurance otherwise carried by the City for all loss or damages arising from the Company's operations under this Agreement. The Company and each of its subcontractors shall and do waive all rights of subrogation against the City.

ARTICLE 7 - INDEMNIFICATION

The Company shall indemnify and hold harmless the City and the City's officers, agents and employees from and against any and all damages, liabilities and expenses proximately caused by the Company's breach of contract, or negligent, reckless or intentional acts or omissions constituting a tort under applicable statutes common law or violations of applicable statutes or regulations, unless the damages, liabilities and expenses are proximately caused by or resulting from, in whole or in part, the negligence of the City, or the City's officers, agents and employees. Company may be obligated to pay attorneys' fees, litigation or court costs actually incurred by the City to defend against third party claims alleged in any court, tribunal, or alternative dispute resolution procedures required of the City by law or by contract provided that the fault of the Company is a proximate cause of such defense costs, litigation expense or court costs. Company shall purchase insurance, as described in Section 7 of the Contract, which shall include coverage for the contractual liability described herein. This provision shall survive the expiration or early termination of the Contract.

ARTICLE 8 - COVENANTS AND REPRESENTATIONS

The Company covenants and represents that it shall exercise a customary degree of care and diligence in performing all services under this Agreement. The Company shall render services under this Agreement in accordance with the customary professional standards prevailing for major international airports in the United States.

The Company further covenants and represents that:

- a. To the best of Company's knowledge, information, and belief, the services performed by it under this Agreement do not violate any contracts with third parties or any third-party rights in any patent, trademark, copyright, trade secret or similar right;
- b. The services performed hereunder shall be performed in a professional manner and by qualified staff and shall satisfy the requirements set forth in this Agreement; and
- c. It has sufficient expertise and resources to perform under this Agreement.

The Company further represents and covenants that:

- a. It is a corporation duly incorporated, validly existing, and in good standing under the laws of [INSERT APPROPRIATE STATE OF INCORPORATION; IF A FOREIGN COMPANY ADD THE FOLLOWING CLAUSE – “with authorization to transact business in the State of North Carolina.”];
- b. It has all the requisite corporate power and/or authority to execute, deliver and perform its obligations under this Agreement;
- c. The execution, delivery, and performance of this Agreement have been duly authorized by the Company;
- d. No approval, authorization, or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Agreement; and
- e. In connection with its obligations under this Agreement, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses.
- f. It and each of its subcontractors have complied and shall comply with all federal, state and local laws and regulations relating to the performance of this Agreement and/or to the products and services delivered hereunder, and shall obtain all applicable verifications, permits and licenses.

Any defective designs or specifications furnished by the Company and any failure of any services performed by the Company to comply with any requirements set forth in this Agreement shall be promptly corrected by the Company at no cost to the City, or, at City’s sole discretion, City shall have the work corrected and Company shall reimburse City for the resulting expense. The City’s approval, acceptance, use of, or payment for all or any part of the Company’s Services shall in no way alter the Company’s obligations or the City’s rights under this Agreement.

ARTICLE 9 - OWNERSHIP AND USE OF WORK PRODUCT

9.1 Ownership. The City shall own title to and all intellectual property rights in and to all documents, reports, specifications, designs, developments, computations, and other materials prepared, obtained or delivered under the terms of this Agreement (collectively the “Deliverables”). The City may use, transfer, copy and distribute the Deliverables without restriction or limitation. The City accepts responsibility for any changes made by the City to these Deliverables after final submittal by the Company.

9.2 Instruments of Professional Service. The City acknowledges that the Deliverables are instruments of professional service. The City acknowledges and agrees that the Company may retain one copy of each Deliverable and use the Deliverable solely for its internal general reference.

9.3 Modification or Reuse Risk. Any modification of the Deliverables by the City without the involvement of the Company shall be at the sole risk of the City.

9.4 Other Items. The Company shall cooperate with and provide reasonable assistance to the City as necessary to obtain or enforce any patents, copyrights or other proprietary rights in the Deliverables and to execute all Deliverables necessary to give the City full legal ownership of such Deliverables. The Company shall also take all necessary actions to ensure that all employees and approved subcontractors engaged by the Company in connection with the Agreement are bound by the terms of this Section. The Company shall, as required for the performance under this Agreement and otherwise upon the request of the City or upon expiration or termination of this Agreement, deliver to the City all Deliverables.

9.5 Confidentiality Requirements. The parties acknowledge that they are bound by all terms and conditions contained in the Confidentiality Requirements with respect to any confidential information which either of them obtains access to in connection with this Agreement. By signing this Agreement you acknowledge that you will comply with all provisions of the Confidentiality Requirements as set forth in **Exhibit G** hereto. A violation of any provision of the Confidentiality Requirements shall constitute a material breach of this Agreement and will be the basis for immediate termination of this Agreement for cause, notwithstanding any other provision of this Agreement to the contrary.

ARTICLE 10 - TERMINATION AND SUSPENSION

10.1 Termination for Convenience. The City may terminate this Agreement immediately for any reason or no reason by giving written notice to the Company. The notice shall specify the date upon which such termination becomes effective.

10.2 Termination for Default by Either Party. By giving written notice, either party may terminate this Agreement if the other party violates or fails to perform any covenant, provision, obligation, term, or condition contained in this Agreement but, unless otherwise provided, such failure or violation shall not be cause for termination if the defaulting party cures such default within thirty (30) days of receipt of written notice of default from the other party. The notice of default shall state the party's intent to terminate this Agreement if the default is not cured within the specified time period.

10.3 Additional Grounds for Termination for Default by the City. The City may terminate this Agreement immediately by written notice to the Company upon the occurrence of one or more of the following events, each of which shall also constitute a non-exclusive Event of Default:

- a. The Company makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Agreement, the Company's proposal, or any covenant, agreement, obligation, term, or condition contained in the Agreement;

b. The Company ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Agreement shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of the other party's assets or properties.

10.4 Obligations upon Expiration or Termination. Upon expiration or termination of the Agreement, the Company shall promptly provide or return to the City:

- a. All Deliverables, in whatever form;
- b. Documentation to evidence completion of matters covered by this Agreement and setting forth progress in developing the Deliverables to the date of termination; and
- c. All equipment, materials, documents, or data, whether in written, graphic, machine readable or other form, supplied by the City in connection with this Agreement, in as good condition as when delivered, reasonable wear and tear excepted.

Upon the request of the City, the Company agrees to provide reasonable assistance and cooperation to the City and City contractors for a period of up to twelve (12) months after expiration or termination of this Agreement at its then-current rates.

In the event of Termination for Convenience, City shall pay Company for Services rendered and reimbursable expenses incurred prior to the effective date of termination and no amount shall be allowed for anticipated profit on unperformed services.

In the event of Termination for Default, the City may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Company shall be liable to the City for any additional cost occasioned to the City thereby.

If it is later conclusively determined that the Company had not in fact defaulted, the termination shall be deemed to have been effected for the convenience of the City and the Company shall be paid as provided for a Termination for Convenience.

10.5 No Effect on Taxes, Fees, Charges or Reports. Any termination of this Agreement shall not relieve the Company of the obligation to pay any fees, taxes, or other charges then due to the City, nor relieve the Company of the obligation to file any daily, monthly, quarterly, or annual reports covering the period to termination nor relieve the Company from any claim for damages previously accrued or then accruing against the Company.

10.6 Substitute Performance. In the event the Company fails to perform any part of the Scope of Services within the time frame set forth in this Agreement without good

cause, then, without limiting any other remedies available to the City, the City may take either or both of the following actions:

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

10.7 Cancellation of Orders and Subcontracts. In the event this Agreement is terminated by the City for any reason, the Company shall upon the effective date of termination (unless the City's notice of termination directs otherwise), immediately discontinue all service in connection with this Agreement and promptly cancel all existing orders and subcontracts which are chargeable to this Agreement. As soon as practical after receipt of notice of termination, the Company shall submit a statement to the City showing in detail the services performed under this Agreement to the date of termination.

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

10.9 Suspension. At any time, the City may suspend Company's Services by providing written notice of suspension to the Company.

In the event of suspension, Company shall be paid for the Services performed prior to suspension, plus reimbursable expenses incurred prior to suspension.

If such suspension continues for more than (six) 6 months for reasons beyond Company's control, Company may terminate this Agreement immediately upon written notice to City.

ARTICLE 11 - PUBLICITY AND STATEMENTS TO THE PRESS

Advertising, sales promotion or other materials of the Company or its agents or representatives shall limit the identification or reference to this Agreement to the general description of the project and/or services that are the subject of this Agreement. Descriptions of conceptual or alternative designs/products considered in connection with this Agreement shall not be included in advertising, sales or other materials. As a condition of entering into this Agreement, the Company further agrees to refrain from the following, absent the City's prior written approval: (1) making any statement to the media or public regarding the subject matter of this Agreement or the City's position on any issue relating to this Agreement; or (2) making any statement to the media or public on any issue which, in the City's judgment, is likely to cast doubt on the competence or integrity

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

ARTICLE 12 - GENERAL COMPLIANCE WITH LAWS

The Company shall comply with all Federal, State, and local laws, ordinances, and regulations applicable to the services provided herein. If, due to conflicts between two or more such ordinances, statutes, laws, rules, and regulations (the "Regulations") or due to conflicts in the interpretation or enforcement of such Regulations by courts or governing bodies having jurisdiction over the project, the Company is unable to comply with such Regulations, the Company shall exercise usual and customary professional care in complying with such conflicting Regulations.

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

ARTICLE 13 - NON-DISCRIMINATION PROVISION FOR ALL CITY CONTRACTS

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

ARTICLE 14 - COMPLIANCE WITH SECURITY MEASURES.

Company acknowledges and agrees that:

- a. Access to the secured areas of the Airport is subject to security measures imposed by the United States ("Security Plan") and enforced by the Transportation Security Administration;
- b. Access to the secured areas of the Airport or the airfield by Company's officers and employees shall be limited to and conditioned upon compliance with the Security Plan as it exists upon the effective date of this Agreement, and as may be modified from time to time;
- c. Company's officers and employees who need regular access to the secured areas of the Airport or the airfield will have to apply for and qualify for security identification badges ("Security Badges") issued by the Aviation Director; and
- d. City shall not be liable to Company for any diminution or deprivation of Company's rights hereunder on account of the inability or delay of Company

or his officers or employees to obtain a Security Badge, regardless of the reason.

ARTICLE 15 - MANDATORY FEDERAL PROVISIONS

This Agreement is funded in whole or in part through the Airport Improvement Program (“AIP”) administered by the Federal Aviation Administration (“FAA”). Depending on the funding source identified in a Task Order Document assigned under this Agreement, the AIP requires the Company, as a contractor participating on an AIP-funded project, to comply with the applicable federal requirements set forth in **Exhibit H-1 or H-2**, attached hereto.

ARTICLE 16 – DIVERSITY AND BUSINESS INCLUSION PROGRAMS

ARTICLE 16(A) - DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

16(A).1 Participation. This Agreement is subject to the terms and conditions of 49 CFR Part 26 and the City’s Disadvantaged Business Enterprise Program (“DBE Program”). The complete DBE Program including DBE Forms 1 through 6 can be found at www.cltairport.com under the “Business with CLT” heading. Execution of the Agreement shall constitute an acknowledgment upon which the City may rely that the Company has thoroughly examined, and is familiar with the DBE regulations and Agreement requirements.

16(A).2 Goal. The applicable DBE Goal, if any, will be established by the City and set forth in each negotiated Task Order Document. Executed copies of DBE Form 4 – Letters of Intent will be attached thereto as **Exhibit I-1**.

16(A).3 Reporting. Company further agrees to report payments and all other information related to the DBE Program as may be required or requested by the City, and to submit this documentation into the InclusionCLT system, or subsequent software platform provided by the City, or in such other manner as may be prescribed, and further require that its Subcontractors provide such documentation and information through the same system.

16(A).4 Prompt Payment. The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than seven days from the receipt of each payment the prime contractor receives from the City. The prime contractor agrees further to return retainage payments to each subcontractor within seven days after the subcontractor’s work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors. Additional DBE requirements are included in **Exhibit I-1**.

16(A).5 Termination. Failure by the Company to comply with the DBE Program shall constitute a breach of this Agreement, in which case City shall have the right to

terminate the Agreement without notice or opportunity to cure, or exercise any other legal remedies otherwise available to the City under the law or DBE Program, including withholding of funds until such time as the Company complies with the requirements of the DBE program.

ARTICLE 16(B) - CHARLOTTE BUSINESS INCLUSION PROGRAM

16(B).1 Participation. This Agreement is subject to the requirements of the City of Charlotte's Charlotte Business Inclusion ("CBI") Program. Company agrees to abide by the City's CBI Program, a complete copy of which is available at www.charlottebusinessinclusion.com. Execution of the Agreement shall constitute an acknowledgment upon which the City may rely that the Company has thoroughly examined, and is familiar with the CBI Program and Agreement requirements.

16(B).2 Goal. The Agreement is subject to a CBI aspirational Goal. The applicable CBI Goal, if any, will be established by the City and set forth in each negotiated Task Order Document. Executed copies of CBI Form 4 – Letters of Intent will be attached thereto as **Exhibit I-2**.

16(B).3 Reporting. For purposes of CBI reporting requirements, Contractor will submit documentation requested by the City or required to comply with the City's CBI Program into the InclusionCLT System or subsequent software platform provided by the City, or in such other manner as may be prescribed, and further require its Subcontractors to provide such documentation and information through the same system.

16(B).4 Additional CBI Program Provisions. The parties agree that:

- I. The terms of the CBI Program, as revised from time-to-time, together with all rules and guidelines established, are incorporated into this Agreement by reference; and
- II. A violation of the CBI Program shall constitute a material breach of this Agreement, and shall entitle the City to exercise any of the remedies set forth in Part D of the CBI Program, including but not limited to liquidated damages; and
- III. Without limiting any of the other remedies the City has under the CBI Program, the City shall be entitled to withhold periodic payments and final payment due to the Company under this Agreement until the City has received in a form satisfactory to the City all claim releases and other documentation required by the City's CBI Program, and in the event payments are withheld under this provision, the Company waives any right to interest that might otherwise be warranted on such withheld amount under G.S. 143-134.1; and
- IV. The remedies set forth in Part D Section 14 of the CBI Policy shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy; and

V. The City will incur costs if the Company violates the CBI Policy, and such costs are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the Company agrees to pay the City liquidated damages at the rates set forth in Part D of the CBI Policy.

VI. The Company agrees to participate in any dispute resolution process specified by the City from time-to-time for the resolution of disputes arising from the CBI Program.

VII. Nothing in this Section shall be construed to relieve the Company from any obligation it may have under N.C. Gen. Stat. 143-134.1 regarding the payment of subcontractors.

ARTICLE 17 - DISPUTE RESOLUTION

17.1 The City and the Company agree to participate in good faith in any mediation of a dispute subject to the terms and conditions of this Section and NCGS 143-128(f1).

17.2 Full compliance with this section is a precondition for any party to initiate any form of litigation concerning the claim and/or dispute. Unless otherwise directed by the City, the Company shall continue performance under this Agreement while matters in dispute are being resolved. The process set forth by this Section may be foregone upon the mutual written agreement of all parties in interest to the claim and/or dispute.

17.3 The Company shall include this Section in every subcontract or any other agreement it enters into with any party related to or that will be involved in the Services rendered under this Agreement. Failure to do so will constitute a breach of this Agreement, and the Company shall indemnify and hold harmless the City from and against any and all claims, including without limitation reasonable attorney fees and other costs of litigation, arising in any manner from such breach.

17.4 The following disputes are not subject to the provisions of this Article:

- i. A dispute seeking a non-monetary recovery; and
- ii. A dispute seeking a monetary recovery of \$15,000 or less.

17.5 For purposes of this section, a dispute is limited to the recovery of monetary damages from the same transaction or occurrence against a single party or two or more parties alleged to be liable jointly, severally or in the alternative. Two or more disputes may not be consolidated or otherwise combined without the consent of all parties to such disputes.

17.6 Prior to requesting mediation, a party must form a good faith belief that it is entitled under applicable law to recover the monetary amount to be included in the request from one or more of the remaining parties. Such belief must be based on a reasonable and

prudent investigation into the dispute that is the subject of the request. The request for mediation must be based on such investigation and may not include any amount or the name of any remaining party, unless supported by such investigation and good faith belief by the party requesting the mediation.

17.7 All expenses incurred by a party to a dispute in preparing and presenting any claim or defense at the mediation shall be paid by the party. The parties shall share the mediator's fee and any filing fees equally with at least one-third of such fees to be paid by City, if City is party to the dispute. Agreements reached in mediation shall be enforceable as settlement agreements in any court have jurisdiction thereof.

17.8 The mediation shall be held in the Charlotte, Mecklenburg County, North Carolina, unless otherwise agreed by all parties in writing. The parties understand and agree that mediation in accordance with this Section shall be a condition precedent to institution of any legal or equitable proceeding seeking monetary recovery based on any dispute that is subject to mediation pursuant to this Section.

ARTICLE 18 – E-BUILDER PROJECT CONTROL SYSTEM

Upon City's request, Company shall use the City's web-based project control software ("e-Builder") for records retention and management of all documentation related to this Agreement. Information on e-Builder can be found at www.e-builder.net. Documents, forms, and processes that will be used in e-Builder by the City, City's representatives and Company include but are not limited to: drawings, designs, schematics, submittals, reports, photos, transmittals, requests For information, contract amendments, design changes, letters, meeting notifications and meeting minutes. If an item is not covered by e-Builder, submittal shall be as directed by the City. For submittals larger than 11x17, submittal shall be as directed by the City.

City will provide access and technical service for five (5) e-builder licenses at no cost to the Company. Any additional e-Builder licenses will be the responsibility of the Company to purchase as needed. The City will provide training at no cost to the Company.

Company shall submit a Submittal Register to the City the Agreement has been approved and executed. The Submittal Register shall include a list of all submittals required to be submitted under the Agreement. The Submittal Register shall also include the planned dates for all submittals to be submitted for the entire duration of the Agreement. The Company shall submit an updated Submittal Register monthly with any changes to the planned submittal dates.

The City will provide will the Company with the format for the Submittal Register. The Company should allow a minimum of twenty-one (21) days for review and approval of the Submittal Register following the submittal date, unless otherwise approved by the Company. The Submittal Register shall include the following information:

- a) Number
- b) Package
- c) Specification Section and Sub-Section
- d) Revision (designate on original submittals as Rev. 00)
- e) Description
- f) Category
- g) Submittal Date

ARTICLE 19 - MISCELLANEOUS CONDITIONS

19.1 Relationship of the Parties. The relationship of the parties established by this Agreement is solely that of independent contractors, and nothing contained in this Agreement shall be construed to (i) give any party the power to direct or control the day-to-day activities of the other; or (ii) constitute such parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking.

19.2 Governing Law and Jurisdiction. The parties acknowledge that this Agreement is made and entered into in Charlotte, North Carolina. The parties further acknowledge and agree that North Carolina law shall govern all rights, obligations, duties, and liabilities of the parties to this Agreement, and that North Carolina law shall govern interpretation of this Agreement and any other matters relating to this Agreement (all without regard to North Carolina conflicts of laws principles).

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

19.3 Amendment. No amendment or change to this Agreement shall be valid unless in writing and signed by both parties to this Agreement.

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

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

19.6 CAD Standards. Company shall use and abide by the Airport's CAD standards. Information on applicable standards can be found at www.cltcadstandards.info.

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

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

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

19.10 Taxes. The Company shall pay all applicable Federal, State and local taxes that may be chargeable against the performance of the Services.

19.11 No Bribery or Lobby. The Company certifies that to the best of its knowledge, information, and belief, neither it, any of its affiliates or subcontractors, nor any employees of any of the forgoing has bribed or lobbied, or attempted to bribe or lobby, an officer or employee of the City in connection with this Agreement.

19.12 Survival of Provisions. Those Articles of this Agreement and the Exhibits that by their nature would reasonably be expected to continue after the termination of this Agreement shall survive the termination of this Agreement.

19.13 Endorsement of Documents. The Company shall sign and seal, or shall cause to be signed and sealed, with the appropriate North Carolina Professional Seal, all plans, specifications, calculations, reports, plats, and construction documents prepared by the Company.

19.14 Entire Agreement. This Agreement is the entire agreement between the parties with respect to its subject matter, and there are no other representations, understandings, or agreements between the parties relative to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations, and proposals ("prior agreements"), written or oral, except to the extent such prior agreements are incorporated by reference into this Agreement.

19.15 E-Verify Compliance. Company shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if Company utilizes a subcontractor,

Company shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes.

19.16 NC Prohibitions on Contracts with Companies that Invest in Iran or Boycott Israel. Company certifies that (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 147-86.58 (collectively, the “Treasurer’s IDA List”); (ii) it has not been designated by the NC State Treasurer pursuant to N.C.G.S. 147-86.81 as a company engaged in the boycott of Israel (such designation being referred to as the “Treasurer’s IB List”); and (iii) it will not take any action causing to appear on the Treasurer’s IDA List or the Treasurer’s IB List during the term of this Contract. In signing this Contract, Company further agrees, as an independent obligation, separate and apart from this Contract, to reimburse the City for any and all damages, costs and attorneys’ fees incurred by the City in connection with any claim that this Agreement or any part thereof is void due to Company appearing on The Treasurer’s IDA List or the Treasurer’s IB List at any time before or during the term of this Except to the extent specifically provided above, this Amendment shall not be interpreted or construed as waiving any rights, obligations, remedies or claims the parties may otherwise have under the Agreement.

19.17 Pre-Audit. No pre-audit certificate is required under N.C. Gen. Stat. 159-28(a) because this Contract is for an indefinite quantity with no minimum purchase requirement. Notwithstanding anything contained herein to the contrary, this Contract does not require the City to purchase a single product or service, and a decision by the City to not make any purchase hereunder will violate neither this Contract nor any implied duty of good faith and fair dealing. The City has no financial obligation under this Contract absent the City’s execution of a valid and binding PO or contract addendum containing a pre-audit certificate.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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 as of the date first written above.

[INSERT COMPANY NAME]

Federal Tax I.D. No. _____

By: _____

Printed Name: _____

Title: _____

Date: _____

CITY OF CHARLOTTE

By: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT A - SCOPE OF SERVICES

EXHIBIT B – SCHEDULE

This Agreement shall be for a term of three (3) years with an option to renew for two (2) additional one-year terms. Schedules and deadlines for Services assigned hereunder shall be as established in a Task Order Document for each project.

EXHIBIT C – COMPENSATION

EXHIBIT D – TASK ORDER DOCUMENT

**Task Order Document – Aviation Department
Request and Price Proposal for On-Call Materials Testing
and Special Inspection Services**

Please provide a Price Proposal for the Company’s cost and time to perform the On-Call Materials Testing and Special Inspection Services required for the Task Order Project described below within ten (10) business days of the Request Date. Your Price Proposal shall be a lump sum all-inclusive amount that covers every aspect of work required to provide the services and all of the Deliverables associated therewith in accordance with the terms and conditions of your Professional Services Agreement with the City. **Your Price Proposal must identify all costs for which the City will be responsible.**

SERVICE REQUEST DETAILS (Provided by Airport)

REQUEST DATE	
PROJECT LOCATION	TERMINAL; LAND-SIDE; AIR FIELD; ETC.
FUNDING SOURCE	FEDERAL or NON-FEDERAL
DESCRIPTION OF PROJECT	

PRICE PROPOSAL (Provided by Company)

DELIVERABLES: All Deliverables that will be needed to complete the services required for the project shall be identified in the table below. Company may use as many lines as necessary to capture the costs associated with all Deliverables and Expenses required to perform the project work. Company’s Price Proposal shall be based upon and use the hourly rates set out in Exhibit B to the Agreement. Company may submit its Price Proposal in another format if, at a minimum, the information requested below is included.

ITEM	CATEGORY	DESCRIPTION	TARGET COMPLETION DATE	COST
1	Deliverable			
2	Deliverable			
3	Deliverable			
4	Expenses			

TOTAL AMOUNT OF COMPANY'S PRICE PROPOSAL: \$ _____
Diversity and Business Inclusion Programs:

By signing this Task Order Request and Price Proposal, Company agrees that it will comply with the requirements of the applicable Diversity and Business Inclusion Program as set out in further detail in the Agreement depending upon whether the project is funded with Federal or Non-Federal funds.

The DBE or CBI goal for this Task Order Project is _____%. Upon execution of the Task Order Request and Price Proposal, Company is expected to provide completed copies of the DBE or CBI Form 4 – Letters of Intent for all participating DBE or CBI subconsultants.

Every aspect of the Company's Price Proposal must be complete and appear on this Task Order Request and Price Proposal form. The form, together with any attachments or supplemental pages, must be emailed to xxxxxx@cltairport.com on or before the Proposal Deadline listed above.

Company submits this Price Proposal to perform the Services requested in this Task Order Document. Upon acceptance of Company's Price Proposal, the Task Order Document shall be incorporated into the Company's Professional Services Agreement with the City, and the terms and conditions thereof shall apply and govern the performance of Services hereunder.

COMPANY NAME

BY: _____

SIGNATURE: _____

TITLE: _____

DATE: _____

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

By: _____
Finance Officer

EXHIBIT E – TRAVEL AND EXPENSE REIMBURSEMENT PROTOCOL

I. Transportation Expenses.

- A. Reasonable transportation expenses will be paid on the basis of actual costs. Requests for reimbursement for a transportation expense must include itemized receipts.
- B. Company is expected to use the most economically feasible mode of transportation giving consideration of time constraints, productive hours and distance involved. If Company elects to use a more expensive travel option, Company will only receive reimbursement equivalent to the least expensive option.
- C. The City will not pay additional expenses resulting from arriving earlier or staying later than necessary to conduct official business.
- D. The use of a rental car requires a written business purpose explanation.
- E. Fines for parking violations, moving violations, speeding tickets, etc. are the responsibility of the Company and will not be reimbursed by the City.

II. Air Travel.

- A. Company will not be reimbursed for priority airline boarding, US Customs Trusted Traveler Program fees, upgraded airline seats including preferred seating in coach, in-flight movie rental, flight insurance, or other voluntary amenity services.
- B. In lieu of fees for airport parking, transportation to the airport from origination via a TNC service, taxi, black car, etc. is reimbursable up to the total of the prevailing CLT Business Valet rates for the business trip.
- C. Per IRS, mileage to/from the airport is reimbursable only if traveling directly from the office to the airport and requires supporting documentation.

III. Driving Expenses. Company may be reimbursed for mileage based on the documented use of a private vehicle for business travel and in consideration of the most economical feasible transportation method; however, as per IRS guidelines, mileage between a residence and an airport is not reimbursable.

IV. Lodging Expenses.

- A. Lodging expenses will be paid by the City in accordance with the GSA lodging rate for a specific city.
- B. The City will pay lodging for the minimum number of nights required to conduct the assigned business.
- C. Company shall not be reimbursed for in-room movie rentals, laundry fees, fitness room fees, hotel room upgrades, or other voluntary, unspecified hotel amenity charges.

V. Meals and Incidental Expenses.

- A. Company will be reimbursed on the GSA per diem basis for meals and incidental expenses incurred specifically during the business portion of travel. GSA per diems for meals and incidental expenses can be found at the GSA website www.gsa.gov/portal/content/110007.
- B. Incidental expenses consist of fees and tips for persons who provide services, such as porters and baggage carriers, incurred when traveling overnight.

VI. Miscellaneous Expenses. Company may be reimbursed for other

business-related expenses, including local registration fees, parking fees, etc. Itemized receipts must be submitted with request for reimbursement for any such expenses.

VII. Documentation and Procedure.

- A. Itemized receipts for the cost of lodging, transportation (airfare, shuttles, light rail, taxis, parking, etc.) and registration fees must be submitted to be reimbursed.
- B. Mileage reimbursement requests must be supported by documentation evidencing actual mileage such as a Google Maps printout.
- C. If upon review of the travel expenses, any expense item requires additional clarification, the Company may be required to submit additional supporting documentation in the discretion of the City. If acceptable supporting documentation is not submitted, the expense item in question may be disapproved.

EXHIBIT F – INVOICING REQUIREMENTS

1. All invoices will clearly state:
 - a. Company MUNIS Vendor number
 - b. Company Name and Address
 - c. CLT PM
 - d. Contract/Contract Number
 - e. Purchase Order Number
 - f. Vendor Invoice Number (if applicable)
 - g. Charlotte Business INClusion Form #6
2. Company sends draft invoice to PM for review and approval.
3. If revisions are necessary, Company will be notified by the PM on what to correct. Corrections must be made before an invoice is submitted to Maria Teresa Allera.
4. Company submits invoice to mariateresa.allera@cltairport.com and copy;
 - a. CLT PM
 - b. Carol Wilson (Carol.Wilson@cltairport.com) CLT Development Office Manager
 - c. Claire Butler (Claire.Butler@cltairport.com) CLT CBI Business Diversity & Development Manager
 - d. CLT Procurement (procurement@cltairport.com)
5. Base Fee Billing – Each task identified in the project which a separate fee or percentage of the Total Compensation is assigned will be listed on a separate row. For a typical design project these would include such tasks as Programming, Design (this can be broken down further if desired into SD, DD, CD), Bidding, Construction Administration. (see attached invoice as an example) However, depending on the project, some projects may have very different and distinct tasks that need to be identified. Due to the complexity and unique nature of the types of projects that we manage, it will be left to the discretion of the Airport Engineer and the PM how the tasks are broken down.
6. If multiple POs are included on a single invoice, POs should be clearly identified with associated tasks directly below the identifying PO information (PO #, Project Name, etc.)
7. Every invoice will have the following columns: Total Fee, % of Total Fee, % Complete, Fee Earned (to date), Previous Billing, Current Due.
8. Reimbursable expenses should be listed below the base fee billing and clearly convey the same information, preferably using the same column format.
9. The designer/architect/consultant should provide a summary with each invoice showing total contract value and all purchase orders associated with that contract to assure CLT that they have not exceeded their contract value.
10. The designer/architect/consultant should provide a schedule update.

EXHIBIT G - CONFIDENTIALITY REQUIREMENTS

Company hereby agrees to comply with all confidentiality requirements set forth below in connection with this Agreement.

1. Confidential Information

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

- A. Trade secrets. For purposes of this Agreement, trade secrets consist of information of the City or any of its suppliers, contractors or licensors: (a) that derives value from being secret; and (b) that the City 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.
- B. Information of the City or its suppliers, contractors or licensors marked "Confidential" or "Proprietary."
- C. Information relating to criminal investigations conducted by the City, and records of criminal intelligence information compiled by the City.
- D. Information contained in the City/County's personnel files, as defined by N.C. Gen. Stat. 160A-168. This consists of all information gathered and/or maintained by the City about employees, except for that information which is a matter of public record under North Carolina law.
- E. Citizen or employee social security numbers collected by the City.
- F. Computer security information of the City, including all security features of electronic data processing, or information technology systems, telecommunications networks and electronic security systems. This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software and codes.
- G. Local tax records of the City that contains information about a taxpayer's income or receipts.
- H. Any attorney / client privileged information disclosed by either party.
- I. 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.

- J. The name or address of individual homeowners who, based on their income, have received a rehabilitation grant to repair their home.
- K. Building plans of City-owned buildings or structures, as well as any detailed security plans.
- L. Billing information of customers compiled and maintained in connection with the City providing utility services.
- M. Other information that is exempt from disclosure under the North Carolina public records laws.

Categories A through L 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 these requirements, and agrees that: (a) all requirements set forth herein applicable to Confidential Information shall apply to Highly Restricted Information; and (b) the Company will also comply with any more restrictive instructions or written policies that may be provided by the City from time to time to protect the confidentiality of Highly Restricted Information.

2. Restrictions

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

- A. It shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information.
- B. It shall not, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information of the other to any third party or to any individual employed by the Company, other than an employee, agent, subcontractor or vendor of the City or Company who: (i) has a need to know such Confidential Information, and (ii) has executed a confidentiality agreement incorporating substantially the form of this Section and containing all protections set forth herein.
- C. It shall not use any Confidential Information of the City for its own benefit or for the benefit of a third party, except to the extent such use is authorized by City as set forth herein, or is for the purpose for which such Confidential Information is being disclosed.
- D. It shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information of the other.
- E. The Company shall use its best efforts to enforce the proprietary rights of the City and the City's vendors, licensors and suppliers (including but not limited to seeking injunctive relief where reasonably necessary) against any

person who has possession of or discloses Confidential Information in a manner not permitted by City.

- F. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, the Company shall assert these provisions as grounds 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.
- G. All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to the City or destroyed upon satisfaction of the purpose of the disclosure of such information.

3. Exceptions

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

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

4. Unintentional Disclosure

Notwithstanding anything contained herein in to the contrary, in the event that the Company is unintentionally exposed to any Confidential Information of the City, the Company agrees that it shall not, directly or indirectly, disclose, divulge, reveal,

report or transfer such Confidential Information to any person or entity or use such Confidential Information for any purpose whatsoever.

5. Remedies

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

EXHIBIT H-1
MANDATORY FEDERAL REQUIREMENTS

(APPLICABLE TO FEDERAL AIP FUNDED PROFESSIONAL SERVICES)

The following provisions, if applicable, are hereby included in and made a part of the Agreement between City and Company.

All references made herein to "Contractor", "Prime Contractor", "Bidder", and "Offeror" shall pertain to the Architect/Engineer (A/E).

All references made herein to "Subcontractor", "Sub-Tier Contractor" or "Lower Tier Contractor" shall pertain to any subconsultant under contract with the A/E.

All references made herein to "Sponsor" and "Owner" shall pertain to the City of Charlotte executing the contract with the A/E.

Federal laws and regulations require that the contract provisions set forth herein be included in each contract funded under the AIP. Contractor (including all subcontractors at every tier) shall:

- A. Insert these contract provisions in each contract and subcontract, and further require that the clauses be included in all lower tier subcontracts.
- B. Incorporate applicable requirements of these contract provisions by reference for work done under any purchase orders, rental agreements and other agreements for supplies or services.
- C. Be responsible for compliance with these contract provisions by any subcontractor, lower-tier subcontractor or service provider.

The Owner is required to review every subcontract at every tier that is let pursuant to this Prime Contract and to certify to the FAA that each such subcontract at every tier includes these federal clauses and requirements as set forth herein. Contractor shall submit to the Owner every subcontract at every tier within fourteen (14) business days of the execution of the subcontract for the Owner's review.

Failure to comply with the terms of these contract provisions may be sufficient grounds to:

- A. Withhold progress payments or final payment;**
- B. Terminate the contract;**
- C. Seek suspension/debarment;**
- D. Require the Contractor to, directly or by requiring a subcontractor to, renegotiate and amend a subcontract (at any tier) to include directly or by**

attachment (but not by incorporation by reference) the Federal contract clauses set forth in this Section; or

E. Any other action determined to be appropriate by the Owner or FAA.

THE FOLLOWING FEDERAL CONTRACT PROVISIONS ARE APPLICABLE TO THIS CONTRACT, PROJECT, TASK ORDER, AND WORK:

1. ACCESS TO RECORDS AND REPORTS

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

2. GENERAL CIVIL RIGHTS PROVISIONS

In all its activities within the scope of its airport program, the Contractor agrees that it will comply with pertinent statutes, Executive Orders and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

The above provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract.

3. CIVIL RIGHTS – TITLE VI ASSURANCES

A. Title VI Solicitation Notice

The Owner, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.

B. Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following nondiscrimination statutes and authorities, including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Non-discrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, *et seq.*) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, *et seq.*).

C. Compliance with Nondiscrimination Requirements:

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation

Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

4. CERTIFICATION REGARDING DOMESTIC PREFERENCES FOR PROCUREMENTS

The Bidder or Offeror certifies by signing and submitting this bid or proposal that, to the greatest extent practicable, the Bidder or Offeror has provided a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to, iron, aluminum, steel, cement, and other manufactured products) in compliance with 2 CFR § 200.322.

5. FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, et seq, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The Contractor has full responsibility to monitor compliance to the referenced statute or regulation. The Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

6. FOREIGN TRADE RESTRICTION CERTIFICATION

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror –

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
- c. has not entered into any subcontract for any product to be used on the Federal on the project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, USC, § 1001.

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR § 30.17, no contract shall be awarded to an Offeror or subcontractor:

- (1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR, or
- (2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list or
- (3) who incorporates in the public works project any product of a foreign country on such USTR list;

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

7. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

8. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Contractor agrees to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act [Public Law 115-232 § 889(f)(1)].

9. CERTIFICATION OF OFFEROR/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

Certifications

- a) The applicant represents that it is () is not () a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- b) The applicant represents that it is () is not () a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

Note

If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the Sponsor has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government's interests. The applicant therefore must provide information to the owner about its tax liability or conviction to the Owner, who will then notify the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made.

Term Definitions

Felony conviction: Felony conviction means a conviction within the preceding twenty-four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. Code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 USC § 3559.

Tax Delinquency: A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

10. VETERAN'S PREFERENCE

In the employment of labor (excluding executive, administrative, and supervisory positions), the Contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 USC § 632) owned and controlled by disabled

veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

11. BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the Consultant or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

Owner will provide Consultant written notice that describes the nature of the breach and corrective actions the Consultant must undertake in order to avoid termination of the contract. Owner reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Owner elects to terminate the contract. The Owner's notice will identify a specific date by which the Consultant must correct the breach. Owner may proceed with termination of the contract if the Consultant fails to correct the breach by the deadline indicated in the Owner's notice.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

12. DISADVANTAGED BUSINESS ENTERPRISES

Contract Assurance (49 CFR § 26.13)

The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the Contractor from future bidding as non-responsible.

Prompt Payment (49 CFR §26.29)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the prime contractor receives from the Owner. The prime contractor agrees further to return retainage payments to each subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Owner. This clause applies to both DBE and non-DBE subcontractors.

Race/Gender Neutral

The requirements of 49 CFR part 26 apply to this contract. It is the policy of Owner to practice nondiscrimination based on race, color, sex or national origin in the award or performance of this contract. The Owner encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

Termination of DBE Subcontracts (49 CFR § 26.53(f))

The prime contractor must not terminate a DBE subcontractor listed in response to this contract (or an approved substitute DBE firm) without prior written consent of the Owner. This includes, but is not limited to, instances in which the prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

The prime contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains written consent the Owner. Unless Owner consent is provided, the prime contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

Owner may provide such written consent only if Owner agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the circumstances listed in 49 CFR §26.53.

Before transmitting to Owner its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to Owner, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise Owner and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why Owner should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), Owner may provide a response period shorter than five days.

In addition to post-award terminations, the provisions of this section apply to preaward deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

13. CLEAN AIR AND WATER POLLUTION CONTROL

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

Contractor must include this requirement in all subcontracts that exceeds \$150,000.

14. LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

The Bidder or Offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

15. DEBARMENT AND SUSPENSION

A. Certification Regarding Debarment and Suspension (Bidder or Offeror)

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that at the time the bidder or offeror submits its proposal that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

B. Certification Regarding Debarment and Suspension (Successful Bidder Regarding Lower Tier Participants)

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction", must confirm each lower tier participant of a "covered transaction" under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>

2. Collecting a certification statement similar to the Certificate of Offeror/Bidder Regarding Debarment, above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract

If the FAA later determines that a lower tier participant failed to tell a higher tier that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedy, including suspension and debarment of the non-compliant participant.

16. DISTRACTED DRIVING

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), the FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$10,000 that involve driving a motor vehicle in performance of work activities associated with the project.

17. RIGHTS TO INVENTIONS

Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Owner in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within 37 CFR §401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental, or research work.

18. SEISMIC SAFETY

In the performance of design services, the Consultant agrees to furnish a building design and associated construction specification that conform to a building code standard that provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Consultant agrees to furnish the Owner a "certification of compliance" that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

19. EQUAL OPPORTUNITY CLAUSE

During the performance of this contract, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment

because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representatives of the Contractor's commitments under this section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor

issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS

1. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;

d. "Minority" includes:

(1) Black (all) persons having origins in any of the Black African racial groups not of Hispanic origin);

(2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);

(3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor

participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 18.7a through 18.7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction Contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the Contractor has a collective bargaining agreement to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246 or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a

recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel, such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (18.7a through 18.7p). The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 18.7a through 18.7p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally,) the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 18.7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

20. CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

1. Overtime Requirements.

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

2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) above, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours

without payment of the overtime wages required by the clause set forth in paragraph 1 above.

3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

4. Subcontractors.

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

RFQ Exhibit Attachment

Certification of Offeror Regarding Tax Delinquency and Felony Convictions

As a matter of bid responsiveness, the bidder or offeror must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

Certifications

- a) The applicant represents [] it is OR [] it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- b) The applicant represents [] it is OR [] it is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

Note

If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the sponsor has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government's interests. The applicant therefore must provide information to the owner about its tax liability or conviction to the Owner, who will then notify the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made.

Term Definitions

Felony conviction: Felony conviction means a conviction within the preceding twenty-four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 USC § 3559.

Tax Delinquency: A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

By: _____
Signature of Authorized Official

Title: _____
(Certification signature should be same as Contract Signature)

RFQ Exhibit Attachment

Certification of Offeror Regarding Lobbying and Influencing Federal Employees

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

By: _____
Signature of Authorized Official

Title: _____
(Certification signature should be same as Contract Signature)

EXHIBIT H-2
MANDATORY FEDERAL REQUIREMENTS

(APPLICABLE TO NON-FEDERAL AIP FUNDED PROFESSIONAL SERVICES)

The following provisions are hereby included in and made a part of the Agreement between City and Company.

All references made herein to “Contractor”, “Prime Contractor”, “Bidder”, and “Offeror” shall pertain to the Architect/Engineer (A/E).

All references made herein to “Subcontractor”, “Sub-Tier Contractor” or “Lower Tier Contractor” shall pertain to any subconsultant under contract with the A/E.

All references made herein to “Sponsor” and “Owner” shall pertain to the City of Charlotte executing the contract with the A/E.

Federal laws and regulations require that the contract provisions set forth herein be included in each contract funded under the AIP. Contractor (including all subcontractors at every tier) shall:

- A. Insert these contract provisions in each contract and subcontract, and further require that the clauses be included in all lower tier subcontracts.
- B. Incorporate applicable requirements of these contract provisions by reference for work done under any purchase orders, rental agreements and other agreements for supplies or services.
- C. Be responsible for compliance with these contract provisions by any subcontractor, lower-tier subcontractor or service provider.

The Owner is required to review every subcontract at every tier that is let pursuant to this Prime Contract and to certify to the FAA that each such subcontract at every tier includes these federal clauses and requirements as set forth herein. Contractor shall submit to the Owner every subcontract at every tier within fourteen (14) business days of the execution of the subcontract for the Owner’s review.

Failure to comply with the terms of these contract provisions may be sufficient grounds to:

- A. Withhold progress payments or final payment;**
- B. Terminate the contract;**
- C. Seek suspension/debarment;**
- D. Require the Contractor to, directly or by requiring a subcontractor to, renegotiate and amend a subcontract (at any tier) to include directly or by**

attachment (but not by incorporation by reference) the Federal contract clauses set forth in this Section; or

E. Any other action determined to be appropriate by the Owner or FAA.

THE FOLLOWING FEDERAL CONTRACT PROVISIONS ARE APPLICABLE TO THIS CONTRACT, PROJECT, TASK ORDER, AND WORK:

1. GENERAL CIVIL RIGHTS PROVISIONS

In all its activities within the scope of its airport program, the Contractor agrees that it will comply with pertinent statutes, Executive Orders and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

The above provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract.

2. CIVIL RIGHTS – TITLE VI ASSURANCES

A. Title VI Solicitation Notice

The **Owner**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.

B. Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, *et seq*) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, *et seq*).

C. Compliance with Nondiscrimination Requirements

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the **Title VI List of Pertinent Nondiscrimination Acts and Authorities**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will

not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

- 3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- 4. Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- 5. Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
- 6. Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

2. FAIR LABOR STANDARDS ACT

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, et seq, the Federal Fair Labor Standards Act (FLSA), with the

same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The Consultant has full responsibility to monitor compliance to the referenced statute or regulation. The Consultant must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

3. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

**EXHIBIT I-1
DBE FORM 4 – LETTER OF INTENT**

Executed copies of DBE Form 4 Letters of Intent are deemed to be incorporated herein.

**EXHIBIT I-2
CBI FORM 4 – LETTER OF INTENT**

Executed copies of CBI Form 4 Letters of Intent are deemed to be incorporated herein.