

REQUEST FOR QUALIFICATIONS

FOR

**PROFESSIONAL ENGINEERING SERVICES
FOR THE
LIFT STATION IMPROVEMENTS PHASE III**

FY23-RFQ-07



CITY OF CHARLOTTE, NORTH CAROLINA

MAY 2023

**REQUEST FOR QUALIFICATIONS
FOR
PROFESSIONAL ENGINEERING SERVICES FOR THE
LIFT STATION IMPROVEMENTS PHASE III**

May 8, 2023

Charlotte Water is requesting proposals from qualified companies interested in providing Professional Engineering Services for the Lift Station Improvements Phase III Project. The requirements for submitting a Statement of Qualifications are stated in the attached Request for Qualifications. Please review them carefully.

Proposals are due no later than the date and time stated in the Schedule of Events. Electronic proposals in searchable PDF format only, are to be submitted per the instructions outlined within the RFQ. Exhibit 1 provides a sample of Charlotte Water's standard professional services agreement that will be presented to the selected company(ies). Please review prior to submitting your Statement of Qualifications.

The full RFQ document, addenda, clarifications, and all other related information will be posted on Charlotte Water's Opportunities website at: charlottewater.org. Each Company is responsible for checking the Charlotte Water website to obtain the latest information.

The City of Charlotte appreciates your interest in providing professional services for this project.

Sincerely,

Katherine Osborne
Sr. Procurement Officer
Katherine.Osborne@charlottenc.gov

Attachments:

Form 1: Company Information
Form 2: CBI Participation Plan
Form 3: E-Verify Certification
Form 4: Certification Regarding Debarment, Suspension and Other Responsibility Matters
Form 5: Byrd Anti-Lobbying Certification
Exhibit 1: Sample Agreement

**REQUEST FOR QUALIFICATIONS
FOR
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LIFT STATION IMPROVEMENTS PHASE III**

DESCRIPTION OF PROJECT

Charlotte Water (CLTWater) is soliciting Statements of Qualifications (SOQ) from qualified engineering companies (Company or Proposer) to provide professional engineering services for the Lift Station Improvements Phase III Project (Project).

BACKGROUND

Charlotte Water is upgrading control systems at lift stations throughout the Charlotte, Mecklenburg County service area. Two phases of the Lift Stations Improvements (LSI) have already been completed to promote standardization, reliability, and safety at 24 lift station. 40 remaining lift stations require similar improvements, of which 13 stations have been selected for Phase III of the improvement program.

SCOPE

The following is a general description of the tasks required. This is not intended to be all-inclusive, nor is it guaranteed that all of the below tasks will be utilized. A more defined Scope of Work will be developed during negotiation with the selected company.

Selected Firm shall provide, at a minimum, detail design, permitting, bid phase services, and construction phase services for the following:

- New rack mounted control panel cabinet at grade level.
 - The control panel will include programmable logic controllers (PLC), an auto-dialer, and alarm/beacon and removal of the existing at-grade alarm horn and beacon.
 - The control panel will supply power to all 120 volts alternating current (VAC) and/or 24 volts direct current (VDC) devices requiring power on site.
 - The control panel will be capable of accepting all instrumentation signals at the lift station.
- Replacement of the current bubbler system with two submersible pressure transducers.
- Installation of supplemental grounding for electrical components and fencing.
- Installation of two wet well floats
- Additional site-specific improvements include site grading, retaining walls, fencing, awings, driveway/asphalt repairs, replace suction style pumps with submersible pumps.

The following table list the priority 13 lift stations requiring improvements.

Lift Station Improvements Phase III		
Cardinal Woods	Lakeview	Palisades #1
Carolina Village	McCullough	Palisades #2
Creekshire	Meadow Creek	Southern Trace
Davidson College	Neal Branch	Washam Street
Hamilton Green		

SCHEDULE OF EVENTS

Provided below is the anticipated schedule of events. The City reserves the right to adjust the schedule and add or remove specific events to meet the unique needs of the Project. Contract negotiation is expected to begin shortly after selection.

<i>EVENT</i>	<i>DATE</i>
Issuance of RFQ	May 8, 2023
Last Day for Questions	May 18, 2023, at 5:00 p.m.
SOQ Packages Due	May 30, 2023, at 2:00 p.m.
Selection Notification	June 8 - 15, 2023

STATEMENT OF QUALIFICATION PREPARATION

SOQ Submission

Companies wanting to be considered for providing the required services to the City should submit an electronic proposal to Katherine Osborne at katherine.osborne@charlottenc.gov. Proposals must be in searchable PDF format only and sent as an attachment to the email (Companies may not provide a link to the document). PDF attachments must be limited to less than 50 MB. Hard copies will not be accepted. The subject line of the email shall include "FY23-RFQ-07" and the proposal file name should begin with the Company's name.

Each Company is solely responsible for the timely delivery of their SOQ. Companies accept all risks of late delivery regardless of fault. In addition, Companies accept all risks if file is corrupted, incorrect, incomplete, or not attached. Any SOQ received after the date and time specified, regardless of the mode of delivery, shall not be considered. The Procurement Officer will confirm receipt of SOQs to all Companies via email within 24 hours of the SOQ deadline.

No responsibility will be attached to the City for prematurely opening an SOQ not properly addressed or identified.

Format and Page Limit

The SOQ Package should consist of the information described below. Due to demands on the time of the Selection Committee members, please limit your proposal to ten (10) pages. Page size should be 8.5" x 11" and type size should be no smaller than 11 points for narrative sections, but may be reduced for captions, footnotes, etc. as required while still maintaining legibility. Front and back covers, dividers, and required forms will not count toward the page limit. Promotional literature, brochures, and the cover letter will be considered as part of the page limit. Statements consisting of more than the previously stated page limit may be rejected.

Proposers may not include hyperlinks, QR codes, or similar, that links to websites or additional online resources in their SOQ. All content submitted for consideration must be printed in the SOQ and adhere to the page limits provided above.

SOQ Contents

Cover Letter

Cover letter should be signed by a person empowered to commit the company to a contractual arrangement with the City of Charlotte.

Section One: Project Team

1. Provide an organizational chart identifying members of the team, including subconsultants who would be assigned to this project. The chart should clearly delineate roles and responsibilities of the various team members.
2. For proposed subconsultants, please provide the name of each company, the office location, contact name and telephone number, and the services to be provided.
3. Indicate if any member of your team has been certified as a Minority or Small Business Enterprise (MSBE) by the City of Charlotte. For MSBE certified subconsultants, please complete Form 2.
4. Provide brief bios for the team members listed on the organizational chart. Particular emphasis should be placed on the project manager, his/her length of time with the company, and his/her relevant experience for this project. Background information for all team members should include professional registrations/certifications listing applicable state(s).

Section Two: Experience and Approach

1. Provide three (3) project examples completed within the past five (5) years by your company that were similar in size or type to this project. Proposers may list ongoing projects; however, preference may be given to proposers providing completed projects. Include date of substantial completion / final completion. Projects listed in the bios may include work done by individuals while employed by other companies, but this must be noted beside the project name. For each project, provide a brief project summary, identify the owner, and include the name and phone number of the owner's representative. In addition, indicate which member(s) of your proposed project team had key roles in the projects, and what those roles were.
2. Describe the general tasks required to fulfill project requirements and your company's approach to completing those tasks.
3. Workload / Availability.
4. Summarize why your company should be selected.

Required Forms

Please note these forms are occasionally updated. Companies need to sign and submit the forms provided in this RFQ instead of submitting previously signed forms.

- Form 1 – Company Information
- Form 2 – CBI Participation Plan
- Form 3 – E-Verify Certification
- Form 4 – Certification Regarding Debarment, Suspension and Other Responsibility Matters
- Form 5 – Byrd Anti-Lobbying Certification

EVALUATION CRITERIA

SOQ packages will be evaluated on the Company's ability to meet the requirements of this RFQ. Evaluations will focus on relative strengths, weaknesses, deficiencies and risks associated with the SOQs. Factors will include the following:

- The Company's experience in providing similar services for similar projects;
- Qualifications and abilities of key individuals identified in the Qualifications Package;
- Company's approach;
- Proposed utilization of companies certified / registered with the City's Charlotte Business Inclusion program who will be given realistic opportunities to perform under the scope of this contract;
- Appropriate licensure of the company to provide the services requested (including licensure through the North Carolina Board of Examiners for Engineers and Surveyors); and
- References.

It is the intent of CLTWater to select one company for this project. However, during the course of selection, CLTWater may decide to select multiple companies if it's in the best interest of the City.

ADDITIONAL INFORMATION ABOUT THIS RFQ

1. *Charlotte Business INclusion*

Pursuant to Charlotte City Council's adoption of the Charlotte Business INclusion (CBI) Policy, the CBI program promotes diversity, inclusion, and local business opportunities in the City's contracting and procurement process for Minority, Women, and Small Business Enterprises (MWSBEs) with a significant business presence in the Charlotte Combined Statistical Area (CSA). The CBI Policy is posted at: www.charlottebusinessinclusion.com.

The City is committed to promoting opportunities for maximum participation of certified MWSBEs on City funded contracts at both the Prime and Subcontract level. For MWSBE participation to count towards a Goal, MWSBEs must meet both the certification and geographic requirements as detailed throughout this solicitation and in the CBI Policy.

The City will negotiate a Minority and Small (MSBE) Subcontracting Goal for the Project with the selected Company(ies). The Company should submit Form 2: CBI Participation Plan attached herein.

In evaluating the company's proposal, the City may take into account: (1) the Company's past performance in meeting MBE, WBE and SBE goals; (2) the Company's Participation Plan; and (3) the Participation Plan submitted by other companies in comparison to the Company's Participation Plan.

The Charlotte CSA refers to the Charlotte-Gastonia-Salisbury Combined Statistical Area in effect as of April 8, 2013 consisting of; (a) the North Carolina counties of Anson, Cabarrus, Cleveland, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, Stanly, and Union; and (b) the South Carolina counties of Chester, Lancaster, and York. This is one criteria used by Charlotte Business INclusion to determine eligibility to participate in the program.

Firms are highly encouraged to consider any and all possibilities for M/W/SBE participation. A complete list of City certified SBEs is available at www.charlottebusinessinclusion.com. A list of State of North Carolina HUB certified MBEs and WBEs is available at <http://www.doa.nc.gov/hub/searchhub.aspx>.

MBE Goal: May be satisfied by an entity that qualifies as a Minority Business Enterprise under NCGS § 143-128, and that has been certified as a Historically Underutilized Business by the State of North Carolina with a significant business presence in the Charlotte Combined Statistical Area. Please note, when identifying MBEs for inclusion towards the MBE Goal, only HUB-certified MBEs with a significant business presence in the Charlotte Combined Statistical Area will be counted towards the MBE Goal.

SBE Goal: May be satisfied by an entity that is certified by the City of Charlotte under Part E of the CBI Policy as meeting all of the requirements for SBE certification.

MSBE Goal (Project Goal): The total work performed by MBEs or SBEs in the aggregate for this Project.

The City will negotiate at least a 10% MSBE Subcontracting Goal for the Project with the selected firm(s).

Firms are required to include a Minority & Small Business Enterprise Participation Plan (Form 2 provided with this RFQ) that describes the firm's approach and past history with MSBE subcontractor utilization. The Participation Plan shall include at a minimum the following elements:

- Identify MSBEs that will be committed and utilized by the firm for the Project;
- Identify specific scopes of work to be performed by the MSBEs for the Project; and
- Document the overall percentage to be committed to MSBEs for the Project.

In evaluating the firm's proposal, the City may take into account: (1) the firm's past performance in meeting MSBE goals; (2) the firm's Participation Plan; and (3) the Participation Plan submitted by other firms in comparison to the firm's Participation Plan.

2. Vendor Registration

In order to measure the effectiveness of the City's CBI Program, all prime consultants and first-tier subconsultants and suppliers must be registered in the City's Vendor Registration System. Consultants and subconsultants not registered cannot receive payment for services and/or supplies provided under any City contract.

3. Addenda / Questions and Answers

Companies may submit written questions concerning this RFQ via email to the Procurement Officer listed on the RFQ cover letter of the RFQ. Questions received after the stated deadline in the Schedule of Events may not be answered. No oral statement of any person shall modify or otherwise change or affect the terms, conditions, specifications, or any other item stated in the RFQ. Changes, interpretations, and clarifications considered necessary by the Owner in response to questions received will be issued by Addenda. Addenda shall be made in writing only and posted on Charlotte Water's website at charlottewater.org.

Companies are encouraged to contact the Charlotte Business INclusion (CBI) Liaison for assistance or clarification with issues specifically related to the City's CBI Program. The point of contact is Frederica Love, who may be reached via email at frederica.love@charlottenc.gov.

4. Selection Process / Interviews

Pursuant to North Carolina General Statute 143-64.31, Charlotte Water Services is conducting a “qualifications-based” selection process without regard to fee.

CLTWater will conduct a fair and impartial evaluation of all proposals that are received in accordance with the provisions of this RFQ. CLTWater will appoint a selection committee to perform the evaluation. CLTWater reserves the right to obtain clarification of any point in a company’s/team’s Qualification Package or to obtain additional information. All companies/teams who submit Qualification Packages will be notified of the selection committee’s choice. Final approval of any selected company/team is subject to the action of City Council or appropriate City officials.

Interviews with companies are not anticipated, but may be held at the option of the selection committee. An interview process may be used to clarify the information contained in the SOQ, but not to modify the SOQ. The SOQ evaluation committee may use the interviews to confirm or modify the evaluation of the SOQs and to clarify any questions.

5. Failure to Comply with Instructions

The City may choose to exercise the following options for SOQ packages that fail to comply with any requirement of this RFQ: a) assign a low rating; or b) deem the SOQ non-responsive and remove the SOQ from further consideration.

6. Modification or Withdrawal of SOQs

Companies may change or withdraw their SOQs at any time prior to the due date by providing written notice via email to the Procurement Officer stated in Item 3 above. In order to be effective, the intent of the notification must be clear and concise.

Withdrawal of a SOQ will not preclude a Proposer from subsequently submitting a new SOQ, so long as that new SOQ is properly submitted and received by the City’s Procurement Manager prior to the SOQ Due Date.

7. Negotiations and Modification of Contract Documents

The City reserves the right to conduct negotiations with the Proposer regarding any remaining issues provided that the general work scope remains the same and that the field of competition does not change as a result of material changes to the requirements stated in the RFQ. The City will make such modifications to the Contract Documents as it may determine, in the exercise of its sole discretion, to be necessary to fully incorporate the terms of the Proposer’s Statement of Qualification, or to correct any inconsistencies, ambiguities, or errors that may exist in the Contract Documents. If, in the City’s sole discretion, it determines that the highest qualified Proposer is not responsive to the negotiation process, or that the parties will be unable to reach a mutually-acceptable Contract, the City may terminate negotiations with the Proposer. The City will then continue the process of negotiation with the next highest qualified Proposer until the City either successfully negotiates a Contract or cancels the procurement.

The contents of this RFQ and all provisions of the successful proposal deemed responsive by the City of Charlotte may be incorporated, either in whole or in part, into a contract and become legally binding when approved and executed by both parties. Contents of the contract may contain changes from the City of Charlotte’s perspective as a result of the

RFQ process and proposal(s) received. The final negotiated contract may include the scope of work as outlined in this RFQ along with the successful firm's submittal and any additions or deletions made at the discretion of the City as a result of the RFQ process.

8. Public Records

Upon receipt by the City, each Qualifications Package becomes the property of the City and is considered a public record except for material that qualifies as "Trade Secret" information under North Carolina General Statute 66-152 et seq. Qualifications Packages will be reviewed by the City's Selection Committee, as well as other City staff and members of the general public who submit public record requests after a selection result has been announced to the public. To properly designate material as a trade secret under these circumstances, each company must take the following precautions: (a) any trade secrets submitted by the Company should be submitted in a separate, sealed envelope marked "Trade Secret - Confidential and Proprietary Information - Do Not Disclose Except for the Purpose of Evaluating this Qualifications Package," and (b) the same trade secret/confidentiality designation should be stamped on each page of the trade secret materials contained in the envelope.

In submitting a Qualifications Package, each company agrees that the City may reveal any trade secret materials contained in such response to all City staff and City officials involved in the selection process and to any outside consultant or other third parties who serve on the Selection Committee or who are hired by the City to assist in the selection process. Furthermore, each Company agrees to indemnify and hold harmless the City and each of its officers, employees and agents from all costs, damages, and expenses incurred in connection with refusing to disclose any material that the Company has designated as a trade secret. Any Company that designates its entire Qualifications Package as a trade secret may be disqualified from the selection process.

9. Commercial Non-Discrimination Ordinance

REQUIRED BY CITY ORDINANCE: 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. Company consents to be bound by the award of any arbitration conducted thereunder.

10. E-Verify

As a condition for payment under this Contract, Company shall: (i) comply with the E-Verify requirements set forth in Article 2 of Chapter 64 of the North Carolina General Statutes (the "E-Verify Requirements"); and (ii) cause each subcontractor under this Contract to comply with such E-Verify Requirements as well. Company will indemnify and save harmless the City from all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, interest charges and other liabilities (including settlement amounts) incurred on account of any failure by Company or any subcontractor to comply with the E-Verify Requirements.

11. Conditions and Reservations

The City reserves the right to request substitutions of subconsultants. The City reserves the right to contact any Proposer if such is deemed desirable by the City to obtain any additional information including but not limited to experience, qualifications, abilities, equipment, facilities, and financial standing. The City reserves the right to conduct investigations with respect to the qualifications and experience of any Proposer. The City

reserves the right to contact any Company/team to negotiate if such is deemed desirable by the City. The City, at its sole discretion, reserves the right to reject any or all responses to the RFQ, to cancel the RFQ, to re-advertise for new RFQ responses either with identical or revised specifications, or to accept any RFQ response, in whole or part, deemed to be in the best interest of the City. The City reserves the right to waive technicalities and informalities.

A response to this RFQ should not be construed as a contract, nor indicate a commitment of any kind. No recommendations or conclusions from this RFQ process concerning any Company shall constitute a right (property or otherwise) under the Constitution of the United States or under the Constitution, case law or statutory law of North Carolina. No binding contract, obligation to negotiate, or any other obligation shall be created on the part of the City unless the City and a Company jointly execute a contract.

12. *Cost of SOQ Preparation*

The City accepts no liability for the costs and expenses incurred by companies responding to this RFQ, in preparing responses for clarification, in attending interviews, participating in contract development sessions, or in attending meetings and presentations required for the contract approval process. Each Company that enters into the procurement process shall prepare the required materials and proposals at its own expense and with the express understanding that the Company cannot make any claims whatsoever for reimbursement from the City for the costs and expenses associated with the procurement process. The RFQ does not commit the City to pay for costs incurred in the submission of a response to this RFQ or for any cost incurred prior to the execution of a final contract.

13. *Registration with Secretary of State for North Carolina and North Carolina Board of Examiners for Engineers and Surveyors*

Any Company wishing to be considered for the Services must be properly registered with the Office of the Secretary of State, if applicable, and with the North Carolina Board of Examiners for Engineers and Surveyors at the time of submission of the SOQ. The private engineering Company selected under this RFQ will be responsible for providing all professional, technical, managerial, and administrative staff with the appropriate skills and qualifications to perform the required Services. The engineers in responsible charge of the work must be registered as a Professional Engineer in the State of North Carolina and must have good ethical and professional standing.

Any Company proposing to use corporate subsidiaries or subcontractors must include a statement that these companies are properly registered with the NC Board of Architecture or NC Board of Registration for Professional Engineers and Land Surveyors. It will be the responsibility of the prime company to verify the registration of any corporate subsidiary or subcontractor prior to submitting a SOQ. For detailed licensing requirements, refer to North Carolina General Statutes (<http://www.ncbels.org/rulesandlaws.html>).

14. *Communication Guidelines*

Companies and their staff are prohibited from communicating with elected City officials and City employees regarding the RFQ or proposals from the time the RFQ has been released until all respondents have been notified and the selection results have been publicly announced. These restrictions extend to “thank you” letters, phone calls, and emails and any contact that results in the direct or indirect discussion of the RFQ and/or the Qualification Package submitted by the Company/team. Violation of this provision by

the Company/team and/or its agents may lead to disqualification of the company's/team's proposal from consideration.

15. *No Lobbying*

The Company certifies that it has not and will not pay any person or organization to influence or attempt to influence an officer or employee of the City or the State of North Carolina in connection with obtaining a contract under this RFQ.

16. *NC Prohibition 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 it 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 Contract 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 Contract.

17. *Duties and Obligations of Companies in the RFQ Process*

Interested companies are expected to fully inform themselves as to all conditions, requirements and specifications of this RFQ before submitting a proposal. Companies must perform their own evaluation and due diligence verification of all information and data provided by the City and their own evaluation and due diligence of any consultants the firm proposes to engage to provide any of the professional services. The City makes no representations or warranties regarding any information or data provided by the City. Companies are expected to promptly notify the City in writing to report any ambiguity, inconsistency or error in this RFQ. Failure to notify the City accordingly will constitute a waiver of claim of ambiguity, inconsistency or error.

18. *Ownership of Work Products*

The City shall have exclusive ownership of all intellectual property rights in all designs, plans and specifications, documents and other work product prepared by, for, or under the direction of the selected firm pursuant to any contract under this RFQ including work product prepared by subconsultants (collectively, the "Intellectual Property"), including without limitation the right to copy, use, disclose, distribute, and make derivations of the Intellectual Property for any purpose or to assign such rights to any third party. The Intellectual Property shall be prepared in the City's name and shall be the sole and exclusive property of the City, whether or not the work contemplated therein is performed. The City will grant the firm a royalty-free, non-exclusive license to use and copy the Intellectual Property to the extent necessary to perform the contract.

19. *Financial Capacity; Insurance Requirements*

The selected firm must have the financial capacity to undertake the work and assume associated liability. The selected firm will be required to provide certificates of insurance and copies of their insurance policies evidencing coverage for professional liability in the minimum amount of \$1,000,000; automobile liability in the minimum amount of

\$1,000,000; commercial general liability in the minimum amount of \$1,000,000; and workers' compensation insurance as required by North Carolina statutes.

FORM 1

COMPANY INFORMATION

Project: Lift Station Improvements Phase III

This form consists of 2 pages and should be signed by a person empowered to commit the Company to a contractual arrangement with the City of Charlotte. The person executing this form, on behalf of the Company, being duly sworn, solemnly swears (or affirms) the following:

- He/she has fully read the RFQ document and agrees to the contents.
- The information contained in this Proposal, including its forms and other documents, delivered or to be delivered to the City, is true, accurate, and complete. This Proposal includes all information necessary to ensure that the statements therein do not in whole or in part mislead the City as to any material facts.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

PROPOSER INFORMATION

Company Legal Name: _____

NC Board of
(Examiners for
Engineers No.) _____

Mailing Address
(Headquarters): _____

Mailing Address (Local
Office, if different from
above): _____

City of Charlotte
Vendor Number: _____

Person(s) to Contact
Regarding Proposal
(including questions
and selection
announcements): Contact 1 Name: _____

Contact 1 Email: _____ Phone: _____

Contact 2 Name: _____

Contact 2 Email: _____ Phone: _____

Type of Company (check one box)

Sole Proprietor **Partnership** **Corporation** | State of Incorporation: _____

Limited Liability Company | State of Incorporation: _____

Joint Venture (This form must be completed by each joint venture company.)

Name of Joint Venture: _____

FORM 1 – COMPANY INFORMATION (CONTINUED)

Does the Company or any key individual have any conflicts of interest with this project?

Yes No (If yes, please attach an additional sheet explaining.)

Does the Company or any key individual:

- a) currently have any unresolved claims, disputes, and/or litigation with the City of Charlotte?
- b) have claims, disputes, and/or litigation with the City of Charlotte resolved/settled within the past 5 years?

Yes No (If yes, please attach an additional sheet explaining.)

The Company’s proposal contains confidential / proprietary / trade secret information:

Yes No (If yes, pages must be clearly identified as described in Item 8 under “Additional Information About This RFQ”.)

Acknowledgement of Addenda:

No.: _____ Date: _____

No.: _____ Date: _____

No.: _____ Date: _____

No.: _____ Date: _____

FORM 2

CBI PARTICIPATION PLAN

Project: Lift Station Improvements Phase III

List below all certified firms that you intend to use on this contact.

Subconsultant's Full Name	Description of work / materials	Certification Type (e.g. MBE, SBE)	City Vendor #

In addition, address the following:

1. Has the Proposer included Minority, Women, Small Business Enterprises on past similar projects?
2. Was this experience with the City of Charlotte's program? If no, state the program used and briefly describe the requirements and compliance.
3. Include a list of past projects and your MWSBE utilization on said projects.
4. Identify outreach efforts that will be employed by the Proposer to maximize inclusion efforts as well as outreach efforts that have already been conducted in connection with this RFQ. Identify specific scopes of work to be performed by certified firms.
5. Provide a recent project example of compliance efforts and results.

FORM 3

E-VERIFY CERTIFICATION

Project: Lift Station Improvements Phase III

This E-Verify Certification is provided to the City of Charlotte (the "City") by the company signing below ("Company") as a prerequisite to the City considering Company for award of a City contract (the "Contract").

1. Company understands that:
 - a. E-Verify is the federal program operated by the United States Department of Homeland Security and other federal agencies to enable employers to verify the work authorization of newly hired employees pursuant to federal law, as modified from time to time.
 - b. Article 2 of Chapter 64 of the North Carolina General Statutes requires employers that transact business in this state and employ 25 or more employees in this state to: (i) verify the work authorization of newly hired employees who will be performing work in North Carolina through E-Verify; and (ii) maintain records of such verification (the "E-Verify Requirements"). Section 126-7.1 of the North Carolina General Statutes requires state agencies to verify their employees' work statuses through E-Verify.
 - c. North Carolina General Statute 160A-20.1(b) prohibits the City from entering into contracts unless the contractor and all subcontractors comply with the E-Verify Requirements.

2. As a condition of being considered for the Contract, Company certifies that:
 - a. If Company has 25 or more employees working in North Carolina (whether now or at any time during the term of the Contract), Company has complied and will comply with the E-Verify Requirements with respect to Company employees working in North Carolina; and
 - b. Regardless of how many employees Company has working in North Carolina; Company will take appropriate steps to ensure that each subcontractor performing work on the Contract that has 25 or more employees working in North Carolina complies with the E-Verify Requirements.

3. Company acknowledges that the City will be relying on this Certification in entering into the Contract, and that the City may incur expenses and damages if the City enters into the Contract with Company and Company or any subcontractor fails to comply with the E-Verify Requirements. Only in the manner and to the extent permitted by the North Carolina Tort Claims Act, N.C.G.S. § 143-291, et seq., and without waiver of its sovereign immunity, company agrees to indemnify and save the City harmless from and against all losses, damages, costs, expenses obligations, duties, fines and penalties (collectively "Losses") arising directly or indirectly from violation of the E-Verify Requirements by Company or any of its subcontractors, including without limitation any Losses incurred as a result of the Contract being deemed void.

Name of Company

Signature of Company's Authorized Official

Date

Print Name

Title

FORM 4

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

Project: Lift Station Improvements Phase III

Company:

The bidder, contractor, or subcontractor, as appropriate, certifies to the best of its knowledge and belief that neither it nor any of its officers, directors, or managers who will be working under the Contract, or persons or entities holding greater than 10% equity interest in it (collectively "Principals"):

- 1. Are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency in the United States;
2. Have within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust or procurement statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are presently indicted for or otherwise criminally or civilly charged by a government entity, (federal, state or local) with commission of any of the offenses enumerated in paragraph 2 of this certification; and
4. Have within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award or in some instances, criminal prosecution.

I hereby certify as stated above:

Print Name

Signature

Title

Date

I am unable to certify to one or more the above statements. Attached is my explanation. [Check box if applicable]

Print Name

Signature

Title

Date

FORM 5

BYRD ANTI-LOBBYING CERTIFICATION

Project: Lift Station Improvements Phase III

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of and Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)].
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including all subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

_____ (the "Company") certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Company understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

Print Name

Address

Authorized Signature

City / State / Zip

Date

EXHIBIT 1
SAMPLE AGREEMENT

AGREEMENT # _____

**AGREEMENT FOR
PROFESSIONAL SERVICES**

PROJECT:

OWNER:

City of Charlotte
5100 Brookshire Boulevard
Charlotte, North Carolina 28216

COMPANY:

Vendor #

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF CHARLOTTE AND**

TABLE OF CONTENTS

ARTICLE 1	Description; Scope of Services	3
ARTICLE 2	Company's Responsibilities	4
ARTICLE 3	Time of Beginning and Completion	4
ARTICLE 4	Personnel	5
ARTICLE 5	Points of Contact; Notification	7
ARTICLE 6	Compensation and Payments	9
ARTICLE 7	Items to be Furnished by the City	13
ARTICLE 8	Insurance	13
ARTICLE 9	Quality Control Program	14
ARTICLE 10	Ownership and Use of Work Products	15
ARTICLE 11	Termination	15
ARTICLE 12	Covenants and Representations	18
ARTICLE 13	Indemnification	19
ARTICLE 14	General Compliance with Laws	19
ARTICLE 15	Miscellaneous Conditions	19
ARTICLE 16	Publicity and Statements to the Press	26
ARTICLE 17	Charlotte Business INClusion Program	27
ARTICLE 18	Sensitive Documents	27
ARTICLE 19	E-Verify	28
ARTICLE 20	Dispute Resolution	29
ARTICLE 21	NC Prohibition on Agreements with Companies that Invest in Iran or Boycott Israel	30
ARTICLE 22	City's Web Based Project Control System (E-Builder)	30

EXHIBITS

EXHIBIT 1	Scope of Services
EXHIBIT 2	Hourly Rate / Compensation Schedule
EXHIBIT 3	Schedule
EXHIBIT 4	Project Team
EXHIBIT 5	E-Verify Certification
EXHIBIT 6	Certification Regarding Debarment, Suspension and Other Responsibility Matters
EXHIBIT 7	Byrd Anti-Lobbying Certification
EXHIBIT 8	Insurance Certificate
EXHIBIT 9	Charlotte Business INClusion Program
EXHIBIT 10	Task Order Form

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF CHARLOTTE AND**

THIS AGREEMENT, made and entered into this ____ day of _____, 2021 (“Effective Date”), by and between the **CITY OF CHARLOTTE**, a North Carolina municipal corporation, hereinafter referred to as the “City”, and XXX, a professional corporation doing business in North Carolina, hereinafter referred to as the “Company”.

GENERAL RECITALS

WHEREAS, the City issued a Request for Qualifications (FY22-RFQ-XX) for X dated X;

WHEREAS, the City desires to engage the Company to provide professional services as outlined hereinafter upon the terms and conditions as set out herein;

WHEREAS, the City is authorized by the City Council to enter into an Agreement for performance of such services;

NOW THEREFORE, the City and the Company, for consideration hereinafter stipulated, mutually agree that the Company shall perform the services provided under this Agreement and shall do, perform and carry out in a satisfactory manner, as determined by the City, the following:

AGREEMENT

ARTICLE 1 – DESCRIPTION; SCOPE OF SERVICES

The Company has been retained by the City to provide _____ services associated with the _____ X Project (Project). A detailed description and scope of services is included in **Exhibit 1** of the Agreement. Unless otherwise stated in Exhibit 1, the Company shall obtain and provide all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the services.

1.1 Task Orders

The City and Company will negotiate the details of Task Orders for specific services under this Agreement. The Company will execute and submit to the City a proposed Task Order utilizing the form provided in **Exhibit 10** for each project that the Company proposes to provide to the City under this Agreement. The City may accept the proposed Task order by issuing a purchase order. Upon issuance of such purchase order, the Task Order and the purchase order shall be deemed incorporated into and made part of this Agreement, and each reference to an accepted Task Order in this Agreement shall be deemed to include both the Task Order in the form accepted by the City and the purchase order. In the event of a conflict between the main body of this Agreement and the Task Order or purchase order, the main body of the Agreement shall prevail. In the event of a conflict between the City’s purchase order and the remainder of the Task Order, the City’s purchase order will prevail. The City will not be legally obligated by a Task Order absent a City-issued purchase order. This Agreement is for an indefinite quantity with no minimum purchase requirement. The Company is not approved to start work until receipt of a purchase order.

Each Task Order will include a fee breakdown attachment. The fees provided in Task Orders shall be calculated using the hourly and unit rates set forth in Exhibit 2 of this Agreement.

ARTICLE 2 - COMPANY'S RESPONSIBILITIES

Upon receipt of a written Notice to Proceed, Company shall:

- a. Provide professional services for the City to which this Agreement applies;
- b. Serve as City's professional as directed by the City's Project Manager;
- c. Furnish professional consultation and advice;
- d. Furnish services incidental to the Project;
- e. Review available data and consult with City to clarify and define City's requirements;
- f. Obtain that information, conduct those investigations, and undertake other reasonable efforts necessary for the Company to become conversant with the philosophy and purpose of each project and to carry out its responsibilities;
- g. Identify and analyze requirements of governmental authorities having jurisdiction and assist the City in obtaining required approval from such authorities.

ARTICLE 3 - TIME OF BEGINNING AND COMPLETION

This Agreement shall commence on the Effective Date and shall continue in full force until all contract monies have been expended / for an initial term of ____ years from the Effective Date, unless sooner terminated or extended in accordance with the provisions of this Agreement. Time is of the essence and the Company shall begin work immediately following issuance of each written Task Order / a written Notice to Proceed. All services shall be completed in accordance with the schedule in Exhibit 3

ARTICLE 4 - PERSONNEL

The key personnel listed in the Company's organizational chart (Exhibit 4) shall be assigned to the Project until completion. No changes in Company's key personnel shall be made without prior written approval of the City.

4.1 *Addition, Removal and Replacement of Personnel*

The City has the right to require any additional personnel that the City deems necessary to maintain the Project schedule. The City also has the right to require removal and replacement of any personnel of the Company or Company's subconsultants who are assigned to perform services for the City. The City shall be entitled to exercise such right in its sole discretion by providing written notice to the Company.

The City must approve in writing any hires or transfers of personnel to "Key Personnel" positions on the Project, and the City shall have the right to interview all personnel that the Company proposes to hire or transfer to such positions. As used in this Agreement, the term "Key Personnel" shall mean any personnel of the Company or its subconsultants who are identified as Key Personnel in **Exhibit 4** to the Agreement, or whom the City from time to time designates in writing to the Company as fulfilling a key role in the Project. Unless approved by the City in writing, the Company will not: (i) remove the Company's Key Personnel from the Project or permit its subconsultants to remove Key Personnel from the Project; or (ii) materially reduce the involvement of the Company's Key Personnel

in the Project or allow its subconsultants to materially reduce the involvement of Key Personnel in the Project.

The Company will replace any personnel who leave the Project with equivalently qualified persons. The Company will replace such personnel as soon as reasonably possible, and in any event within thirty days after the Company first receives notice that the person will be leaving the Project.

If the Company falls more than 7 days behind in completing any Deliverable required by this Agreement, the Company will devote all personnel assigned to the Project to working on the Project on a first priority basis. If the delay is at the fault or request of the City, the Company should provide written notice to the City's Project Manager. As used in this Agreement, the term "personnel" includes all staff provided by the Company or its subconsultants, including but not limited to Key Personnel.

4.2 *Respectful and Courteous Behavior*

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

4.3 *Commercial Non-Discrimination Ordinance*

REQUIRED BY CITY ORDINANCE: 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. Company consents to be bound by the award of any arbitration conducted thereunder.

4.4 *Subcontractor Employees*

For purposes of this section, Company's "employees" shall include employees of any subcontractor. The Company's employees who normally and regularly come in direct contact with the public shall be clearly identifiable by name badges, nametags, or identification cards. The Company shall assure that its employees 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. The Company agrees to make itself aware of and comply with the City's Harassment Policy. The City will not tolerate or condone acts of harassment based upon race, sex, religion, national origin, color, age or disability. Violators of this policy shall be subject to termination.

ARTICLE 5 - POINTS OF CONTACT; NOTIFICATION

5.1 *City's Point of Contact*

The City will designate a Project Manager who is authorized to act in the City's behalf with respect to the Project, except as otherwise limited by this Agreement. The Project Manager will examine the documents submitted by the Company and will expedite decisions concerning the documents in order to avoid unreasonable delay in the progress of the Company's Services. The Project Manager will coordinate all communication between the Company and the City unless otherwise specified in

writing. The Company shall contact the Project Manager prior to all meetings involving City personnel.

The City's Point of Contact and Project Manager is:

5.2 ***Company's Point of Contact***

The duties of the Company's Point of Contact include, but are not limited to:

- Managing the overall Project by monitoring and reporting on the status of the Project and on actual versus projected progress, and by consulting with the City Project Manager when deviations occur and by documenting all such deviations in accordance with agreed upon change control procedures;
- Meeting with other entities working on City projects that relate to this effort as necessary to resolve problems and coordinating the services;
- Coordinating Services and the Company's resource assignments based on the City's requirements;
- Providing consultation and advice to the City on matters related to the Services and the Project and acting as a conduit to the Company's specialist resources that may be needed to supplement the Company's regular staff;
- Acting on behalf of Company for all aspects of contract administration, including invoicing for Services, and status reporting;
- Facilitating meetings and conferences between the City and the Company's staff when scheduled or requested by the City;
- Communicating among and between the City and the Company's staff;
- Promptly responding to the City's Project Manager when consulted in writing with respect to Service deviation and necessary documentation;
- Identifying and providing the City with written notice immediately after the Company becomes aware of any issue that may threaten the delivery of Services in the manner contemplated by this Agreement; and
- Ensuring that adequate quality assurance procedures are in place for the performance of Services.

The Company's Point of Contact and Project Manager is:

5.3 ***Legal Notices***

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

For the City:

Charlotte Water
5100 Brookshire Boulevard
Charlotte, NC 28216

Attn:
Phone:
Email:

City of Charlotte Attorney's Office
600 East 4th Street, 15th Floor
Charlotte, NC 28202

Attn: Thomas E. Powers, III
Phone: 704-336-5877
Email: Thomas.Powers@charlottenc.gov

For the Company:

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

ARTICLE 6 - COMPENSATION AND PAYMENTS

6.1 Lump Sum Fees

The Company shall be compensated on a lump sum basis for the services listed in this Agreement using the fee schedule in Exhibit 2, provided, however, that the total of payments to the Company shall not exceed \$XXX.

6.2 Hourly and Unit Price Basis

The Company shall be compensated for actual work performed on an hourly and unit price basis for the services listed in this Agreement using the hourly rates and unit prices in Exhibit 2; provided, however, that the total of payments to the Company for providing hourly and unit price basis services shall not exceed \$XXX.

The City reserves the sole right to approve or reject requests for adjustments.

6.3 Subconsultant Fee

The Company may receive compensation for coordination of professional services by subcontractor(s). The maximum fee for coordination is ten percent (10%) of the fee paid to the subcontractor. Such compensation shall be included within the applicable section of the scope of services. This fee is designed to cover general overhead the Company may incur on review and responsibility of the subcontractor's work.

6.4 Allowance for Additional Services

Additional services shall be performed by the Company only after written instructions to do so are received from the City's Project Manager. Compensation for additional services performed shall be in accordance with the hourly and unit price rates set forth in this Agreement and shall not exceed

\$XXX.

6.5 **Reimbursable Expenses**

Reimbursable expenses may not be marked up and shall be limited to the actual expenditures incurred by the Company during the performance of the work. Reimbursable expenses shall not exceed \$XXX. The following items shall be considered reimbursable expenses and will be compensated at cost:

6.5.1 Travel:

- a. Vehicular transportation at the rate established by the Internal Revenue Service current at the time the travel occurs;
- b. Parking fees;
- c. Airline tickets (only for coach/economy airline fares, or, if not available, first/business airline fares, and both only with prior approval of the Project Manager); and
- d. Meals and lodging in connection with out-of-town travel (with prior approval of the Project Manager).

6.5.2 Permit fees

- a. Permit costs and fees paid for securing approval of authorities having jurisdiction over the Project.

6.5.3 Reprographics

- a. Copying and binding expenses for drawings, specifications, reports and other Project documents;
- b. Photography as approved by the City's Project Manager; and
- c. Renderings and models requested by the City if not specifically included in basic services.

6.5.4 Postage for sending project documents.

6.6 **Summary of Fees and Allowances**

The maximum cumulative amount paid to the Company pursuant to this Agreement for all services performed and all reimbursable expenses shall not exceed the following:

Lump Sum Fees	\$
Hourly and Unit Price Allowances	\$
Allowance for Additional Services	\$
TOTAL MAXIMUM FEES AND ALLOWANCES	\$

6.7 **Invoices**

6.7.1 Payment of the fees provided for under this Agreement will be made to the Company on a monthly basis upon submission of an invoice stating the nature and quantity of work performed and accompanied by proper supporting documentation as the City may require. Hourly basis fees and reimbursable expenses shall be itemized on each invoice, when applicable. Payments of accurate, undisputed, properly submitted invoices will be made

within thirty (30) calendar days of the date of receipt of a correct payment request. A correct payment request is defined as an invoice that indicates only those work items that have been satisfactorily completed and accepted by the City. The Company waives the right to payment for all services that are not invoiced to the City within ninety (90) days after the date on which they have been completed. Final payment to the Company will not be made until Record Drawings for the Project have been completed, submitted and approved by the City, if applicable.

6.7.2 Each invoice sent by the Company shall detail all services performed and delivered which are necessary to entitle the Company to the requested payment under the terms of this Agreement. All invoices must include the City purchase order number for purchases made under the Agreement. Purchase order numbers will be provided by the City. Invoices must be submitted with lines matching those on the City-provided purchase order.

6.7.3 The Company shall email all invoices to cocap@charlottenc.gov, with copy to the City's Point of Contact/Project Manager, or mail all invoices to:

City of Charlotte AP
Attn: Charlotte Water Insert Division, Insert Project Manager
P.O. Box 37979
Charlotte, NC 28237-7979

For either option, Accounts Payable (or AP) must be in the first line. On the "Attn:" line, you must indicate the department or area, along with the appropriate contact name, as shown above. Invoices that are addressed directly to City departments and not to Accounts Payable may not be handled as quickly as invoices that are addressed correctly.

6.8 **Payment Affidavits**

To determine whether disparities exist in City contracting based on race, gender and other factors, and also to measure the effectiveness of the City's Charlotte Business INCLUSION program, the City tracks the utilization of subcontractors and suppliers on City contracts based on race, gender, small business status, and other factors. For analysis purposes, it is important that the City obtain this data not only for minority-owned businesses, women-owned businesses, and small business suppliers and subcontractors, but also for other subcontractors and suppliers. As a condition to receiving payment under this Agreement, the Company agrees to provide to the City with each invoice for payment submitted under this Agreement, a written payment affidavit detailing the amounts paid by the Company to first tier subcontractors and suppliers in connection with this Agreement ("Payment Affidavits"). Payment Affidavits shall be in the format specified by the City from time to time, and shall include all payments made to first tier subcontractors and suppliers under this Agreement that are not included on a prior Payment Affidavit.

Failure to provide a properly completed version of each Payment Affidavit required by this Section shall constitute a default under this Agreement, and shall entitle the City to: (a) withhold payment of

any amounts due the Company (whether under this Agreement or otherwise), or (b) exercise any other remedies legally available for breach of this Agreement; or (c) impose any other sanctions permitted under the City's Charlotte Business INClusion program. In order to have a properly completed Payment Affidavit, each Company and first tier subcontractor identified must be registered in the City's Vendor Registration System.

6.9 **Cost Overruns**

If it appears during the course of the work that any of the estimated fees and allowances may be exceeded, the Company shall immediately notify the City's Project Manager in writing. The estimated fees and allowances shall not be exceeded except by written amendment to this Agreement. Any work performed without prior written approval shall be at the Company's expense.

6.10 **Accounting and Auditing**

The Company shall maintain complete and accurate records, using Generally Accepted Accounting Practices (GAAP), of all costs related to this Agreement. Such records shall be open to inspection and subject to audit and/or reproduction, during normal working hours, 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. Except as otherwise expressly provided herein, records subject to examination do not include those pertaining solely to services compensated on a lump sum basis.

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.

The City's agent or authorized representative shall have access to the Company's facilities and shall be provided an adequate and appropriate work place, in order to conduct audits in compliance with this Article. The City will give the Company reasonable advance notice of planned inspections. If, as the 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.

6.11 **Withholding of Payments**

The parties agree that the City shall be entitled to withhold payments, including final payment, due to the Company under this Contract until the City has received in a form satisfactory to the City all claim releases and other documentation, including but not limited to the City's Charlotte Business INClusion Program.

ARTICLE 7 - ITEMS TO BE FURNISHED BY THE CITY

At the request of the Company and in connection with providing the services, the City will furnish the following

items and/or services either directly or indirectly to the Company at no cost:

- a. Access to facilities to perform any inspections required to perform the Scope of Services for the Project.
- b. Background information on the Project, including planning, programming, and budgeting documents. The City also will provide applicable City standard specifications, details and other materials listed herein on a timely basis.

Notwithstanding the foregoing, the Company shall not be entitled to request that the City provide information, personnel or facilities other than those which **Exhibit 1** specifically requires the City to provide. The Company shall not be relieved of any failure to perform under this Agreement by virtue of the City's failure to provide any information, equipment, facilities or resources (i) that the Company failed to identify and request in writing from the City pursuant to this Section; or (ii) which the City is not required to provide pursuant to this Agreement. In the event the City fails to provide any information, personnel, facility or resource that it is required to provide under this Section, the Company shall notify the City in writing immediately in accordance with the notice provision of this Agreement. Failure to do so shall constitute a waiver by Company of any claim or defense it may otherwise have based on the City's failure to provide such information, personnel, facility or resource.

ARTICLE 8 - INSURANCE

The Company shall purchase and maintain during the life of this Agreement with an insurance company acceptable to the City and authorized to do business in the State of North Carolina the following insurance:

8.1 *Automobile Liability*

Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$1,000,000 combined single limit each occurrence/aggregate.

8.2 *Commercial General Liability*

Bodily injury and property damage liability as shall protect the Company and any subcontractor performing work under this Agreement from claims of bodily injury or property damage which arise from operation of this Agreement whether such operations are performed by Company, any subcontractor or any person directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate. This insurance shall include coverage for products/completed operation, personal and advertising injury liability and contractual liability assumed under the indemnity provision of this Agreement.

8.3 *Workers' Compensation Insurance*

Meeting the statutory requirements of the State of North Carolina and Employers Liability - \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit, providing coverage for employees and owners.

8.4 *Professional Liability Insurance*

In an amount of not less than \$1,000,000 each claim and \$1,000,000 aggregate.

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

The City of Charlotte shall be named as additional insured under the commercial general liability insurance for operations and services rendered under this Agreement. Certificates of all required insurance shall be furnished to the City and shall contain the provision that the City will be given thirty (30) day written notice of any intent to reduce coverage in any manner or to any extent, or to terminate by either the insured or the insuring company.

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

ARTICLE 9 - QUALITY CONTROL PROGRAM

The Company shall establish and follow a quality control program throughout the Planning and Design process. The Quality Control Program will identify review personnel and describe the procedures to be used to verify, to independently check, and to review all drawings, reports, designs, specifications and other documentation prepared, as well as any function, activity, or task as part of this Agreement. The Quality Control Program will specify the manner for documenting the check and review processes, for recording required procedures, and for verifying work activities. It will provide for internal reviews and will detail the frequency and types of reviews to be conducted for the specific job to ensure compliance with quality standards. Within thirty (30) days after receiving a notice to proceed, the Company shall submit a written Quality Control Program, to address all quality assurance/quality control issues in connection with the Project, for review and approval by the City's Project Manager.

Throughout the project development, the Company will maintain quality control procedures as covered in the approved Quality Control Program and documentation of the Company's internal design reviews for inspection by the City's Project Manager. The City's Project Manager will have the option to review planning and design documents in the Company's office periodically to verify that proper quality control procedures are employed in the development process.

ARTICLE 10 - OWNERSHIP AND USE OF WORK PRODUCTS

The City shall own title to any 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.

10.1 *Ownership*

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.

10.2 **Modification or Reuse Risk**

Any modification or reuse of the Deliverables by the City without the involvement of the Company shall be at the sole risk of the City.

10.3 **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. At the City's option, Deliverables shall also be provided in electronic format.

The deliverable shall be compatible with the City's current software applications packages, operating systems and computer hardware.

If there is a discrepancy between the electronic files and the hard copies, the hard copies shall govern.

ARTICLE 11 - TERMINATION

11.1 **Termination for Convenience**

The City may terminate this Agreement for any reason or no reason by giving written notice of termination at least thirty (30) days before the date of termination. The notice shall specify the date upon which such termination becomes effective and the City shall pay the Company for Services rendered prior to the effective date of termination.

11.2 **Termination for Default**

By giving written notice, either party may terminate this Agreement upon the occurrence of one or more of the following events, each of which constitute a non-exclusive Event of Default under this Agreement:

a. The other party violates or fails to perform any covenant, provision, obligation, term, or condition contained in this Agreement, provided that, unless otherwise provided in this Agreement, such failure or violation shall not be cause for termination if the defaulting party cures such default (if the default is susceptible to cure) within fifteen (15) days of receipt of written notice of default from the other party.

b. The Company takes or fails to take any action which constitutes grounds for immediate

termination under the terms of this Agreement, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Agreement, or failure to provide the proof of insurance as required by this Agreement.

Any notice of default shall state the party's intent to terminate this Agreement if the default is not cured within the specified time period.

11.3 ***Additional Grounds for Termination 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 this Agreement; or
- 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.

11.4 ***Obligations Upon Expiration Or Termination***

- a. 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.

- b. Upon termination or expiration of this Contract, the Company shall cooperate with the City to assist with the orderly transfer of the Services provided by the Company to the City. Prior to

termination or expiration of this Contract, the City may require the Company to perform and, if so required, the Company shall perform certain transition services, necessary to shift the Services of the Company to another provider or to the City itself as described below (the "Transition Services"). Transition Services may include but shall not be limited to the following:

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

11.5 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.

11.6 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.

11.7 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 reasonable 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.

11.8 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.

11.9 Authority to Terminate

The Director of Charlotte Water, Assistant City Manager, or City Manager, will have authority, without the necessity of further action by City Council, to terminate this Agreement on behalf of the City.

ARTICLE 12 - COVENANTS AND REPRESENTATIONS

12.1 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 in the Mecklenburg County area.

12.2 The Company further covenants and represents that (i) 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, (ii) 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 (iii) it has sufficient expertise and resources to perform under this Agreement.

12.3 The Company further represents and covenants that (i) it is validly existing and in good standing under the laws of North Carolina; (ii) it has all the requisite power and/or authority to execute, deliver and perform its obligations under this Agreement; (iii) the execution, delivery, and performance of this Agreement have been duly authorized by the Company; (iv) 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 (v) 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.

12.4 Any defective designs, specifications, plats or surveys 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. The City's approval, acceptance, use of, or payment for all or any part of the Company's services or of the Project itself shall in no way alter the Company's obligations or the City's rights under this Agreement.

ARTICLE 13 - 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 or 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, which shall include coverage for the contractual liability described herein. This provision shall survive the expiration or early termination of the Agreement.

ARTICLE 14 - 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 the in complying with such conflicting Regulations.

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

ARTICLE 15 - MISCELLANEOUS CONDITIONS

15.1 *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; or (iii) make either party an agent of the other for any purpose whatsoever. Neither party nor its agents or employees is the representative of the other for any purpose, and neither has power or authority to act as agent or employee to represent, act for, bind, or otherwise create or assume any obligation on behalf of the other, unless expressly authorized in writing by the City for the performance of specific tasks by the Company.

15.2 *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. In the event of conflict between the terms and conditions of this Agreement and the purchase orders associated with this Agreement, the terms and conditions of this Agreement shall govern.

15.3 *Amendment*

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

15.4 ***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 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.

15.5 ***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.

15.6 ***Delays and Extensions***

Reasonable extensions of time for unforeseen or unavoidable delays may be made by mutual consent of the parties involved.

15.7 ***Force Majeure***

Neither party shall be liable for any failure or delay in the performance of its obligation pursuant to the Agreement, and such failure or delay shall not be deemed a default of the Agreement or grounds for termination hereunder if all of the following conditions are satisfied:

- a. If such failure or delay could not have been prevented by reasonable precautions;
- b. If such failure or delay cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and
- c. If and to the extent, such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, public health emergencies, epidemics, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions or court order.

An event, which satisfies all of the conditions set forth above, shall be referred to as a "Force Majeure Event". Upon the occurrence of a Force Majeure Event, the affected party shall be excused from any further performance of those of its obligations, which are affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) the affected party continues to use reasonable efforts to recommence performance whenever and to whatever extent possible.

Upon the occurrence of a Force Majeure Event, the affected party shall promptly notify the other by telephone (to be confirmed by written notice within five (5) days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents the Company from performing its obligations for more than fifteen (15) days, the City shall have the right to terminate the Agreement(s) by written notice to the Company.

Notwithstanding anything contained herein to the contrary, strikes, slow-downs, walkouts, lockouts, and industrial disputes of the Company or its subcontractors shall not constitute "Force Majeure Events" and are not excused under this provision.

15.8 **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.

15.9 **Approvals**

All approvals or consents required under this Agreement must be in writing. Electronic documents shall have the same validity as physical documents.

15.10 **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.

15.11 **Interest of the Parties**

The Company covenants that its officers, employees, shareholders and subcontractor 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.

15.12 **Taxes**

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

15.13 **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.

15.14 ***Change In Control***

In the event of a change in "Control" of the Company (as defined below), the City shall have the option of terminating this Agreement by written notice to the Company. The Company shall notify the City within ten (10) days of the occurrence of a change in control. As used in this 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.

15.15 ***Subcontracting***

Should the Company choose to subcontract, the Company shall remain fully responsible for performance of all obligations that it is required to perform under this Agreement. Any subcontract entered into by the Company in connection with the Project shall name the City as a third party beneficiary.

15.16 ***City Not Liable for Delays***

Except as expressly provided in this Agreement, the City shall not be liable to the Company, its agents, representatives or subcontractors for or on account of any stoppages or delay in the performance of any obligations of the City or any other party hereunder.

15.17 ***City Not Liable for Special or Consequential Damages***

Except as expressly provided in this Agreement, the City shall not be liable to the Company, its agents, representatives or subcontractors for any other consequential, indirect or special damages or lost profits related to this Agreement.

15.18 ***Survival of Provisions***

All definitions and express representations and indemnifications included in this Agreement will survive its completion or termination. Those sections of this Agreement including Exhibits that by their nature would reasonably be expected to continue after the termination of this Agreement shall survive the termination of this Agreement.

15.19 ***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 under this Agreement.

15.20 ***Reliance on City-Furnished Information***

In response to reasonable requests by the Company, the City will endeavor to provide to the Company all information in the possession of Charlotte Water reasonably related to the Scope of Services. Except as otherwise expressly stated herein, the Company may reasonably rely upon the accuracy, timeliness and completeness of such information provided by the City, unless the Company knew or should have known that such information was not accurate or complete.

15.21 ***Access to Facilities***

The City will make its facilities reasonably accessible to the Company as required for the Company's performance of its services under this Agreement. Except as otherwise expressly stated herein, the City will perform at no cost to the Company such tests of equipment, machinery, pipelines, and other components of the City's facilities as may be reasonably required in connection with the Company's services under this Agreement.

The Company will, whenever on the City premises, obey all instructions and City policies that the Company is made aware of with respect to performing work on the City premises.

15.22 ***Advertisements, Permits and Access***

Except as expressly stated herein, the City will obtain, arrange, and pay for all advertisements for bids, permits and licenses required by applicable law, and all land, easements and access thereto necessary for the Company to perform its services under this Agreement.

15.23 ***Opinions and Estimates***

The Company's opinions, estimates, projections, or other forecast of future costs or revenues shall be made on the basis of available information and the Company's expertise and qualifications as a professional. The Company does not warrant or guarantee that its opinions, estimates, projections or other forecasts of future costs or revenues will not vary from the actual costs or revenues

15.24 ***Construction Procedures***

Company's observation or monitoring portions of the work performed under construction contracts shall not relieve the contractor from its responsibility for performing work in accordance with applicable contract documents. Company shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the work and shall not manage, supervise, control or have charge of construction. Further, Company shall not be responsible for the acts or omissions of the contractor or other parties on the project.

15.25 ***Litigation Support***

In the event Company is required to respond to a subpoena, government inquiry or other legal process related to the services in connection with a legal or dispute resolution proceeding to which Company is not a party, City shall reimburse Company for reasonable costs in responding and compensate Company at its then standard rates for reasonable time incurred in gathering information

and documents and attending depositions, hearings, and trial.

15.26 ***Utility Location***

If underground sampling/testing is to be performed, Company shall contact a local utility locating service to make arrangements for all utilities to determine the location of all underground utilities. In addition, City shall notify Company of the presence and location of any underground objects and City facilities known to Charlotte Water and located on the City's property which are not the responsibility of private/public utilities. Company shall take reasonable precautions to avoid damaging underground utilities and objects that are properly marked. The City agrees to waive any claim against Company arising from or caused by Company's damaging of City property, which the City failed to identify prior to beginning the underground sampling/testing.

15.27 ***Hazardous Materials***

City represents that, to the best of its knowledge and belief, it has disclosed to Company the existence of hazardous materials known to Charlotte Water, including but not limited to asbestos, PCB's, petroleum, hazardous waste, hazardous biological matter or radioactive material located at or near the project site, including type, quantity and location of such hazardous materials. As a result of entering into this agreement, Company is not and shall not be considered (i) the owner of material, substances, or wastes noted in the Scope of Work; (ii) the operator of a waste management facility; (iii) the generator, storer, or disposer of hazardous or solid waste; (iv) to have arranged for the transportation or disposal of any wastes, pollutants, or contaminants by virtue of the performance of Company's services under this Agreement or anything contained herein, as those terms are used in the Resource Conservation and Recovery Act ("RCRA"), as amended, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA"), as amended, or any other federal, state statute or regulation governing the treatment, transportation, storage, or disposal of substances, materials or wastes. If Company's services hereunder cannot be performed because of the existence of undisclosed hazardous materials, Company shall be entitled to terminate this Agreement for cause on 7 days written notice.

15.28 ***Purchase Orders***

The City will issue Purchase Orders for services as needed during the term of the Agreement. The City reserves the right to purchase services according to actual need and does not guarantee utilization.

15.29 ***Non-Appropriation of Funds***

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

15.30 **Pre-Audit**
Reserved.

15.31 **Non-Exclusivity**

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

15.32 **Damaged Data, Equipment and Facilities**

a. **Regeneration of Lost or Damaged Data**

If the Company loses or damages any data in the City's possession, the Company shall, at its own expense, promptly replace or regenerate such data from the City machine-readable supporting material, or obtain, at the Company's own expense, a new machine-readable copy of lost or damaged data from the City data sources.

b. **Repair or Replacement of Damaged Equipment or Facilities**

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

15.33 **CADD Standards; Final Plans**

The Company shall submit an electronic copy of all plans in the current version of AutoCAD. The Company will not be required to seal electronic files. In addition to the digital files, the Company shall submit PDFs or a hard copy of the final design plans based on the preference of the Project Manager.

ARTICLE 16 - 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 physical description and location of the approved final design/product of the Project. Descriptions of conceptual or alternative designs/products considered for the Project 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 is in the City's judgment likely to cast doubt on the competence or integrity of the City or 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 17 - CHARLOTTE BUSINESS INCLUSION PROGRAM

The Charlotte City Council has declared that a race-neutral and gender-neutral and race-conscious and

gender-conscious program employing goals and good faith efforts to promote the utilization of small and minority businesses in City contracts will benefit the City by promoting competition in City contracting and by promoting economic growth and development in the Charlotte CSA.

The Charlotte City Council adopted the Charlotte Business INClusion (CBI) Program that utilizes both race-neutral and gender-neutral measures and race-conscious and gender-conscious measures based on a recent disparity study. The Charlotte Business INClusion Program (CBI Program) applies to all aspects of the City's contracting and procurement programs and its provisions are incorporated in their entirety into this Agreement by reference. Forms and instructions for complying with the CBI Program are included in Exhibit 9, attached hereto and incorporated herein by reference.

ARTICLE 18 - SENSITIVE DOCUMENTS

All or substantial portions of the following documents may not be considered to be public records pursuant to applicable provisions of North Carolina law: Company's work product under this Agreement; and all plans, drawings and other documents containing security plans and arrangements and/or detailed plans and drawings of any facility of the City.

Such work product, security arrangements, and/or detailed plans and drawings are herein referenced as *Sensitive Document(s)*. Without limiting the foregoing, it is expressly understood and agreed that *Sensitive Document(s)* is not limited to documents related to this Agreement and includes any and all documents herein described concerning any facility of the City regardless of the type of facility and regardless of the manner in which the Company acquired possession of such documents. The City retains sole authority and discretion to determine whether all or any portion of any Sensitive Document is a public record pursuant to applicable provisions of North Carolina law. Under no circumstances will the Company provide the original or copy of any portion of any Sensitive Document (without regard to the status of such Sensitive Document as in preliminary, draft or final form) to any person or entity unless directed by the City or unless reasonably necessary to satisfy Company's obligations pursuant to this Agreement. The Company will maintain and implement such rules and procedures governing the conduct of its officers, employees, agents and subcontractors and the maintenance, handling and use of Sensitive Documents as may be reasonably necessary to prevent the release of any Sensitive Document in violation of this provision. Such rules and procedures will be subject to review by the City and such changes as the City determines to be reasonably necessary, including without limitation maintaining a log identifying any Sensitive Document provided to any person or entity that includes at a minimum, identification of the Sensitive Document provided, name of person releasing the Sensitive Document, name of person receiving the Sensitive Document, State Driver's License number of person receiving Sensitive Document, reason for releasing Sensitive Document, and date Sensitive Document released. Without exception, every person or entity receiving a Sensitive Document must agree not to copy or release such Sensitive Document to any other person or entity, unless otherwise approved by the City in writing. Such log need not include the release of any document to an officer or employee of the Company or to any employee of the City. A violation of any provision of this section is a serious violation 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 19 – E-VERIFY

Company shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Furthermore, if Company utilizes a subcontractor, Company shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

ARTICLE 20 – DISPUTE RESOLUTION

It is understood and agreed that projects subject to NCGS 143-128(g-h) requires that disputes arising under a Contract subject to a dispute resolution process specified by the Owner (i.e., the City). In compliance with this statutory provision, the City specifies this Article as the dispute resolution process to be used on this Project, regardless if the Project is or is not subject to NCGS 143-128(g-h). It is further understood and agreed that this dispute resolution process is based on non-binding mediation and will only be effective to the extent that the Parties to any mediated dispute participate in the mediation in good faith. It is also understood and agreed that the City is under no obligation under any circumstance to secure or enforce the participation of any other Party in the mediation of any dispute subject to this Article and NCGS 143-128(g-h).

- 20.1 Any dispute arising between or among the Parties listed in Section 21.3 of this Article that arises from an agreement to perform services in conjunction with the Project, including without limitation a breach of such agreement, shall be subject to non-binding mediation administered by the American Arbitration Association under the industry appropriate Mediation Rules (“Rules”). To the extent any provision of the Rules is inconsistent with the provisions of this Article, the provisions of this Article shall control. The mediation provided in this Article shall be used pursuant to this Contract and NCGS 143-128(g-h) and is in lieu of any dispute resolution process adopted by any other government entity, which process shall not apply to this Project.
- 20.2 For purposes of this Article the following definitions shall apply:
- a. Party or Parties refers to the parties listed in Section 21.3 of this Article.
 - b. Project means project pursuant to this Contract.
- 20.3 The City and any Party contracting with the City or with any first-tier or lower-tier subconsultant for the performance of the Project agree to participate in good faith in any mediation of a dispute subject to this Article and NCGS 143-128(g-h), including without limitation the following Parties (if any): Company, independent contractor(s) of the City, surety(ies), subconsultant(s), and supplier(s).
- 20.4 The Company and all other Parties shall include this Article in every agreement to which it (any of them) is a Party in performing the Services of the Project without variation or exception. Failure to do so will constitute a breach of this Contract, and the Contractor or other Party failing to include this Article in any agreement required by this Article shall indemnify and hold harmless the remaining Parties 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. Notwithstanding the foregoing provisions of this Section, it is expressly understood and agreed that the Parties are intended to be and shall be third-party beneficiaries of the provisions of this Article and can enforce the provisions hereof.

- 20.5 The following disputes are not subject to mediation: (i) a dispute seeking a non-monetary recovery; and (ii) a dispute seeking a monetary recovery of \$15,000 or less.
- 20.6 A dispute seeking the extension of any time limit set forth in an agreement to perform the Services for the Project shall be subject to mediation pursuant to this Article and NCGS 143-128(g-h), but only if the damages which would be suffered by the Party seeking the extension would exceed \$15,000 if the disputed extension is denied. To the extent that liquidated damages are set forth in such agreement as the measurement of damages for failure by such Party to meet such time limit, such liquidated damages shall be the exclusive standard for determining the amount of damages associated with such dispute.
- 20.7 For purposes of this Article, 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.
- 20.8 In addition to such matters as are required by the Rules, a request for mediation shall include the amount of the monetary relief requested.
- 20.9 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.
- 20.10 If a Party breaches any provision of Section 21.9 of this Article, it shall indemnify and hold harmless all other Parties from any costs, including reasonable attorney fees and other costs of litigation, and damages incurred by such other Parties that arise from such breach.
- 20.11 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. Such expenses include without limitation preparation and production of witnesses and exhibits and attorney fees. All other expenses of the mediation, including filing fees and required traveling and other expenses of the mediator, shall be borne as follows: one half by the Party requesting the mediation, with the remaining parties paying equal shares of the remaining expenses and costs; provided that, if the City is named as a party to the mediation, the City shall pay at least one-third of the mediation expenses and costs divided among the Parties. If more than one Party to a dispute requests a mediation, the mediation expenses and costs to be divided among the Parties shall be borne equally by the Parties to the dispute; provided that, if the City is named as a Party to the mediation, the City shall pay at least one-third of the mediation expenses and costs divided among the Parties.

- 20.12 The mediation shall be held at a location agreeable to the mediator and all of the Parties; provided that, if no agreement can be reached, the mediation will be held at such location in Mecklenburg County as the mediator shall determine.
- 20.13 The provisions of this Article are subject to any other provision of this Contract concerning the submission, documentation and/or proof of any claim or dispute. Such other provisions shall apply in full force and shall be satisfied as a condition precedent to mediation pursuant to this Article.
- 20.14 The Parties understand and agree that mediation in accordance with this Article 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 Article.

ARTICLE 21 – NC PROHIBITION ON AGREEMENTS 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 it to appear on the Treasurer’s IDA List or the Treasurer’s IB List during the term of this Agreement. In signing this Agreement, Company further agrees, as an independent obligation, separate and apart from this Agreement, 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 Agreement.

ARTICLE 22 – CITY’S WEB-BASED PROJECT CONTROL SYSTEM (E-BUILDER)

Company certifies and agrees to utilize the City’s web-based Project Control System (e-Builder) in the execution of its scope of services:

- a. E-Builder is a web-based program management tool that manages program cost, schedule, and documents. Information on e-Builder can be found at www.e-builder.net.
- b. The Company shall effectively manage and use e-Builder including maintaining adequate staffing levels and ensuring that personnel attend the mandatory City-provided training sessions.
- c. All parties shall use e-Builder for records retention and management of all project communication and documentation until completion of the Company’s scope of services.
- d. The Company shall use the workflow processes contained within e-Builder to submit and receive approval for all project deliverables.
- e. The Company shall continuously monitor and review e-Builder to ensure the Company’s data is current through completion of the Company’s scope of services.
- f. Documents, forms, and processes that will be used in e-Builder by the City, City’s Representatives and Agreement include but are not limited to: Request for Information (RFI), Supplemental

Instructions, Submittals, Drawings and Specifications, Photo Documentations, Change Orders, Change Directives, Change Proposals, Pay Applications, CBI Payment Affidavits, Reports (daily, monthly, etc.), Schedules, Special Inspections, Meeting Minutes, Online document collaborations and Closeout.

- g. If specific documents, forms, and processes are not available in e-Builder, submittal shall be as directed by the City.
- h. Scanned documents shall be searchable PDF format and image files can be in jpeg, tiff and bmp format. All documents shall have clarity of 300 dpi or better.
- i. The City will provide access to e-Builder for active project participants and technical service support at no cost to the Company. The City will not furnish any equipment related to accessing e-Builder. E-Builder is web-accessible, and can therefore be accessed via any computer with an Internet connection.
- j. The City will provide training to familiarize team members with e-Builder at no cost to the Company. In an effort to protect proprietary information and prohibit unauthorized use or modifications, levels of access security will be assigned by the City based on user roles and responsibilities.
- k. The City will provide e-Builder system administration and end user support, for the duration of the project.
- l. All parties are to maintain a current copy of their data on their own system. The City is not liable for willful or inadvertent acts of any user, theft, or force majeure.
- m. The City shall retain ownership of all data in the system and shall administer all information contained therein. Distribution of any system data shall be made upon request.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, and in acknowledgement 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.

COMPANY

**CITY OF CHARLOTTE:
CITY MANAGER'S OFFICE**

BY: _____
(signature)

BY: _____
(signature)

PRINT NAME: _____

PRINT NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

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

By: _____
Finance Officer

Date: _____