



# **REQUEST FOR QUALIFICATIONS**

**FOR**

## **CONSULTING AND DESIGN SERVICES FOR ROOFING AND SKYLIGHT INSPECTIONS AND REPAIRS**

**DATE: JANUARY 28, 2025**

## I. 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, the “Firm”) interested in providing consulting and design services for roofing and skylight inspections and repairs (the “Work”). A full Scope of Work is attached hereto as **Exhibit A**.

The Work will be governed by a professional services agreement, a form copy of which is attached hereto as **Exhibit B** (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.

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.

### B. RFQ EXHIBITS

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

Exhibit A	Scope of Work
Exhibit B	Form Professional Services Agreement
Exhibit C	CBI Compliance Instructions and CBI Form #3
Exhibit D	City Non-Discrimination Certification

### C. RFQ SCHEDULE

DATE	ACTIVITY (All times are EST)
January 28, 2025	Issue RFQ
February 11, 2025; 5:00 PM EST.	Deadline for Submission of Written Questions
February 25, 2025: 2:00 PM EST.	Proposals are Due
March 10 – 14, 2025	Firm Interviews (if applicable)
April 28, 2025	City Council Date
June 1, 2025	Estimated Start Date

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. CHARLOTTE BUSINESS INCLUSION (“CBI”) PROGRAM

The City has a long history of creating and implementing strategies to support and encourage local business growth. In 2013, the City adopted the 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 ("MWSBEs").

For this RFQ, the City will negotiate an MWSBE participation goal ("CBI Goal") with the selected Firm. The CBI Goal will be made part of the selected Firm's Agreement. Firms are required to complete and attach CBI Form #3 – Utilization Commitment to their SOQ. **Please note, CBI Form #3 is the ONLY CBI form that should be attached to the SOQ.**

The selected Firm will be required to submit CBI Form #4 – Letter of Intent for each MWSBE the selected Firm commits to use to meet the CBI Goal. 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 CBI Form #6 – Payment Affidavit with each invoice submitted to CLT for payment.

CBI Compliance Instructions and a form copy of CBI Form #3 are attached to this RFQ as **Exhibit C**.

The following information is available at the CBI website at [www.charlottebusinessinclusion.com](http://www.charlottebusinessinclusion.com):

- A complete copy of the CBI Program;
- A complete list of registered MWSBEs; and
- Copies of all CBI forms.

## **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 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.

## **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 – Drew Buckner  
Email: [andrew.buckner@cltairport.com](mailto:andrew.buckner@cltairport.com)

Information related to this RFQ, including any addenda, will be posted to eBuilder Portal using the link below:

<https://gateway.app.e-builder.net/app/bidders/landing?accountid=80fe0a4a-0c8f-4fcd-ac93-cc9db65522cb&projectid=5d56a1f5-a212-49cb-8b36-009b9d822b7a&bidpackageid=7aa408c2-846b-4194-8f90-969d3a3db45e>

### **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 via the e-Builder Q&A tab**. 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](http://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 that, in its sole judgment, is most responsive in meeting the requirements and objectives of this RFQ as set forth below.

1. Demonstrated experience of Firm in providing similar services for comparable airport projects within previous five (5) years; identify key qualifications, certifications and credentials. (Weight 25%)
2. Demonstrated experience of proposed sub-consultants or sub-contractors in providing similar services for comparable airport projects within previous five (5) years; identify key qualifications, certifications and credentials (Weight 5%).
3. Identification of the project team that will be performing the Work including: (Weight 25%)
  - Qualifications, certifications and other key credentials of each team member;
  - Demonstrated experience of each team member on comparable airport projects;
  - Geographic location of each team member; and
  - Current workload of each team member.
4. Proposed approach to the performance of the Work and identification of key issues, considerations and challenges specific to CLT. (Weight 25%)
5. A description of the Firm's resources to complete Work including without limitation; technical resources, software, hardware, other. (Weight 10%)
  - Where applicable, ability to provide plans in AutoCAD and provide the City with drawing files (See "Digital CAD Specifications for Airport Projects" attached to the Agreement);
  - Where applicable, ability to work with and provide GIS files compatible with the Airport's ALP and other related GIS-based files;
  - Where applicable, 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;
6. A description of the Firm's proposed plan to comply with the CBI Program (Weight 5%).
  - The Firm is required to submit a CBI Form #3 for each proposed MWSBE subcontractor that will participate on the Work.
7. References; include contact information and description of work for each reference.
8. SOQ responsiveness and completeness (Weight 5%)
  - Identify contract terminations within previous 10 years at other airports and explain circumstances.
  - Identify bankruptcies within previous 10 years and explain circumstances.
  - Identify pending claims or lawsuits between Firm and other airports and explain circumstances.
9. Financial assurances such that CLT can assess Firm's ability to complete the Work.

## **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.
  - 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. 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.

**\*\*CBI Form #3 is the ONLY CBI form that should be attached to the SOQ.**

5. Commercial Non-Discrimination Certification – see **Exhibit D**.

#### B. SUBMISSION REQUIREMENTS

Firms must submit ONE (1) unbound, original and complete SOQs signed in ink by a company official authorized to make a legal binding offer and an electronic version on a flash drive 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=7aa408c2-846b-4194-8f90-969d3a3db45e>

All SOQs shall not exceed forty (40) pages in 8 1/2" x 11" format with all standard text no smaller than twelve (12) points. SOQs should use double-sided copying and be unbound with tab dividers corresponding to the format requirements specified above. 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 for certain technical or financial information may be used where appropriate.

### **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 WORK**

### **Scope of Work – Roof/Exterior Wall Maintenance Survey**

1. Visual inspections will be made of each facility by qualified personnel as scheduled by client and consists of all elements of roofs and building envelope. No invasive roof openings are anticipated as part of these services.
  - a. Inspection of built-up, modified bitumen or single-ply roof systems will include roof membrane, base flashings, drainage components, coping caps, edge metal, roof penetration flashings, equipment flashings, roof accessories, expansion and control joints flashings, walls above roof level, sealant or any other component that serves to prevent water infiltration.
  - b. Inspection of metal roof systems will include metal roof panels, standing seams, panel laps, exposed fasteners, edge metal, end closure flashings, ridge caps, high eave flashings, apron flashings, “Z” closures, roof penetration flashings, equipment flashings, drainage components, expansion and control joints flashings, walls above roof level, sealant, or any other component that serves to prevent water infiltration.
  - c. Inspection of exterior walls will include brick, CMU or precast concrete walls, metal wall panels, ACM panes, Exterior Insulation and Finish Systems (EIFS), Windows, masonry control joints, penetrations or any other component that serves to prevent water infiltration.
2. A report of findings of the inspection will be prepared and will in general include the following:
  - a. A written report of conditions noted during the survey including a description of the roof system components and, if available, manufacturer, age and warranty information.
  - b. An opinion of the general roof condition.
  - c. Schematic roof plan drawings depicting general roof layout with identification of each roof section and location of deficiencies found, if any.
  - d. General overview photographs and photographs of selected significant and typical conditions as required to illustrate the conditions described.
  - e. Recommendations for corrective actions, including repair and/or replacement of roof systems or components surveyed, including estimated costs.
  - f. A scope of work for repairs/replacement.

### **Scope of Work – Water Testing of Skylights, Windows, Exterior Walls or Through-Wall Flashings**

1. Perform water tests as scheduled by client at Skylights, Windows, Exterior Walls or Through-Wall Flashings utilizing a spray rack or standard garden hoses and portable communication. One individual will be posted inside monitoring interior conditions and a second individual will be on the exterior controlling the water spray.
2. Review of plans, specifications, shop drawings, etc. to the extent such documents are made available by Client.
3. Observe removal of building components by a Contractor to as necessary to observe condition and configuration of existing construction.
4. A report of findings will be prepared and will in general include the following:
  - a. A description of the components of the assembly investigated.
  - b. A report of details and conditions noted during the investigation.
  - c. Photographs of selected significant and typical conditions as required to illustrate typical conditions as required to illustrate the conditions described.

- d. Photographs of selected significant and typical conditions as required to illustrate typical conditions as required to illustrate the conditions described.
- e. General recommendations for the corrective actions required to eliminate water intrusion.
- f. Recommendations will be made covering work considered to repair the existing system if economically feasible or to provide an appropriate system.

**EXHIBIT B – FORM COPY OF PROFESSIONAL SERVICES AGREEMENT**



## **AGREEMENT FOR PROFESSIONAL SERVICES**

I

### **PROJECT:**

CONSULTING AND DESIGN SERVICES FOR  
ROOFING AND SKYLIGHT INSPECTIONS AND REPAIRS

### **OWNER:**

City of Charlotte  
c/o Aviation Department

### **COMPANY:**

[Insert Name]

(Non-Federal)

*Rev. 01.06.2023*

## **TABLE OF CONTENTS**

<b>ARTICLE 1 - SCOPE OF SERVICES</b>	<b>I-16</b>
<b>ARTICLE 2 –SCHEDULE</b>	<b>I-16</b>
<b>ARTICLE 3 - COMPENSATION</b>	<b>I-16</b>
<b>ARTICLE 4 - PERSONNEL</b>	<b>I-17</b>
<b>ARTICLE 5 - NOTIFICATION</b>	<b>I-18</b>
<b>ARTICLE 6 - INSURANCE</b>	<b>I-19</b>
<b>ARTICLE 7 - INDEMNIFICATION</b>	<b>I-20</b>
<b>ARTICLE 8 - COVENANTS AND REPRESENTATIONS</b>	<b>I-20</b>
<b>ARTICLE 9 - OWNERSHIP AND USE OF WORK PRODUCT</b>	<b>I-21</b>
<b>ARTICLE 10 - TERMINATION AND SUSPENSION</b>	<b>I-22</b>
<b>ARTICLE 11 - PUBLICITY AND STATEMENTS TO THE PRESS</b>	<b>I-25</b>
<b>ARTICLE 12 - GENERAL COMPLIANCE WITH LAWS</b>	<b>I-25</b>
<b>ARTICLE 13 - NON-DISCRIMINATION PROVISION FOR ALL CITY CONTRACTS</b>	<b>I-25</b>
<b>ARTICLE 14 - COMPLIANCE WITH SECURITY MEASURES.</b>	<b>I-25</b>
<b>ARTICLE 15 - CHARLOTTE BUSINESS INCLUSION PROGRAM</b>	<b>I-26</b>
<b>ARTICLE 16 - DISPUTE RESOLUTION</b>	<b>I-27</b>
<b>ARTICLE 17 – E-BUILDER PROJECT CONTROL SYSTEM</b>	<b>I-28</b>
<b>ARTICLE 18 - MISCELLANEOUS CONDITIONS</b>	<b>I-29</b>
<b>EXHIBIT A</b>	<b>SCOPE OF SERVICES</b>
<b>EXHIBIT B</b>	<b>SCHEDULE</b>
<b>EXHIBIT C</b>	<b>COMPENSATION</b>
<b>EXHIBIT D</b>	<b>TRAVEL AND EXPENSE REIMBURSEMENT PROTOCOL</b>
<b>EXHIBIT E</b>	<b>INVOICING REQUIREMENTS</b>
<b>EXHIBIT F</b>	<b>CONFIDENTIALITY REQUIREMENTS</b>
<b>EXHIBIT G</b>	<b>MANDATORY FEDERAL PROVISIONS (UPDATED 1.29.2016)</b>
<b>EXHIBIT H</b>	<b>CBI FORM 4 – LETTER OF INTENT</b>



This **AGREEMENT FOR PROFESSIONAL SERVICES** ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_ ("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 consulting and design services for roofing and skylight inspections and repairs ("Services") for buildings on Airport property;

**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**

A detailed scope of services is provided in **Exhibit A**, attached hereto and incorporated by reference as if fully set forth herein.

**ARTICLE 2 –SCHEDULE**

The Services shall be completed on a timetable described in **Exhibit B**. Company shall attach an updated Schedule to each invoice submitted under this Agreement.

**ARTICLE 3 - COMPENSATION**

**3.1 Total Compensation.**

As Total Compensation for the Services, Company will be paid on the basis of the hourly rate(s) as set forth in **Exhibit C**, attached hereto and incorporated herein by reference, in an amount, including reimbursable costs as detailed in Section 3.3 below, not to exceed **X** Dollars (**\$X**). Both parties understand and agree that Total 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 the Travel and Expense Reimbursement Protocol attached hereto as **Exhibit D**. There shall be no mark-up on these costs.

**3.3 Payments.** Payments shall be made for fees and reimbursable costs, if applicable, upon submission of an invoice that complies with the format and procedural requirements set forth in **Exhibit E** attached hereto. Invoices that do not comply with the format and procedural requirements set forth in **Exhibit E** 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.

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.

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.** Company shall not subcontract the Services without prior written approval of 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 6 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 F** 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:

All Deliverables, in whatever form;

Documentation to evidence completion of matters covered by this Agreement and setting forth progress in developing the Deliverables to the date of termination; and

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), all Occupational Safety and Health Administration (OSHA) regulations applicable to the work. The Company also acknowledges and agrees to comply with the federal requirements set forth in Exhibit G, attached hereto and incorporated herein by reference.

## **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, which is 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

a. 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 - CHARLOTTE BUSINESS INCLUSION PROGRAM**

**15.1 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](http://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.

**15.2 Goal.** The CBI Contract Goal is hereby established at [REDACTED] percent (??%) of Total Compensation. The Company agrees it shall use its best efforts to utilize the committed certified minority-owned, women-owned and/or small business enterprise ("MWSBE") firms to achieve the CBI Contract Goal set forth herein. An executed copy of each CBI Form 4 – Letter of Intent is attached hereto as **Exhibit H**.

**15.3 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.

**15.4 Additional CBI Program Provisions.** The parties agree that:

- a. 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

- b. 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
- c. 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
- d. 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
- e. 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.
- f. 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.
- g. 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 16 - DISPUTE RESOLUTION**

**16.1** 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).

**16.2** 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.

**16.3** 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.

**16.4** 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.

**16.5** 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.

**16.6** 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.

**16.7** 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.

**16.8** 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 17 – 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](http://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 18 - MISCELLANEOUS CONDITIONS**

**18.1 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.

**18.2 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.

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

**18.4 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.

**18.5 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.

**18.6 Digital CAD Standards for Airport Projects.** Company shall use and abide by the Airport's CAD standards. Information on applicable standards can be found at [www.cltcadstandards.info](http://www.cltcadstandards.info).

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

**18.8 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.

**18.9 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.

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

**18.11 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.

**18.12 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.

**18.13 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.

**18.14 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.

**18.15 E-Verify Compliance.** Unless otherwise exempted, 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.

**18.16 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.

**[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 FIRM'S 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**

## **EXHIBIT C – COMPENSATION**

## EXHIBIT D – 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](http://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 E – INVOICING REQUIREMENTS

1. All invoices will clearly state:
  - The current City of Charlotte (COC) PO number and/or contract number.
  - The PO line number for each good and/or service (for multi-line PO).
  - All applicable sales taxes as a separate line. *The City of Charlotte is not exempt from sales tax; therefore, do not combine sales tax with the cost of goods and/or services.*
  - The invoice should be consolidated with the supporting documentation. If the invoice and supporting documentation are separate, clearly notate the invoice number and COC PO number on the supporting documentation.
  - Submit the completed invoice and supporting documentation in PDF form either via email or U.S. mail using the billing information below:

<b>Invoice Mailing Address:</b>	<b>Invoice Email Address:</b>
City of Charlotte, Accounts Payable Attention: Aviation Invoice P.O. Box 37979 Charlotte, NC 28219	<a href="mailto:COCAP@charlottenc.gov">COCAP@charlottenc.gov</a> <b>In the Subject Line, add the word “AVIATION” &amp; insert the “COC PO Number”.</b>

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 COCAP.
4. Company submits invoice via email to COCAP to [COCAP@charlottenc.gov](mailto:COCAP@charlottenc.gov) and copy the following;
  - a. CLT PM
  - b. Carol Wilson ([Carol.Wilson@cltairport.com](mailto:Carol.Wilson@cltairport.com)) CLT Development Office Manager
  - c. Claire Butler ([claire.butler@cltairport.com](mailto:claire.butler@cltairport.com)) CLT CBI Business Diversity Programs Manager
5. Base Fee Billing – Each task identified in the project in which a separate fee or percentage of the total fee 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 as to 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, and 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 F - 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 G**

### **FEDERAL REQUIREMENTS FOR NON-AIP FUNDED PROFESSIONAL SERVICES AGREEMENTS**

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) or Consultant.

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.

#### **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 H - CBI FORM 4 – LETTER OF INTENT**

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

## **EXHIBIT C –CBI PROGRAM INSTRUCTIONS AND CBI FORM #3**

The City of Charlotte has a long history of creating and implementing strategies to support and encourage local business growth. In 2013, Charlotte City Council adopted the Charlotte Business INclusion Policy to promote diversity, inclusion, and local business opportunities in the City’s contracting and procurement process for Minority, Women, and Small Business Enterprises (MWMWSBEs) headquartered in the Charlotte Combined Statistical Area\*.

A complete list of City of Charlotte certified Small Business Enterprises (MWSBEs) and City of Charlotte registered Minority and Women Business Enterprises (MWBES) is available on the City’s website at [www.charlottebusinessinclusion.com](http://www.charlottebusinessinclusion.com)

For this project, the established  
MWSBE goal is                      %

\* The Charlotte CSA consists of the following 13 counties:

In NC: Anson, Cabarrus, Cleveland, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, Stanly, and Union

In SC: Chester, Lancaster, and York

### **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 may be obtained by:

*Internet:* [www.charlottebusinessinclusion.com](http://www.charlottebusinessinclusion.com)

*Mail:* Charlotte Business INclusion Office  
600 East Trade Street, Suite 300  
Charlotte, North Carolina 28202

Capitalized terms used in this document shall have the meanings set forth in Part A, Appendix 1 of the CBI Policy. Each reference to “you” or “your” in these provisions refers to any entity that submits a proposal, proposal or statement of qualifications on a City contract, and any entity that enters into a contract with the City.

For this solicitation, the CBI Policy requires that you either (a) meet the MWSBE Utilization Goal, as listed in Section 2 below; or (b) comply with the Good Faith Efforts and Good Faith Negotiation requirements referenced in Section 3 below. ***Failure to comply with the CBI Policy in the proposal phase constitutes grounds for rejection of your proposal. Failure to comply after contract award may result in assessment of damages and/or termination of your 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 the projected dollar amount for each MWSBE firm listed on their CBI Form 3 and indicate the total dollar value of MWSBE participation for the contract. 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 Part C Section 3 of the CBI Policy.

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 Part A of the CBI Policy.

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 you do not meet the MWSBE Utilization Goal, then you must meet the Good Faith Efforts and Good Faith Negotiation requirements set forth in Part C Sections 4 and 5 of the CBI Policy. These are summarized below. Detailed information of the City’s Good Faith Efforts and Good Faith Negotiation requirements can be found in the CBI Policy, Part C, Sections 4 and 5. Failure to meet the Good Faith Efforts and Good Faith Negotiation requirements will constitute grounds for rejection of your proposal.

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 project when a MWSBE goal is not met. 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 Efforts (GFE) / Statement of GFE Compliance if you are an apparent selected Proposer for contract award, and 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 MWSBE Goal established 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 steps taken. Mere pro forma efforts will not be sufficient.

In awarding GFEs, the City may also take into account: (1) the Proposer's past performance in meeting MWSBE goals; and (2) the performance of other Proposers in meeting the established MWSBE Goal on the Contract up for award. For example, when the apparent selected Proposer fails to meet the MWSBE Goal, but other Proposers meet it, the City may reasonably raise the question of whether, with additional reasonable efforts, the apparent selected Proposer could have met the goal.

It is important that you carefully review Part C, Sections 4 and 5 of the CBI Policy in order to understand and comply with all requirements. **All actions necessary to earn the required GFE Points must be undertaken prior to Proposal Submission.** Failure to comply with the requirements set forth in this section shall constitute grounds for rejecting a proposal.

### 3.4 Self-Performance.

A Proposer that intends to perform 100% of the work on a Contract with its own workforce may 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. Self-Performance does not exempt Proposers from meeting the requirements of the CBI Program for Service Contracts. The City may require Proposers that desire to self-perform to nevertheless submit MWMWSBE Outreach Documentation. See Part C Section 2.3 of the CBI Policy for more information in how to comply with Self-Performance.

## **4. PROJECT DOCUMENTS / PLANS AND SPECIFICATIONS:**

Plans and Specifications may be viewed at the following location:

<p><b>Richa Graphics</b> 800 North College St. Charlotte, NC 28206 Phone: 704-331-9744</p>
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## **5. MANDATORY SUBCONTRACTING REQUIREMENTS:**

Per Part B Section 2.4 of the CBI Policy, City Council has the authority to establish mandatory subcontracting requirements for certain contracts. The box checked below indicates whether such requirements have been established for this Contract:

☐ City Council has established a mandatory subcontracting requirement of xx.xx percent ( %) for this Contract.

☐ City Council has not established a mandatory subcontracting requirement for this Contract.

## **6. CBI POLICY PROVISIONS APPLICABLE AFTER CONTRACT AWARD:**

If you are awarded a Contract with the City, note in particular the following Part D Sections of the CBI Policy regarding Post Contract Award Requirements and activity:

- I. Compliance with committed MWSBE subcontracting goal throughout Contract completion (Part D, Section 2)
- II. Performance of a commercially useful function and affiliate status (Part D, Section 3)
- III. Terminating or Replacing an MWSBE on the contract (Part D, Section 5)
- IV. New Subcontractor Opportunities (Part D, Section 6)
- V. Renewals (Part D, Section 7)
- VI. Payments to MWSBEs (Part D, Section 8)
- VII. Utilization Reports and Documentation of Payments (Part D, Section 9)
- VIII. Remedies and Liquidated Damages (Part D, Section 14)

## **7. CBI CONTRACT PROVISIONS:**

The following provisions are incorporated into any contract that may result from this solicitation.

Charlotte Business INclusion. The City has adopted a Charlotte Business INclusion Policy (“CBI Policy”), which is posted on the City’s website and available in hard copy form upon request to the City.

The parties agree that:

- I. The terms of the CBI Policy, 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 Policy 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 Policy, including but not limited to liquidated damages; and
- III. Without limiting any of the other remedies the City has under the CBI Policy, 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 and other documentation required by the City’s CBI Policy, and 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 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 Contractor violates the CBI Policy, and such costs are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the Contractor agrees to pay the City liquidated damages at the rates set forth in Part D of the CBI Policy.
- VI. 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 Policy.
- VII. Nothing in this Section shall be construed to relieve a Contractor from any obligation it may have under N.C. Gen. Stat. 143-134.1 regarding the payment of subcontractors.

Remedies for Violation of CBI Policy. A violation of the CBI Policy by a Contractor shall constitute a material breach of the Contract, and shall entitle the City or private owner to:

- I. Exercise all rights and remedies that it may have at law or at equity for violation of the CBI Policy;
- II. Terminate the Contract for default;
- III. Suspend the Contract for default;
- IV. 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;
- V. Assess liquidated damages as provided in Part D Section 14.2; and/or
- VI. Offset any liquidated damages and/or any amounts necessary to cure any violation of the CBI

Policy 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.

Liquidated Damages. The City and the Contractor acknowledge and agree that the City will incur damages if the Contractor violates the CBI Policy 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 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:

- I. **Failure to Meet Committed MWSBE Goal.** If the City determines upon completion or termination of a Contract that the Contractor did not meet a Committed MWSBE Goal and that such failure is not otherwise excused under Part D of the CBI Policy, the City may assess the lesser of: (a) \$200,000 or (b) the dollar difference between the Committed MWSBE Goal that was missed and the Contractor's actual MWSBE utilization toward that Goal. Such amount may be assessed when it becomes apparent that it will not be possible for the Contractor to achieve the Committed MWSBE Goal.
- II. **Use of a MWSBE as a Conduit.** If the Contractor lists an MWSBE to receive credit toward a Committed MWSBE Goal with knowledge that the MWSBE will be acting as a Conduit or will not be performing a Commercially Useful Function reasonably commensurate with the payment amount for which the Contractor will be seeking credit, the City may assess the lesser of: (a) \$100,000 per incident; or (b) the dollar amount the Contractor indicated that it would pay such MWSBE in the MWSBE's contract (or if no contract has been signed, the MWSBE's Letter of Intent).
- III. **Wrongful Termination or Replacement of MWSBE.** If the Contractor terminates or replaces an MWSBE or MWBE in violation of the CBI Policy, the City may assess the lesser of: (a) \$50,000 per incident; or (b) the dollar amount of the work remaining to be performed by the terminated MWSBE or MWBE at the time it was terminated (or if the MWSBE or MWBE was not terminated because it was never retained, then the dollar amount that the Contractor indicated it would pay the MWSBE in the MWSBE's Letter of Intent).
- IV. **Failure to Comply with CBI Policy Following Termination or Withdrawal of an MWSBE.** If the Contractor fails to comply with the Modified Good Faith Efforts requirements (Part D, Section 5 of the CBI Policy) in replacing an MWSBE that is terminated or withdraws from work on a project, the City may assess the lesser of: (a) \$50,000 per incident or (b) the dollar amount of the work remaining to be performed by the MWSBE that withdrew or was terminated at the time of the termination or withdrawal.
- V. **Failure to Comply with CBI Policy to Add New Subcontractors.** If the Contractor fails to comply with the Modified Good Faith Efforts requirements (Part D, Section 5 of the CBI Policy) in adding new subcontractors to a Contract, or when the scope of work of a Contract changes so as to create a new MWSBE subcontracting opportunity, the City may assess the lesser of: (a) \$50,000 per incident; or (b) the dollar amount of the new or additional work.
- VI. **False Statements and Misrepresentations.** If the Contractor makes a false statement or material misrepresentation or material misleading omission regarding any matter relevant to the CBI Policy (including but not limited to information relating to good faith efforts, MWSBE utilization, MWSBE certification or payments to MWSBEs), the City may assess

the lesser of: (a) \$50,000 per incident; or (b) if the misrepresentation relates to payment, the dollar difference between what the Contractor represented and the truth.

VII. **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 Policy within the time period set forth therein, the City may assess \$40 per day for each day that such report, documentation or written submission is overdue.

VIII. **Seeking Credit for Use of An Affiliate to Meet the Committed MWSBE Goal.** If the City finds a violation of Part D, Section 3 of the CBI Policy due to a Contractor seeking credit for utilizing an MWSBE that the City determines to be an Affiliate, the City may assess the lesser of: (a) \$75,000 per incident or (b) the dollar amount the Contractor counted towards its Committed MWSBE Goal for that MWSBE.

## 8. CBI FORMS:

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

CBI Form	Submission Requirements
<p><b>CBI Form 1: Intent to Perform Contract with <u>Own</u> Workforce Affidavit</b></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 Proposal for non-compliance with the CBI Policy.</p>	<p>If not meeting the MWSBE Goal, and intending to perform 100% of the work, the Proposer must submit this completed CBI Form 1 with its proposal*.</p> <p><b>* In addition to submitting a completed CBI Form 1, the Proposer must also provide with its proposal sufficient supporting documentation for the City to determine that the Proposer does not customarily subcontract work on this type project.</b></p>
<p><b>CBI Form 2: Solicitation Form.</b></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 proposal by a MWSBE and NOT awarded to a MWSBE, Proposer must complete CBI Form 2A documenting the reason(s) for rejecting the MWSBE's proposal.</p>	<p>If not meeting the MWSBE Goal, submitted as part of a Proposer's Good Faith Efforts documentation, within three (3) Business Days after requested by the City.</p> <p>ALL supporting documentation, reflecting the solicitation methods and content, must be submitted at the same time as CBI Form 2.</p>

<p><b>CBI Form 2A: Good Faith Negotiation Form.</b> Proposers must submit a completed CBI Form 2A for each MWSBE who proposal the project and was ultimately not selected by the Proposer to participate on the contract.</p>	<p>Must be submitted within three (3) Business Days after requested by the City.</p>
<p><b>CBI Form 3: Subcontractor / Supplier Utilization Commitment.</b> Identifies all MWSBE and non-MWSBE subcontractors and suppliers to be utilized on the contract and the dollar amounts committed to MWSBEs (in all tiers) and non-MWSBEs. Proposers must identify all subcontractors and suppliers known at the time the Proposal is submitted.</p>	<p><b>DUE AT PROPOSAL SUBMISSION</b></p>
<p><b>CBI Form 3A: Subcontractor / Supplier Utilization Commitment – ALTERNATES.</b> Identifies additional MWSBE commitments made after Proposal Opening, when there are accepted alternates.  This form will only be accepted when the City selects alternates.</p>	<p>Must be submitted within three (3) Business Days after requested by the City.</p>
<p><b>CBI Form 4: Letter of Intent.</b> Proposers must submit a separate Letter of Intent executed by each MWSBE listed on CBI Form 3 and CBI Form 3A (if applicable) that the Proposer commits to utilize on the Contract.</p>	<p>Must be submitted within three (3) Business Days after requested by the City.</p>
<p><b>CBI Form 5: Good Faith Efforts (GFE) and Statement of GFE Compliance.</b> Identifies the minimum GFE points required for this contract, the GFE Categories, and respective GFE Points value for each GFE Category.  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>If not meeting the MWSBE Goal, this CBI Form 5 must be submitted as part of the Proposer's Good Faith Efforts documentation, within three (3) Business Days after requested by the City.</p>
<p><b>CBI Form 6: Payment Affidavit – Subcontractor / Supplier Utilization.</b> Contractor shall provide with each pay request to the City a payment affidavit showing work that has been</p>	<p>Upon award of contract, CBI Form 6 must be submitted to the City with each pay request for the duration of the Project.  For Final Payment period, check the box</p>



completed and approved for all subcontractors, suppliers, manufacturers, brokers, and / or members of a joint venture in connection with the contract.	indicating “Final Payment.”
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All CBI Forms and a full list of MWSBE vendors are available on-line at:

[www.charlottebusinessinclusion.com](http://www.charlottebusinessinclusion.com)

Please find below a list\*\* of activities (Vendor List) that the City has identified as potential MWSBE subcontracting opportunities. Proposers may identify additional or different opportunities. (Department Specific)

**\*\* NOTE:** This is a potential listing, not all inclusive. Proposers may identify additional or different opportunities.

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**.*

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

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

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

<b>Firm Name</b>	<b>Description of work</b>	<b>NIGP</b>	<b>Vendor #</b>	<b>Projected Utilization (if known) (\$)</b>
				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 Bidder 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: **[INSERT RFQ NAME]**

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: \_\_\_\_\_