



## REQUEST FOR QUALIFICATIONS (RFQ)

for

## S70 Light Rail Vehicle (LRV) Engineering Services

RFQ# 269-2024-1512

Date Issued:

August 15, 2023



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## **1 REQUEST FOR QUALIFICATIONS (RFQ) INSTRUCTIONS**

### **1.1 Public Notice**

The City of Charlotte (“City”), through its Charlotte Area Transit System (“CATS”) department, is soliciting Statements of Qualifications (SOQs) from firms/teams (Firms) to provide services related to the Hambright Park and Ride (Services). The City is seeking firms whose combination of experience and expertise will provide timely, professional services to the City. The City reserves the right to enter into one or more contracts with any firm selected under this RFQ process.

Information related to this solicitation, including any addenda, will be posted to the City’s website at the following link: [Doing Business with the City](#). For questions related to this solicitation contact:

**Jeremy Wall**, *Transit Procurement Officer*  
City of Charlotte  
Department of General Services – City Procurement  
600 E 4<sup>th</sup> Street, 3<sup>rd</sup> Floor, Charlotte, NC 28202  
Direct Phone: 980-406-6975  
Email: jeremy.wall@charlottenc.gov

### **1.2 Description of Project**

This Request for Qualifications is to select one or more firms to provide consulting engineering services to the CATS Rail Car Maintenance department on a task order on-call basis.

### **1.3 Scope of Services:**

See Exhibit A for the detailed Scope of Work.

### **1.3 RFQ Schedule of Events and SOQ Submission**

Provided below is the anticipated schedule of events. The City reserves the right to adjust the schedule and to add/remove specific events to meet the unique needs of this Project.

<b>DATE</b>	<b>EVENT</b>
August 15, 2023	Advertisement of RFQ
August 22, 2023	<b>Virtual Pre-Response Meeting at 10:00 AM ET*</b> No onsite meeting will be held, and firms <b>should not</b> come to the City expecting to attend in person. Specific instructions for attendees are provided below.
September 7, 2023	Submission of Written Questions. Questions are due by 2:00 PM ET
September 14, 2023	Qualification Submittals Due by 2:00 PM ET
September 2023	Evaluation of Qualifications
October 2023	City Council
November 2023	Contract Executed

\*Specific Pre-Response meeting Instructions:

There will not be an in-person Pre-Response Meeting. The Pre-Response Meeting will be held using MS Teams. There will also be a dial-in number for those without access to MS Teams.

Go to the link below to join the meeting on the date and time designated.

## Microsoft Teams meeting

### **Join on your computer, mobile app or room device**

[Click here to join the meeting](#)

Meeting ID: 241 399 322 649

Passcode: JDeQEg

[Download Teams](#) | [Join on the web](#)

### **Join with a video conferencing device**

cityofcharlotte@m.webex.com

Video Conference ID: 111 083 115 9

[Alternate VTC instructions](#)

### **Or call in (audio only)**

[+1 872-256-4172,,951170146#](#) United States, Chicago

Phone Conference ID: 951 170 146#

[Find a local number](#) | [Reset PIN](#)

Be sure to check the solicitation website for addenda before the Pre-Response Meeting and up until the submittal deadline for updates to this RFQ.

Attendance at the Pre-Response Meeting is not mandatory but is highly recommended.

### **1.3.1 Submission of Statement of Qualifications (SOQ)**

The SOQ must be in the format specified in Sections 1.5 and 1.6 below. SOQs must be emailed to the Procurement Officer at the email below by September 14, 2023 at or before but no later than 2:00 PM EDT. All items required for a responsive SOQ shall be included. It is the sole responsibility of the firm to ensure that the SOQ package is received no later than the established due date and time. SOQs received after the due date and time will not be considered.

Transit Procurement Officer:  
Jeremy Wall  
(980) 406-6975  
[Jeremy.Wall@charlottenc.gov](mailto:Jeremy.Wall@charlottenc.gov)

The City will send an electronic acknowledgement of receipt. If you do not receive this acknowledgement contact Jeremy Wall to confirm its receipt.

When received, all SOQs, as well as correspondence relating to this RFQ, shall become property of the City.

### **1.4 Evaluation Criteria and Process**

The SOQ will be evaluated based on the Firm's qualifications related to the specific services to be provided. This section provides a description of the evaluation criteria that will be used to evaluate the SOQ. To be

deemed responsive, it is important for the Firm to provide appropriate detail to demonstrate satisfaction of each criterion and compliance with the performance provisions outlined in this RFQ. The Firm's Statement of Qualifications (SOQ) will be the primary source of information used in the evaluation process. Qualifications must contain information specifically related to the proposed Services requested herein. Failure of any Respondent to submit information requested may result in the elimination of the SOQ from further evaluation.

Qualifications will be assessed to determine the most qualified firm to provide the services outlined in this RFQ based on, but not limited to, the criteria below. Qualifications will be evaluated on the following categories:

Proposed Project Team and Organization	20 points
Proposed Project Staff Experience and Availability	25 points
Project Approach	25 points
Team's Comparable Project Experience	30 points
DBE Program Goal	Y/N
Acceptance of Terms of Contract/Exceptions	Y/N
Required Forms	Y/N

**1.4.1 Proposed Project Team and Organization.**

Respondents will be evaluated on the proposed team and organization information, specifically adequate staffing and proper organization for the Scopes of Service, key team members for each discipline within each Scope and their availability, and prior experience of the team working together.

*See: Proposed Project Key Team Members and Organization of Team*

*Max Points: 20*

**1.4.2 Proposed Project Staff Experience and Availability.**

Respondents will be evaluated on the experience of the proposed staff that demonstrates a history of success providing similar services with similar projects, including experience providing similar services for similar projects. The Project Manager and other design related professionals referenced must be employed by the firm and licensed in the State of North Carolina.

*See: Proposed Project Staff and Experience.*

*Max Points: 25*

**1.4.3 Project Approach.**

Respondents will be evaluated based upon their understanding of the Scope of Services and proposed approach in completing the Services.

*See: Project Understanding, Methodology and Approach*

*Max Points: 25*

**1.4.4 Team's Comparable Project Experience**

Respondents will be evaluated on their past completed projects of similar size and scope.

*See: Project Experience*

*Max Points: 30*

**1.4.5 DBE Procurement Program Goal**

Respondents will be evaluated on indication to meet the DBE Goal. This shall be a prerequisite for further evaluation of the SOQ.

*See: DBE Procurement Program Goal*

*Yes or No*

**1.4.6 Acceptance of the Terms of the Contract/Exceptions.**

The City will evaluate the Qualifications for compliance with the terms, conditions, requirements, and specifications stated in this RFQ including the sample contract language provided in Attachment A.

*Yes or No*

**1.4.7 Turn in Required Forms**

Respondents will be evaluated on submission of Required Forms. If forms are missing, the SOQ may not receive further evaluation.

*See: Required Forms*

*Yes or No*

**1.5 SOQ Format**

The SOQ package should consist of a cover letter, responses to the specific inquiries in Section 1.6 below, and a set of completed Forms 1 through 6.

SOQs are limited to a maximum of **25** numbered, printed pages (12 ½ pages printed double-sided, 25 pages printed single-sided, or a combination not exceeding 25 pages of print), excluding required forms, covers, sub-tabs, and dividers. SOQs should be presented on 8-1/2" x 11" paper; however, pages with organizational charts, matrices, or diagrams may be presented on larger sheets. Type size should be no smaller than 11 points for narrative sections, but may be reduced for captions, footnotes, etc., while maintaining legibility. Covers, dividers, and required forms do not count toward the page limit. Non-conforming submissions may be removed from consideration at the sole discretion of the City.

**1.6 SOQ Content**

SOQ packages shall be arranged as follow:

**Cover Letter: General Information**

- A. Describe your interest in this Project and the unique advantages your firm and team brings.
- B. State any conflicts of interest your firm or any key team member may have with this Project.
- C. Identify and describe any pending claims, disputes, and/or litigation and any that occurred within the past five (5) years involving your firm or any of your proposed subconsultants. With respect to resolved matters, describe the outcome.
- D. Provide a description of the company that will enter into the contract(s) with the City, including origin, background, current size, financial capacity, available resources, general organization, and company headquarters. Identify the name and title of the person authorized to enter into the contract(s) with the City.
- E. List exceptions to the City's standard contract terms and conditions. A sample contract is attached as Exhibit A.
- F. Cover Letters will be limited to two pages and count toward the page limit.

**Tab 1: Proposed Project Key Team Members and Organization of Team**

- A. Provide an organization chart of all key team members who will be directly involved in providing services, including any subcontractors, to be assigned specifically to this Project.

- B. Identify the Project Manager who will be empowered to make decisions for and act on behalf of the entire team.
- C. Identify any member of the team that is certified as a minority, women or small business.
- D. Describe any previous collaboration(s) between key team members, the responsibilities of each team member during these collaboration(s), and the collaboration(s) outcome(s). Cite any significant achievements reached as a result of this collaboration. Discuss the successes of the team collaboration, any problems encountered, and methods used to mitigate issues.

**Tab 2: Proposed Project Staff Experience and Availability of the Key Team Members**

- A. Resumes may be submitted for each proposed key team member. Resumes should highlight experience gained in the last ten years. Resumes will be counted towards the page limit.
- B. Discuss your firm's/team's qualifications relating to this Project.
- C. Discuss availability of key team members by providing a list of current projects/work for each key team member.
- D. Describe any specific projects or examples that illustrates your team's availability and responsiveness

**Tab 3: Project Understanding, Methodology and Approach**

1. Discuss your firm's/team's understanding of the Project objectives and describe the proposed approach to deliver the Services in an effective, timely and professional manner. Describe any methods the team intends to use to reduce costs. Outline the project plans, structure and services to be provided and how and when these services shall be provided. This description should fully and completely demonstrate the proposer's intended methods for servicing the requirements of all aspects of the Project set forth herein.
2. Describe any support needed from City staff in order to execute the Services.
3. Describe the team's management and quality control procedures, processes for performance, and past involvement in projects of similar nature to those anticipated as a result of this solicitation.
4. Discuss the team's processes and procedures for meeting schedules and budgets.

**Tab 4: Comparable Experience**

- A. List a maximum of five (5) relevant, similar projects, either currently in progress or having been completed ***in the past 10 years***, performed by key team members containing work comparable to the specific Scope of Services, including any projects with the City, as follows:
  - List only projects involving the key team members or subcontractors proposed for this Project.
  - List projects in date order with newest projects listed first and include the following:
    - Brief project description.
    - Owner's representative having knowledge of the team's work, include the representative's firm, phone, email, and physical address.
    - Contract dollar amount and total time period involved.

- Explain your team’s previous successes in being able to deliver similar projects on time and at or under budget.
- Discuss the methods, approach and controls used on the project in order to complete it in an effective, timely, economical and professional manner.

**Tab 5: Disadvantaged Business Enterprises (DBE) Inclusion Strategy**

- Have you included Disadvantaged Business Enterprises on past similar projects? Please document any history of working with Disadvantaged Business Enterprises in your response.
- Identify outreach efforts that will be employed by the Firm to maximize inclusion; please identify outreach efforts that have already been conducted in connection with this RFQ.
- Please identify Disadvantaged Business Enterprises that may be utilized during the various phases of this Project.
- Please identify specific scopes of work to be performed by Disadvantaged Business Enterprises during various phases of this Project.
- For this RFQ, have you communicated with any local Disadvantaged Business Enterprises to discuss participation opportunities? If so, who? For what scopes?
- Provide a Disadvantaged Business Enterprises Participation Plan as required in Form 2 of this RFQ.

**Tab 6: Required Forms**

Forms 1 thru 6 provided with this RFQ shall be completed and submitted with the SOQ. Required Forms will not be counted towards the page limit.

## **2 REPRESENTATIONS, CONDITIONS, AND OTHER REQUIREMENTS**

### **2.1 Communications**

All communication of any nature with respect to this RFQ shall be addressed to the Procurement Officer identified in this RFQ. With the exception of communications with the Procurement Officer and the Civil Rights Compliance Officer for this RFQ, firms and their staffs are prohibited from communicating with elected City officials, City staff and any evaluation committee member regarding this RFQ or SOQ from the time the RFQ is released until the selection results are publicly announced. These restrictions include “thank you” letters, phone calls, emails, and any contact that results in the direct or indirect discussion of this RFQ and/or the SOQ submitted by the firm/team. Violation of this provision may lead to disqualification of the firm’s SOQ for consideration.

### **2.2 Duties and Obligations of Firms in the RFQ Process**

Interested firms are expected to fully inform themselves as to all conditions, requirements and specifications of this RFQ before submitting a proposal. Firms must perform their own evaluation and due diligence verification of all information and data provided by the City. The City makes no representations or warranties regarding any information or data provided by the City. Firms 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.

### **2.3 Addenda**

In order to clarify or modify any part of this RFQ, addenda may be issued and posted at the City’s official website at this link: [Doing Business with the City](#). Any requests for additional information or clarifications should be submitted in writing to the Contracts Administrator listed in Section 1.1 by the “Deadline for Questions” stated in **Section 1.3 – RFQ Schedule of Events**.



**2.4 No Collusion, Bribery, Lobbying or Conflict of Interest**

By responding to this RFQ, the firm shall be deemed to have represented and warranted that its SOQ submittal is not made in connection with any competing firm submitting a separate response to this RFQ, and is in all respects fair and without collusion or fraud. Furthermore, the firm certifies that neither it, any of its affiliates or subconsultants, nor any employees of any of the foregoing has bribed, or attempted to bribe, an officer or employee of the City in connection with this RFQ.

**2.5 Public Records**

Upon receipt by the City, each SOQ 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. SOQs will be reviewed by the City's evaluation 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 firm must take the following precautions: (a) any trade secrets submitted by the firm 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 SOQ," 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 an SOQ, each firm agrees that the City may reveal any trade secret materials contained in such response to all City staff and City officials involved in the evaluation process and to any outside consultant or other third parties who serve on the evaluation committee or who are hired by the City to assist in the evaluation process. Furthermore, each firm 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 firm has designated as a trade secret. Any firm that designates its entire SOQ as a trade secret may be disqualified from consideration.

**2.6 Cost of SOQ Preparation**

The City shall not be liable for any expenses incurred by any firm responding to this RFQ. Firms submitting a SOQ in response to this RFQ agree that the materials and submittals are prepared at the firm's own expense with the express understanding that the firm cannot make any claims whatsoever for reimbursement from the City for the costs and expense associated with preparing and submitting a SOQ. Each firm shall hold the City harmless and free from any and all liability, costs, claims, or expenses incurred by, or on behalf of, any person or firm responding to this RFQ.

**2.7 Advertising**

In submitting a SOQ, the firm agrees not to use the results therefrom as part of any commercial advertising without prior written approval of the City of Charlotte.

**2.8 Vendor Registration with City of Charlotte**

The selected firm and subcontractors must be registered in the City's Vendor Registration System in order to receive payment for services and/or supplies provided under any City contract.

**2.9 Registration with Secretary of State for North Carolina; Licensed Engineers/Architects**

Any firm wishing to be considered for the Services must be properly registered with the Office of the Secretary of State and with either the North Carolina Board of Registration for Professional Engineers and Land Surveyors or the North Carolina Board of Architecture, as applicable, at the time of submission of the SOQ. The firm(s) 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 person in responsible charge of the work must be a registered professional in the State of North Carolina and must have good ethical and professional standing.

Any firm proposing to use corporate subsidiaries or subcontractors must include a statement that these companies are properly registered with the NC Board of Registration for Professional Engineers and Land Surveyors or North Carolina Board of Architecture, as applicable. It will be the responsibility of the prime firm 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>).

**2.10 Financial Capacity; Insurance Requirements**

The selected firm must have the financial capacity to undertake the work and assume associated liability.

**2.11 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 (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.

**2.12 City Rights and Reservations**

The City expects to select one or more firms, but reserves the right to request substitutions of any key team member, including staff and subcontractors. The City reserves the right to contact any firm/team for any additional information including but not limited to experience, qualifications, abilities, equipment, facilities, and financial standing. The City reserves the right to modify any part of this RFQ as issued with an addendum. 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 shall not be construed as a contract, nor indicate a commitment of any kind. The City reserves the sole right to award a contract or contracts to the most qualified firm(s) on the basis of best overall SOQ that is most advantageous to the City. The City also reserves the right to make multiple awards, based on experience and qualifications if it is deemed in the City’s best interest.

**2.13 Contract**

The contents of this RFQ and all provisions of the successful SOQ deemed responsive by the City 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’s perspective as a result of the RFQ process and SOQ(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.

**2.14 Equal Opportunity**

The firm will ensure that employees and applicants for employment are not unfairly discriminated against because of their race, color, religion, sex, national origin, disability or veteran status.

**2.15 E-Verify Certification**

The firm shall comply with requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and shall require each of its subcontractors to do so as well.

**2.16 Familiarity and Compliance with Laws and Ordinances**

The firm shall make itself aware of and comply with and shall cause each of its subcontractors to comply with, all applicable federal, state, and local laws and regulations, including obtaining all required permits and licenses.

**2.17 Insurance Requirements**

The consultant selected under this RFQ will be required, during the life of the contract with the City, to purchase and maintain the following insurance with a company acceptable to the City and authorized to do business with the State of North Carolina:

1. **Automobile Liability Insurance:** Bodily injury and property damage liability covering all owned, non-owned, and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit each occurrence/aggregate.
2. **Comprehensive General Liability:** Bodily injury and property damage liability as shall protect the consultant and any subcontractor performing work under the agreement from claims of bodily injury or property damage which arise from operation of this agreement whether such operations are performed by the consultant, 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 and \$1,000,000 property damage each occurrence/aggregate or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products/completed operation, personal injury liability and contractual liability assumed under the indemnity provision of the agreement.
3. **Worker's Compensation and Occupation Disease Insurance:** In conformance with State law, in an amount of \$100,000 each accident and disease for each employee, and \$500,000 disease policy limit providing coverage for employees and owners.
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 Developer and/or subconsultant providing such insurance.

The City shall be named as additional insured under the commercial general liability insurance for operations and services rendered under a contract. At the time of execution of the contract, 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 amend or terminate by either the insured or the insuring company.

**2.18 Background Checks**

Certain City facilities require a background check of all company employees before they are allowed into the facility. The Charlotte-Mecklenburg Police Department will conduct these background checks as needed.

**2.19 North Carolina Prohibition on Contracts with Companies that Invest in Iran or Boycott Israel**

The Consultant 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 consultant 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 consultant 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 consultant appearing on the Treasurer’s IDA List or the Treasurer’s IB List at any time before or during the term of this Contract.

### **2.20 Disadvantaged Business Enterprise (DBE)**

Consistent with 49 C.F.R. Part 26, the City will not allow any person or business to be excluded from participation in, denied the benefits of, or otherwise be discriminated against in connection with the award and performance of the Contract. As a recipient of funds from the FTA, the City has established a Disadvantaged Business Enterprise (“DBE”) Program in accordance with regulations of the U.S. Department of Transportation (“DOT”), 49 C.F.R. Part 26 and has committed to ensuring compliance on all FTA-funded projects through monitoring, reporting, and goal-setting. In this regard, the Respondent/Design Consultant will take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the maximum opportunity to compete for and perform the Contract. Additional DBE requirements are set forth in Attachment A – Sample Contract of this RFQ.

**The DBE contract goal for this project is set at 15.4%.**

## **3 FEDERAL CONTRACT TERMS AND CONDITIONS**

This exhibit must be included in all solicitations, including those where federal funds may be used to fund purchases of products, services, or construction solicited by this solicitation document. This Exhibit is attached and will be incorporated into the contract between the City and the selected consultant. Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract. In the event of a conflict between this Exhibit and the terms of the main body of the Contract or any other exhibit or appendix, the terms of this Exhibit shall govern.

Contracts resulting from this solicitation process will be for a fixed price and purchase orders may be issued with federal funds. The provisions required under 2 CFR §200.326 and as provided under 2 CFR Part 200, Appendix II, among other provisions, are incorporated herein by reference.

3.1 **Debarment and Suspension.** The Company represents and warrants that, as of the Effective Date of the Contract, neither the Company nor any subcontractor or subconsultant performing work under this Contract (at any tier) is included on the federally debarred bidder’s list listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” If at any point during the Contract term the Company or any subcontractor or subconsultant performing work at any tier is included on the federally debarred bidder’s list, the Company shall notify the City immediately. The Company’s completed Form XX – Vendor Debarment Certification is incorporated herein as Form [EXHIBIT LETTER].

3.2 **Record Retention.** The Company certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. The Company further certifies that it will retain all records as required by 2 CFR § 200.333 for a period of three (3) years after it receives City notice that the City has submitted final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

- 3.3 **Procurement of Recovered Materials.** The Company represents and warrants that in its performance under the Contract, the Company shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 3.4 **Clean Air Act and Federal Water Pollution Control Act.** The Company agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 3.5 **Energy Efficiency.** The Company certifies that the Company will be in compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
- 3.6 **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** The Company certifies that:
- 3.6.1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Company, 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.
- 3.6.2. 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 Company 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)].
- 3.6.3. The Company shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- 3.6.4. The Company's completed Form XX –Byrd Anti-Lobbying Certification is incorporated herein as Form [EXHIBIT LETTER].
- 3.7 **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** If the Contract is in excess of \$100,000 and involves the employment of mechanics or laborers, the Company must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, the Company is required to compute the wages of every

mechanic and laborer on the basis of a standard work week of forty (40) hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of forty (40) hours in the work week. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or purchases of transportation or transmission of intelligence.

- 3.8 **Right to Inventions.** If the federal award is a “funding agreement” under 37 CFR 401.2 and the City wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment of performance or experimental, developmental or research work thereunder, the City must comply with 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- 3.9 **DHS Seal, Logo, and Flags.** The Company shall not use the Department of Homeland Security (“DHS”) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
- 3.10 **Buy America.**  
Buy America requires all iron, steel and manufactured products used in the Project to be produced in the United States. Respondent understands it shall design the Project to be Buy America compliant. The essence of Design America is to be guided during design to only call out products and processes that will ensure that the final design/implementation shall meet Buy America requirements.
- 3.11 The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the City, Company, or any other party pertaining to any matter resulting from the Contract.

**4. REQUIRED FORMS**

[ The rest of this page has been intentionally left blank.  
The Required Forms are on the pages that follow.]

## **Form 1 – Execution of SOQ**

### **S70 LRV Engineering Services**

The person executing the SOQ, on behalf of the Consultant, being duly sworn, solemnly swears (or affirms) that neither he, nor any official, agent or employee of the Consultant has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of full and open competition in connection with any proposal or contract, that the Consultant has not been convicted of violating North Carolina General Statute 133-24 within the last three years, and that the Consultant intends to do the work with its own bona fide employees or subcontractors and is not proposing for the benefit of another company.

Submission of a response to this RFQ constitutes certification that the Consultant and all proposed team members are not currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Project by any State or Federal department or agency. Submission is also agreement that the City will be notified of any change in this status. NC General Statute 133-32 and City Policy prohibit any gift from anyone with a contract with the City, or from any person seeking to do business with the City. By execution of this SOQ, you attest, for your organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

The information contained in this SOQ, including its forms and other documents, delivered or to be delivered to the City, is true, accurate, and complete. This SOQ 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.

- Type of Consultant:**  **Sole Proprietor**  
(check 1 box)  **Partnership**  
 **Corporation** \_\_\_\_\_ (identify the State of  
incorporation)  
 **Limited Liability Company** \_\_\_\_\_ (identify the State  
of incorporation)

Company Legal Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_



**Form 2 – DBE Participation Plan**

**SEE ATTACHED FORM A**

## LIST OF SUBCONTRACTORS - FORM A

### Project DBE and non-DBE Subcontractor / Supplier Utilization Commitment

**Federal Disadvantaged Business Opportunity Program. Note:** This **MUST** be submitted with your bid. Make copies as needed.

If your company failed to meet the DBE Utilization Goal for this Project, you **MUST** attach documentation of your company's Good Faith Efforts with your bid packet.

Bidders Name: \_\_\_\_\_ Project Name: \_\_\_\_\_

Below list **ALL subcontractors and suppliers** (including DBEs) that you intend to use on this contract. Continue listing on the supplemental form.

Subcontractor/Supplier's Name & Address	Contact Person & Number	Age of Firm	Description of Work	NAICS Code	NCDOT Reporting #	Total Projected \$	% of Bid Amount
Annual Gross Receipts: <input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Over \$5M							
Annual Gross Receipts: <input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Over \$5M							
Annual Gross Receipts: <input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Over \$5M							

I acknowledge that I have confirmed the certification of each DBE listed above on [://partner.ncdot.gov/VendorDirectory/default](http://partner.ncdot.gov/VendorDirectory/default).

Total DBE Utilization  \$  Total Bid Amount  \$  Percent DBE Utilization (Total DBE Utilization/Total Bid Amount)  %

**Please read the following "Certification" statement before signing.** "The undersigned certifies that he/she has read, understands, and agrees to be bound by the DBE Program Requirements, including these accompanying FORM(s) A, and the other terms and conditions in the Notice to Bidders. The undersigned further certifies that he/she is legally authorized by the Bidder to make the statements and representations and that said statements and representations are true and correct to the best of his/her knowledge and belief. It is the intent by the undersigned to enter into formal agreement(s) with subcontractors/suppliers named on this Form conditioned upon execution of a contract with the City. All DBE subcontractors/suppliers must provide proof of their DBE status or receive confirmation of their status from the City's Civil Rights Officer prior to contract award. The undersigned understands and agrees that if any of the statements and representations are made by the Bidder knowing them to be false, or if there is a failure of the successful Bidder (i.e., the Contractor) to implement any of the stated agreements, intentions, objectives, goals, commitments and substitutions set forth herein without prior approval by the Civil Rights Officer or a designee, then in any of such events the Contractor's act or failure to act, as the case may be, shall constitute a material breach of the contract, entitling the City to terminate the contract for default. The right to so terminate shall be in addition to, and not in lieu of, any other rights and remedies the City may have for other defaults under the contract, or otherwise. Additionally, the Contractor will be subject to the loss of any future contract awards".

---

Signature of Authorized Official Printed Name Title Submittal Date

**LIST OF SUBCONTRACTORS - FORM A – Continuation**  
**Project DBE and non-DBE Subcontractor / Supplier Utilization Commitment**

**Federal Disadvantaged Business Opportunity Program. Note: This MUST be submitted with your bid. Make copies as needed.**

**If your company failed to meet the DBE Utilization Goal for this Project, you MUST attach documentation of your company's Good Faith Efforts with your bid packet.**

Bidders Name: \_\_\_\_\_ Project Name: \_\_\_\_\_

Subcontractor/Supplier's Name & Address	Contact Person	Age of Firm	Description of Work	NAICS Code	NCDOT Reporting #	Total Projected \$	% of Bid Amount
Annual Gross Receipts: <input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Over \$5M							
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Annual Gross Receipts: <input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Over \$5M							

### **Form 3 – Commercial Non-Discrimination Certification**

**Project Name:** S70 LRV Engineering Services  
**Consultant's Name:** \_\_\_\_\_

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

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

By: \_\_\_\_\_  
SIGNATURE OF AUTHORIZED OFFICIAL

Title: \_\_\_\_\_

## **Form 4 – Vendor Debarment Certification**

### **CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

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 this Agreement, or persons or entities holding a greater than 10% equity interest in it (collectively “Principals”):

- 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;
- 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;
- 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
- 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

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

- 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.
- 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)].
- 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)

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date

\_\_\_\_\_  
City/State/Zip

**Form 6 – Key Team Member Matrix**

(Attach additional sheets as necessary)

<b>KEY TEAM MEMBERS</b>	<b>Key Team Member 1</b>	<b>Key Team Member 2</b>	<b>Key Team Member 3</b>
Name			
Professional Certifications/Licenses <i>(include Certification/License #)</i>			
Relevant Academic Degree(s)			
Proposed Role/Function for Projects	Project Manager		
Office Location (City, State)			
Number of Years with Current Firm			
Number of Years of Relevant Experience			
Availability to provide Services for this Project			
<b>List Notable Projects/Experience</b>			

## **Exhibit A – SCOPE OF WORK**

### **RAIL VEHICLE AND RAIL SYSTEMS ENGINEERING CONSULTANT SERVICES**

The Charlotte Area Transit System (CATS) requires as-needed consultant support services from qualified firms to support CATS in rail vehicle engineering consultant support services. This work will be released through Task Orders issued to the firm qualified under this Bench Contract. Consultant firms awarded a Bench Contract will be eligible to propose specific Task Orders with a defined Statement of Work. The Statement of Work requirements will be developed for each Task Order; however, the general scope is outlined herein.

#### *General Characteristics of the Charlotte Area Transit Fleet*

##### **S70/S700**

The S70/S700 fleet consists of 42 Light Rail Vehicles (LRV) and 6 streetcars built by Siemens between 2005 and 2017. These cars are low-floor platform boarding using an overhead Pantograph to collect the 750 volts DC required to run the car. The Automatic Train Protection system (ATP) is a CSR logic system that displays the speed limits in the cab and prevents trains from running into each other or going too fast. The top speed on the Blue Line is 55 mph. A Train-to-Wayside Communication (TWC) system is used to lower some crossing gates where a roadway is directly ahead of a station (nearside crossing) and to throw all switches on the mainline.

##### **Series 100/200**

The first 20 S70s were built by Siemens between 2005 and 2010.

##### **Series 300**

Siemens built the first 22 S70s between 2015 and 2017.

##### **S700**

Siemens built the first 6 Hybrid (battery) streetcars, 22 S700s, between 2018 and 2019.

### **GENERAL SCOPE OF WORK**

#### **Support Services for Rail Vehicle Acquisitions, Overhauls, and System Compatibility**

##### General Scope

##### **Support Services for Rail Vehicle Acquisitions**

Rail vehicle acquisitions are necessary to ensure that CATS has the sufficient fleet capacity to support the system and that service expansion requirements are fulfilled by the Rail Fleet Management Plan FY2015-FY2040 (Draft, June 10, 2015, v.7.1). CATS expects a need to expand each rail fleet to accommodate expected growth in ridership, line extensions; replace vehicles reaching the end of their useful revenue service life; and support the maintenance department with reasonable spare ratios to prevent deferred maintenance issues. Consultant support may include:



- Developing Specifications
- Identifying Suppliers
- Estimating Costs
- Developing Schedules
- Provide Inspections
- Assist With testing and acceptance
- Rail Vehicles - Fleet Assessment
- Buy America Audits

#### Support Services for Rail Vehicle Overhauls

Rail vehicle overhauls and capital improvements are necessary to ensure the fleet meets its expected design life and reliability. Consultant support may be required to assist CATS in determining the optimal overhaul strategy for existing and future fleets. Consultant support may include:

- Developing Specifications
- Identifying Suppliers
- Estimating Costs
- Developing Schedules
- Provide Inspections
- Assist With testing and acceptance

#### System Compatibility

For the CATS rail line extensions, compatibility, and integration with existing (and outdated) system technology, consultant staff may be requested to help evaluate and assess these lines' various and unique operating environments.

Assessment of the following may be required for each vehicle type and operating line:

- ATP Wayside and Carborne Equipment
- TWC Wayside and Carborne Equipment
- EMI Potential
- Maintenance Facility Capability
- Other Tasks as Necessary
- Developing specifications for a new fleet
- Assist in the procurement of a new fleet
- Assisting in the commissioning and acceptance of the new vehicles
- Any tasks deemed necessary to support the acceptance and reliability of all of its rail fleet

#### Required Classifications

Proposers must propose staff with the following labor classifications below. Proposers may submit additional labor classifications if desired. For each team being presented, please include their projected availability within the next six years.

- Senior Project Manager
- Senior Systems Engineer
- Electrical Engineer
- Mechanical Engineer

- Senior Schedule Analyst
- Quality Assurance Engineer
- Inspector (Contractor's site)
- Inspector (Commissioning/Acceptance Site)
- Administrative Staff
- Document Control

All Consultant staff in critical positions are required to meet stated minimum qualification requirements and are desired to possess stated expertise and experience. CATS, at its sole discretion, will evaluate the firms and individuals proposed for each Task Order, including appropriate knowledge of and experience with relevant agencies' policies, procedures, standards, guidelines, or other information required to conduct the work identified in Work of the CATS Task Order(s).

### **Support Services for Fleet Reliability, Operating Rail Vehicles, Systems, and Facilities**

#### Fleet Reliability

Special help may be needed in investigating the cause of EMI compatibility and vehicle propulsion failures. Analyzing, testing, and researching the sources of the problems may require consultant support for recommendations to improve them. Consultant support will be needed in the following areas:

- Troubleshooting carborne problems
- Component overhaul specifications development
- Reverse Engineering
- Project management assist
- ATP signaling
- EMI "Electromagnetic Interference"
- Engineering studies of fleet performance
- Documentation Control
- Obsolescence and component replacement
- Determine asset condition assessment method.
- Perform a condition of repair survey for all rail assets.
- Develop a rehabilitation plan that supports the continued operation of Rail during rehabilitation.
- Provide engineering (electrical, mechanical, telecommunications, and systems) services to develop specifications and design, review submittals, support design reviews, etc.
- Provide project management
- Estimate project costs
- Support inspections and testing
- Provide configuration management

Proposers must propose staff with the following labor classifications below. Proposers may submit additional labor classifications if desired. Please include each proposed team's projected availability within the next six years.

- Senior Project Manager
- Systems Integrator Engineer
- Senior Systems Engineer

- Electrical Engineer
- Mechanical Engineer
- Quality Assurance Engineer
- Contract Administrator
- Inspector (Contractor's site)
- Administrative Staff
- Document Control

All Consultant staff in critical positions are required to meet stated minimum qualification requirements and are desired to possess stated expertise and experience. CATS, at its sole discretion, will evaluate the firms and individuals proposed for each Task Order, including appropriate knowledge of and experience with pertinent agencies' policies, procedures, standards, guidelines, or other information required to conduct the work identified in the Scope of Work of the CATS Task Order(s).

#### OTHER WORK ACTIVITIES

Work under each Task Order may require the following categories and activities:

##### a. Communications/Meetings/Record Keeping:

- Develop project scope, schedule, and work plan and direct consultant staff throughout all phases of assigned projects.
- Meet with CATS staff/Project Manager throughout the life of the Task Order per the schedule provided as part of the task order package.
- Conduct, participate in, document, and/or facilitate all meetings with affected parties as required by CATS.

##### b. Monthly Progress Reporting

Consultant shall prepare and submit a monthly progress report to CATS per the schedule in the Task Order package. The report shall address but not be limited to the following items:

- Matrix of dollars budgeted, expenditure for the individual invoice, payment to date, and remaining balance forward
- Matrix of tasks budgeted, tasks performed (including work partially completed), and work remained to be done
- Numeric and graphical presentation of work completed versus dollars invoiced
- Detailed report on the status of deliverables
- Statement of problems and deficiencies plans to correct those, and the extent of extra work/escalated cost as well as the anticipated delay.
- Other items, as directed by CATS

##### c. Quality Control/Quality Assurance

The contractor shall provide a QC/QA Program to ensure the accuracy and quality of the work performed for CATS.

**EXHIBIT B – SAMPLE CONTRACT**

[ The rest of this page has been intentionally left blank.]

**EXHIBIT A – SAMPLE CONTRACT**

**CONTRACT NUMBER:** \_\_\_\_\_

**AWARD DATE:** \_\_\_\_\_

**EXPIRATION DATE:** \_\_\_\_\_



**CONTRACT FOR PROFESSIONAL SERVICES**

**PROJECT:**

\_\_\_\_\_

**OWNER:**

City of Charlotte

**CONSULTANT:**

\_\_\_\_\_

SAMPLE

# SAMPLE CONTRACT

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

PROFESSIONAL SERVICES CONTRACT

This **CONTRACT** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022 (“Effective Date”), by and between the **CITY OF CHARLOTTE**, a North Carolina municipal corporation (“City”), and **[NAME OF CONSULTANT IN CAPS]**, a North Carolina professional corporation (“Consultant”).

## GENERAL RECITALS

**WHEREAS**, the City advertised a Request for Qualifications RFQ [RFQ #] for [Name of Services] Services for [Name of Project] on [date RFQ was advertised];

**WHEREAS**, the Consultant submitted a Statement of Qualifications in response to the RFQ;

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

**WHEREAS**, the Consultant desires to provide such engineering services as outlined hereinafter upon the terms and conditions set out herein;

**WHEREAS**, the City is authorized by the City Council to enter into a Contract for performance of such professional services;

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and further consideration of the covenants and representation contained herein, the parties agree as follows:

## CONTRACT

### INCORPORATION OF EXHIBITS

The following exhibits are attached to this Contract and are incorporated into and made a part of this Contract:

- EXHIBIT A: Scope of Work
- EXHIBIT B: Project Schedule
- EXHIBIT C: Fee/Cost Breakdown
- EXHIBIT D: Key Personnel
- EXHIBIT E: Federal Contracting Terms & DBE Provisions
- EXHIBIT F: Commercial Non-Discrimination
- EXHIBIT G: Certification Certificate of Insurance

### DEFINITIONS

ACCEPTANCE refers to the receipt and approval by the City of a Deliverable or Service in accordance with the acceptance process and criteria set forth in this Contract.

## SAMPLE CONTRACT

CONTRACT refers to this written agreement executed by the City and the Consultant for the Services as outlined herein.

CONTRACT PERIOD refers to the number of calendar days or specified date set forth in the Contract for completion of the Services, including authorized amendments or modifications thereto; also referred to as Time of Completion.

CITY refers to the City of Charlotte, North Carolina.

CITY PROJECT MANAGER refers to the specified City employee representing the City for this Project.

CONSULTANT PROJECT MANAGER refers to the specified Consultant employee representing the Consultant for this Project.

DELIVERABLES refer to all tasks, reports, information, designs, plans, specifications, documents and other items, which the Consultant is required to complete and deliver to the City in connection with this Contract.

DEPARTMENT refers to a department within the City.

DOCUMENTATION refers to all written, electronic, or recorded works, that describe the use, functions, features, or purpose of the Deliverables or Services or any component thereof, and which are published or provided to the City by the Consultant or its subconsultants, including without limitation all end user manuals, training manuals, guides, program listings, data models, flow charts, logic diagrams, and other materials related to or for use with the Deliverables or Services.

SERVICES refer to the services to be performed by the Consultant pursuant to this Contract.

SPECIFICATIONS AND REQUIREMENTS refer to all definitions, descriptions, requirements, criteria, warranties and performance standards relating to the Deliverables and Services which are set forth or referenced in: (i) this Contract, (ii) the Documentation; and (iii) any functional and/or technical specifications which are published or provided by the Consultant or its licensors or suppliers from time to time with respect to all or any part of the Deliverable or Services.

WORK PRODUCT refers to the Deliverables and all other reports, information, designs, plans and other items developed by the Consultant in connection with this Contract, and all partial, intermediate or preliminary versions of any of the foregoing.

### DESCRIPTON OF SERVICES

The Consultant shall perform the services described in **Exhibit A** attached to this Contract and incorporated herein by reference ("Services"). Unless otherwise provided in **Exhibit A**, the

## SAMPLE CONTRACT

Consultant shall obtain and provide all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Services.

The Consultant will comply with the schedule set forth in **Exhibit B**, as amended from time to time during the Contract Period, in performing the Services. All references to days in this Contract (including the exhibits) shall refer to calendar days rather than business days, unless a provision specifically uses the term "business days." Any references to "business days" shall mean the days that the City's offices are open for the public to transact business.

### COMPENSATION

#### LUMP SUM FEES

The Consultant shall be compensated on a lump sum basis for the services listed in this Contract using the fee schedule in Exhibit C in the amount of \$\_\_\_\_\_.

#### HOURLY AND UNIT PRICE BASIS ALLOWANCE

The City agrees to pay the Consultant for actual services performed on an hourly and unit price basis for the Services outlined in this Contract using the hourly and unit price rates set forth in **Exhibit C**, provided that the total amount payable under this Contract to the Consultant for providing hourly and unit price basis shall not exceed \$\_\_\_\_\_.

#### 4.3 ALLOWANCE FOR OPTIONAL AND UNSPECIFIED ADDITIONAL SERVICES

Additional services shall be performed by the Consultant 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 Contract and shall not exceed \$\_\_\_\_\_.

#### 1.4 REIMBURSABLE EXPENSES

Reimbursable expenses shall be limited to the actual expenditures made by the Consultant during the performance of the Services. The following expenses may be reimbursed at cost in an amount not to exceed \$\_\_\_\_\_:

##### Travel

- a. Vehicular transportation at the rate established by the Internal Revenue Service current at the time the travel occurs; and
- b. Parking fees.

##### Communications

- a. Long-distance phone call expenses; and
- b. Postage including express mail costs for sending Project documents.

##### Permitting Fees

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

##### Reprographics, Renderings, and Models



- 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.

**4.5 SUMMARY OF FEES AND ALLOWANCES**

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

Lump Sum Fees	\$ _____
Hourly and Unit Price Fees	_____
Allowance for Optional/Unspecified Services	_____
Allowance for Reimbursable Expenses	_____
<b>TOTAL MAXIMUM FEES AND ALLOWANCES</b>	<b>\$ _____</b>

The maximum total fees and charges will not be increased except by a written amendment duly executed by both parties.

**1.6 INVOICES**

Each month, the Consultant shall submit an invoice to the City, stating the nature and quantity of Services performed, accompanied by proper supporting documentation as the City may require, including a monthly project status report. Hourly rates, unit prices, and reimbursable expenses shall be itemized on each invoice, as applicable. The Consultant shall charge the City regular hourly billing rates for any overtime hours worked (as defined by the Fair Labor Standards Act).

The Consultant may submit invoices using one of the following options:

**OPTION 1:**

The Consultant shall email all invoices to [cocap@charlottenc.gov](mailto:cocap@charlottenc.gov)

OR

**OPTION 2:**

The Consultant shall mail all invoices to:  
 City of Charlotte AP  
 Attn: General Services – Division Name  
 P.O. Box 37979  
 Charlotte, NC 28237-7979

Each invoice must contain the following information:

- Purchase Order Number
- Contract Number: [insert contract number]
- City Contact Name: [name of Project Manager]
- City Contact Department: General Services – Division Name

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The City will pay accurate, undisputed, properly submitted invoices within thirty (30) days after the receipt from the Consultant. An undisputed, properly submitted, invoice is defined as an invoice that indicates only those items that have been satisfactorily completed and Accepted by the City.

As a condition of payment, the Consultant must invoice the City for Services within sixty (60) days after such Services are performed. The Consultant waives the right to payment for any Services that have not been invoiced to the City within 60 days after such Services were rendered.

### *PRE-CONTRACT COSTS*

The City shall not be charged for any Services or other work performed by the Consultant prior to the Effective Date of this Contract.

### *COST OVERRUNS*

If it appears during the course of the Services that any of the estimated fees and allowances may be exceeded, the Consultant 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 Contract. Any work performed without prior written approval shall be at the Consultant's expense.

### *ACCOUNTING AND AUDITING*

The Consultant shall maintain complete and accurate records, using Generally Accepted Accounting Principles (GAAP), of all costs related to this Contract. 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 Consultant or any of his payees in connection with this Contract. 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 Contract.

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 Contract, for the duration of the Services, and until three (3) years after the date of final payment by the City to the Consultant pursuant to this Contract.

The City's agent or authorized representative shall have access to the Consultant's facilities and shall be provided an adequate and appropriate work place, in order to conduct audits in compliance with this Section. The City will give the Consultant reasonable advance notice of planned inspections. If, as the result of an audit hereunder, the Consultant is determined to have charged the City for amounts that are not allocable or verifiable, the Consultant shall promptly reimburse the City for said amount.

### *WITHHOLDING OF PAYMENTS*

The parties agree that the City shall be entitled to withhold payments, including final payment, due to the Consultant under this Contract until the City has received in a form satisfactory to the

## SAMPLE CONTRACT

City all claim releases and other documentation, including but not limited to the City's Charlotte Business INclusion Program.

### *PAYMENT AFFIDAVITS*

To determine whether disparities exist in City contracting based on race, gender or other factors, and also to measure the effectiveness of the City's Charlotte Business INclusion ("CBI") Program, the City tracks the utilization of subconsultants and suppliers on certain 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, female and small business suppliers and subconsultants, but also for other subconsultants and suppliers. As a condition to receiving payment under this Contract, the Consultant agrees to provide to the City with each invoice for payment submitted under this Contract, a written payment affidavit detailing the amounts paid by the Consultant to subconsultants and suppliers in connection with this Contract ("Payment Affidavits"). Payment Affidavits shall be in the format specified by the City from time to time, and shall include all payments made to subconsultants and suppliers under this Contract 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 Contract, and shall entitle the City to: (a) withhold payment of any amounts due the Consultant (whether under this Contract or otherwise), or (b) exercise any other remedies legally available for breach of this Contract, 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 subconsultant identified must be registered in the City's Vendor Registration System. The City may request on a case-by-case basis that the Consultant require certain suppliers to be registered in the City's Vendor Registration System, and may withhold payment of any amounts due the Consultant in the event the Consultant fails to comply with such request.

### *PROMPT PAYMENT TO SUBCONSULTANTS*

The Consultant shall pay subconsultants for satisfactory performance of their subcontracts within seven (7) days after the City has paid the Consultant for such work. If the Consultant withholds any retainage pending final completion of any subconsultant's work, the Consultant is required to pay the retainage so withheld within seven (7) days after such subconsultant completes his work satisfactorily.

### *NON-APPROPRIATION OF FUNDS*

If the Charlotte City Council does not appropriate the funding needed by the City to make payments under this Contract for any 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 Consultant of the non-appropriation and this Contract will be terminated at the end of the fiscal year for which the 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 Contract.

**CONTRACT PERIOD**

This Contract shall commence on the Effective Date and shall continue in full force and effect until **[insert ending date]**. The Consultant shall begin work immediately following issuance of a written Notice to Proceed and in accordance with **EXHIBIT B – Project Schedule**.

**CONSULTANT’S RESPONSIBILITIES**

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

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

**DUTY OF CONSULTANT TO IDENTIFY AND REQUEST INFORMATION, PERSONNEL AND FACILITIES**

The Consultant shall identify and request in writing from the City in a timely manner: (i) all information reasonably required by the Consultant to perform the Services, (ii) a list of the City’s personnel whose presence or assistance reasonably may be required by the Consultant to perform the Services, and (iii) any other equipment, facility or resource reasonably required by the Consultant to perform the Services. Notwithstanding the foregoing, the Consultant shall not be entitled to request that the City provide information, personnel or facilities other than those which **Exhibit A** specifically requires the City to provide. The Consultant shall not be relieved of any failure to perform under this Contract by virtue of the City’s failure to provide any information, personnel, equipment, facilities or resources: (i) that the Consultant 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 Contract. In the event the City fails to provide any information, personnel, facility or resource that it is required to provide under this Section, the Consultant shall notify the City in writing immediately in accordance with the notice provision of this Contract. Failure to do so shall constitute a waiver by Consultant of any claim or defense it may otherwise have based on the City’s failure to provide such information, personnel, facility or resource.

**POINTS OF CONTACT; NOTIFICATIONS**

*CITY PROJECT MANAGER*

The duties of the City Project Manager include:

- a. Examining the documents submitted by the Consultant and expediting decisions concerning the documents in order to avoid unreasonable delay in the progress of the Consultant’s Services
- b. Ensuring that the Consultant delivers all requirements and specifications outlined in this Contract;

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- c. Coordinating the City's resource assignment as required to fulfill the City's obligations pursuant to this Contract;
- d. Promptly responding to the Consultant's Project Manager when consulted in writing or by email with respect to Project issues; and
- e. Acting as the City's point of contact for all aspects of the Project including contract administration and coordination of communication with the City's staff.

The City Project Manager is:

\_\_\_\_\_ [Project Manager's Name]

City of Charlotte

General Services – Division Name

600 E. 4<sup>th</sup> Street

Charlotte, NC 28202

\_\_\_\_\_ [PM phone number]

\_\_\_\_\_ [@charlottenc.gov](mailto:_____@charlottenc.gov)

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

### *CONSULTANT PROJECT MANAGER*

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

- a. Coordinating Project schedules and the Consultant's resource assignment based upon the City's requirements and schedule constraints;
- b. 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;
- c. Providing consultation and advice to the City on matters related to Project implementation strategies, key decisions and approaches, and Project operational concerns/issues and acting as a conduit to the Consultant's specialist resources that may be needed to supplement the Consultant's normal implementation staff;
- d. Acting as the Consultant's point of contact for all aspects of contract administration, including invoicing for Services, and status reporting;
- e. Facilitating review meetings and conferences between the City and the Consultant's staff when scheduled or requested by the City;
- f. Communicating among and between the City and the Consultant's staff;
- g. Promptly responding to the City's Project Manager when consulted in writing or by email with respect to Project deviations and necessary documentation;
- h. Identifying and providing the City with timely written notice of all issues that may threaten the Consultant's Services in the manner contemplated by the Contract (with "timely" meaning immediately after the Consultant becomes aware of them);
- i. Ensuring that adequate quality assurance procedures are in place throughout the Project; and

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- j. Meeting with other entities working on City projects that relate to this effort as necessary to resolve problems and coordinating the Services.

The Consultant Project Manager is:

\_\_\_\_\_ [Consultant's PM's Name]  
\_\_\_\_\_ [Title]  
\_\_\_\_\_ [Name of Firm]  
\_\_\_\_\_ [Street Address]  
\_\_\_\_\_ [City/State/Zip]  
\_\_\_\_\_ [Phone]  
\_\_\_\_\_ [Email]

### NOTICES AND PRINCIPAL CONTACTS

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

For the City:

\_\_\_\_\_ [Division Manager's Name]  
\_\_\_\_\_ [Title]  
City of Charlotte  
General Services – Division Name  
600 E. 4<sup>th</sup> Street  
Charlotte, NC 28202  
\_\_\_\_\_ [Phone]  
\_\_\_\_\_ [Email]

For the Consultant:

\_\_\_\_\_ [Consultant's Manager's Name]  
\_\_\_\_\_ [Title]  
\_\_\_\_\_ [Name of Firm]  
\_\_\_\_\_ [Street Address]  
\_\_\_\_\_ [City/State/Zip]  
\_\_\_\_\_ [Phone]  
\_\_\_\_\_ [Email]

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

### REMOVAL, REPLACEMENT AND PROMOTION OF CONSULTANT PERSONNEL

The City will have the right to require the removal and replacement of any personnel of the Consultant or the Consultant's subconsultants who are assigned to perform Services for the City.

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The City shall be entitled to exercise such right in its sole discretion by providing written notice to the Consultant.

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 Consultant proposes to hire or transfer to such positions. As used in this Contract, the term “Key Personnel” shall mean any personnel of the Consultant or its subconsultants who are identified as Key Personnel in **Exhibit D** to the Contract, or whom the City from time to time designates in writing to the Consultant as fulfilling a key role in the Project. Unless approved by the City in writing, the Consultant will not: (i) remove the Consultant’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 Consultant’s Key Personnel in the Project or allow its subconsultants to materially reduce the involvement of Key Personnel in the Project.

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

If the Consultant falls more than 7 days behind in completing any Deliverable required by this Contract, the Consultant will devote all personnel assigned to the Project to working on the Project on a first priority basis. As used in this Contract, the term “personnel” includes all staff provided by the Consultant or its subconsultants, including but not limited to Key Personnel.

### PROGRESS REPORTS

The Consultant shall prepare and submit to the City bi-weekly (or at such other times as may be agreed in **Exhibit A**) written progress reports, which accomplish each of the following:

- a. Update the project schedule set forth in **Exhibit B**, indicating progress for each task and Deliverable.
- b. Identify all information, personnel, equipment, facilities and resources of the City that will be required for the Consultant to perform the Services for the subsequent month.
- c. Identify and report the status of all tasks and Deliverables that have fallen behind schedule.
- d. Identify and summarize all risks and problems identified by the Consultant, which may affect the performance of the Services.
- e. For each risk and problem, identify the action and person(s) responsible for mitigating the risk and resolving the problem.
- f. For each risk and problem identified, state the impact on the project schedule.

Reports will be distributed electronically in PDF format.

**QUALITY CONTROL PROGRAM**

The Consultant shall establish and follow a quality control program throughout duration of the Contract. The Quality Control Program will identify review personnel and describe the procedures to be used to verify, to independently check, and to review all Deliverables prepared, as well as any function, activity, or task as part of this Contract. The Quality Control Program will specify the manner for documenting the check and review processes, recording required procedures, and verification of 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. The City Project Manager, at his/her sole discretion, may request a copy of the Quality Control Program from the Consultant.

Throughout the Contract duration, the Consultant will maintain quality control procedures as covered in the approved Quality Control Program and documentation of the Consultant’s internal reviews for inspection by the City Project Manager. The City Project Manager will have the option to review proposed Deliverables in the Consultant’s office periodically to verify that proper quality control procedures are employed in the development process.

**ACCEPTANCE OF DELIVERABLES**

If the City Project Manager is not satisfied that the Deliverable(s) have been met, a notice of rejection (a “Rejection Notice”) shall be submitted to the Consultant by the City Project Manager that specifies the nature and scope of the deficiencies that the City wants corrected. Upon receipt of a Rejection Notice, the Consultant shall: (a) act diligently and promptly to correct all deficiencies identified in the Rejection Notice, and (b) immediately upon completing such corrections give the City a written, dated certification that all deficiencies have been corrected (the “Certification”). In the event the Consultant fails to correct all deficiencies identified in the Rejection Notice and provide a Certification within fifteen (15) days after receipt of the Rejection Notice, the City shall be entitled to terminate this Contract for default without further obligation to the Consultant and without obligation to pay for the defective work.

Upon receipt of the corrected Deliverable(s), or a Certification, whichever is later, the above-described Acceptance procedure shall recommence. The City shall not be obligated to allow the Consultant to recommence curative action with respect to any deficiency previously identified in a Rejection Notice, or more than once for any given Deliverable (and shall be entitled to terminate this Contract for default if the Consultant does not meet this time frame).

**NON-EXCLUSIVITY**

The Consultant 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 Consultant for any particular project.

**REPRESENTATIONS AND WARRANTIES OF CONSULTANT**

*GENERAL WARRANTIES.*

- a. The Services shall satisfy all requirements set forth in the Contract, including but not limited to the attached Exhibits;



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- b. The Consultant has taken and will continue to take precautions sufficient to ensure that it will not be prevented from performing all or part of its obligations under the Contract by virtue of interruptions in the computer systems used by the Consultant;
- c. All Services performed by the Consultant and/or its subconsultants pursuant to this Contract shall meet the customary industry standards and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;
- d. Neither the Services, nor any Deliverables provided by the Consultant under this Contract will infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party. The Consultant shall not violate any non-compete agreement or any other agreement with any third party by entering into or performing this Contract;
- e. The Consultant and each employee provided by the Consultant to the City for this Project shall have the qualifications, skills and experience necessary to perform the Services described or referenced in **Exhibit A**;
- f. All information provided by the Consultant about each employee is accurate; and
- g. Each employee is an employee of the Consultant, and the Consultant shall make all payments and withholdings required for by law for the Consultant for such employee.

### *ADDITIONAL WARRANTIES*

The Consultant further represents and warrants that:

- a. It is a legal entity and if incorporated, duly incorporated, validly existing and in good standing under the laws of the state of its incorporation or licensing and is qualified to do business in North Carolina;
- b. It has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Contract;
- c. The execution, delivery, and performance of this Contract have been duly authorized by the Consultant;
- d. No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Contract;
- e. In connection with its obligations under this Contract, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses; and
- f. The performance of this Contract by the Consultant and each employee provided by the Consultant will not violate any contracts or agreements with third parties or any third party rights (including but not limited to non-compete agreements, non-disclosure agreements, patents, trademarks or intellectual property rights).

### **OTHER OBLIGATIONS OF THE CONSULTANT**

#### *WORK ON CITY PREMISES*

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

#### *RESPECTFUL AND COURTEOUS BEHAVIOR*

The Consultant shall assure that its employees interact with City employees and with the public in a courteous, helpful, and impartial manner. All employees of the Consultant in both field and

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office shall refrain from belligerent behavior and/or profanity. Correction of any such behavior and language shall be the responsibility of the Consultant.

### *REGENERATION OF LOST OR DAMAGED DATA*

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

### *REPAIR OR REPLACEMENT OF DAMAGED EQUIPMENT OR FACILITIES*

In the event that the Consultant causes damage to the City equipment or facilities, the Consultant 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 Consultant's action.

## **REMEDIES**

### *RIGHT TO COVER*

If the Consultant fails to meet any completion date or resolution time set forth in this Contract (including the Exhibits), the City may take any of the following actions with or without terminating this Contract, and in addition to and without limiting any other remedies it may have:

- a. Employ such means as it may deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and the Consultant is again able to resume performance under this Contract; and
- b. Deduct any and all expenses incurred by the City in obtaining or performing the Services from any money then due or to become due to the Consultant and, should the City's cost of obtaining or performing the Services exceed the amount due the Consultant, collect the amount due from the Consultant.

### *RIGHT TO WITHHOLD PAYMENT*

If the Consultant breaches any provision of this Contract, the City shall have a right to withhold all payments due to the Consultant until such breach has been fully cured.

### *SPECIFIC PERFORMANCE AND INJUNCTIVE RELIEF*

The Consultant agrees that monetary damages are not an adequate remedy for the Consultant's failure to provide the Services or Deliverables as required by this Contract, nor could monetary damages be the equivalent of the performance of such obligation. Accordingly, the Consultant hereby consents to an order granting specific performance of such obligations of the Consultant in a court of competent jurisdiction within the State of North Carolina. The Consultant further consents to the City obtaining injunctive relief (including a temporary restraining order) to assure performance in the event the Consultant breaches the Contract.

### *OTHER REMEDIES*

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

**TERMINATION OF CONTRACT**

*TERMINATION FOR CONVENIENCE*

The City may terminate this Contract for convenience at any time, for any reason, or no reason, by giving thirty (30) days' prior written notice to the Consultant. In the event the Contract is terminated pursuant to this Section, the Consultant shall continue performing the Services until the termination date designated in the termination notice. As soon as practicable after written notice of termination without cause, Consultant shall submit a statement to the City showing in detail the Services performed under this Contract through the date of termination. In the event of termination without cause pursuant to this Section, the City agrees to: (i) pay the Consultant for Services rendered through the termination date at the rates set forth in **Exhibit C**. The foregoing payment obligation is contingent upon: (i) the Consultant having fully complied with this Section; and (ii) the Consultant having provided the City with written documentation reasonably adequate to verify the number of hours of Services rendered by each person through the termination date and the percentage of completion of each Deliverable.

Nothing in this Section shall be construed as limiting any right of either party in the event of a breach.

*TERMINATION FOR DEFAULT*

By giving written notice to the Consultant, the City may terminate the Contract upon the occurrence of one or more of the following events:

- a. The Consultant fails to complete a particular task by the completion date set forth in this Contract;
- b. The Consultant makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Contract, or any covenant, agreement, obligation, term or condition contained in this Contract; or
- c. The Consultant takes or fails to take any action which constitutes grounds for immediate termination under the terms of the Contract, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by the Contract, or failure to provide the proof of insurance as required by the Contract.
- d. The Consultant violates or fails to perform any covenant, provision, obligation, term or condition contained in the Contract, provided that, unless otherwise stated in the Contract, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within fifteen (15) days of receipt of written notice of default from the non-defaulting party;
- e. The Consultant attempts to assign, terminate or cancel the Contract contrary to the terms hereof;
- f. The Consultant ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under the Contract shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of the Consultant's assets or properties.

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

Notwithstanding anything contained herein to the contrary, upon termination of this Contract by the City for default, the Consultant shall continue to perform the Services required by this Contract: (i) for six (6) months after the date of written termination notice; (ii) until the date on which the City completes its transition to a new service provider; or (iii) until a date specified by the City in the written termination notice.

***CANCELLATION OF ORDERS AND SUBCONTRACTS***

In the event this Contract is terminated by the City for any reason prior to the end of the term, the Consultant shall upon termination immediately discontinue all service in connection with this Contract and promptly cancel all existing orders and subcontracts, which are chargeable to this Contract. As soon as practicable after receipt of notice of termination, the Consultant shall submit a statement to the City showing in detail the Services performed under this Contract to the date of termination.

***AUTHORITY TO TERMINATE***

The following persons are authorized to terminate this Contract on behalf of the City: (a) the City Manager; (b) any Assistant City Manager; or (c) the Department Director of the City Department responsible for administering this Contract.

***OBLIGATIONS UPON EXPIRATION OR TERMINATION***

Upon expiration or termination of this Contract, the Consultant shall promptly return to the City (i) all computer programs, files, documentation, media, related material and any other material and equipment that is owned by the City; (ii) all Deliverables that have been completed or that are in process as of the date of termination; and (iii) a written statement describing in detail all work performed with respect to Deliverables which are in process as of the date of termination.

***NO EFFECT ON TAXES, FEES, CHARGES OR REPORTS***

Termination of this Contract shall not relieve the Consultant of the obligation to pay any fees, taxes or other charges then due to the City, nor relieve the Consultant of the obligation to file any daily, monthly, quarterly or annual reports, nor relieve the Consultant from any claim for damages previously accrued or then accruing against the Consultant.

***TRANSITION SERVICES UPON TERMINATION***

Upon termination or expiration of this Contract, the Consultant shall cooperate with the City to assist with the orderly transfer of the Services provided by the Consultant to the City. Prior to termination or expiration of this Contract, the City may require the Consultant to perform and, if so required, the Consultant shall perform certain transition services, necessary to shift the Services of the Consultant 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:

- a. Working with the City to jointly develop a mutually agreed upon Transition Services Plan to facilitate the termination of the Services;
- b. Notifying all affected service providers and subconsultants of the Consultant;
- c. Performing the Transition Service Plan activities;

- d. Answering questions regarding the Services on an as-needed basis; and
- e. Providing such other reasonable services needed to effectuate an orderly transition to a new service provider.

**CHANGES**

In the event changes to the Services (collectively “Changes”), become necessary or desirable to the parties, the parties shall follow the procedures set forth in this Section. A Change shall be effective only when documented by a written, dated agreement executed by both parties which expressly references and is attached to this Contract (an “Amendment”). The Amendment shall set forth in detail: (i) the Change requested, including all modifications of the duties of the parties; (ii) the reason for the proposed Change; and (iii) a detailed analysis of the impact of the Change on the results of the Services and time for completion of the Services, including the impact on all milestones and delivery dates and any associated price.

In the event either party desires a Change, the Project Manager for such party shall submit to the other party’s Project Manager a proposed Amendment. If the parties cannot reach agreement on a proposed Change, the Consultant shall nevertheless continue to render performance under this Contract in accordance with its (unchanged) terms and conditions.

**RELATIONSHIP OF THE PARTIES**

The relationship of the parties established by this Contract is solely that of independent contractors. Nothing contained in this Contract shall be construed to (i) give any party the power to direct or control the day-to-day administrative activities of the other; or (ii) constitute such parties as partners, co-owners or otherwise as participants in a joint venture. Neither party nor its agents or employees is the representative of the other for any purpose, and neither party has power or authority to act for, bind, or otherwise create or assume any obligation on behalf of the other.

**CITY OWNERSHIP OF WORK PRODUCT**

The parties agree that the City shall have exclusive ownership of all reports, documents, designs, ideas, materials, reports, concepts, plans, specifications, creative works, software, data, programming code, documents and other work product developed for or provided to the City in connection with this Contract, and all patent rights, copyrights, trade secret rights and other intellectual property rights relating thereto (collectively the “Intellectual Property”). The Consultant hereby assigns and transfers all rights in the Intellectual Property to the City. The Consultant further agrees to execute and deliver such assignments and other documents as the City may later require to perfect, maintain, and enforce the City’s rights as sole owner of the Intellectual Property, including all rights under patent and copyright law. The Consultant hereby appoints the City as attorney-in-fact to execute all such assignments and instruments and agree that its appointment of the City as an attorney in fact is coupled with an interest and is irrevocable.

The City grants the Consultant a royalty-free, non-exclusive license to use and copy the Intellectual Property to the extent necessary to perform this Contract. The Consultant shall not be entitled to use the Intellectual Property for other purposes without the City’s prior written consent.

## SAMPLE CONTRACT

The Consultant represents and warrants that the Intellectual Property will not infringe or misappropriate the intellectual property or other rights of any person or entity, and that the City shall have the unrestricted right to use the Intellectual Property for any purpose. The Consultant further represents and warrants that it has the right to grant the rights granted to the City in this Section on behalf of the Consultant's subconsultants.

The City recognizes that the Intellectual Property may be generated, stored, transmitted or published in various media, including, but not limited to traditional hard-copy (i.e., blue prints), CADD formats, via Internet or Extranet websites or other electronic or other media and such Intellectual Property may be subject to unauthorized tampering, modifications and alterations (collectively hereinafter referred to as "Unauthorized Use") by parties over whom the Consultant has no control. The Intellectual Property is also subject to discrepancies as a result of numerous factors, including without limitation, transmission and translation errors resulting from differences in computer software, hardware and equipment-related problems, disk malfunctions, and user error (collectively hereinafter referred to as "Discrepancies").

Accordingly, the Consultant has no responsibility for any Discrepancies in the Intellectual Property that are beyond the Consultant's reasonable control. The Consultant shall maintain a hard copy of the Intellectual Property for three (3) years from the date it completes all work under this Contract. If requested, the Consultant shall provide the City with the Intellectual Property in electronic form, and the City agrees to release the Consultant from all claims, causes of action, suits, demands and damages, arising from or relating to any Discrepancies in such Intellectual Property that are beyond the Consultant's reasonable control.

### LICENSING

The Consultant may be required to provide evidence of all valid licenses and certificates required for performance of the Services. Such evidence shall be delivered to the City no later than ten (10) days after the Consultant receives the notice requesting such information from the City. Licenses and certificates required for this Contract include, by way of illustration and not limitation, licenses pertaining to or that may be required to be held by field professionals participating in the contract work.

### INDEMNIFICATION

To the fullest extent permitted by law, the Consultant shall indemnify and hold harmless each of the "Indemnitees" (as defined below) from and against any and all "Charges" (as defined below) paid or incurred as a result of any claims, demands, lawsuits, actions, or proceedings: (i) alleging violation, misappropriation or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to the Services or any products or deliverables provided to the City pursuant to this Contract ("Infringement Claims"); (ii) seeking payment for labor or materials purchased or supplied by the Consultant or its subcontractors in connection with this Contract; (iii) arising from the Consultant's failure to perform its obligations under this Contract, or from any act of negligence or willful misconduct by the Consultant or any of its agents, employees or subcontractors relating to this Contract, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible; or (iv) arising from any claim that the Consultant or an employee or subcontractor of the

## SAMPLE CONTRACT

Consultant is an employee of the City, including but not limited to claims relating to worker's compensation, failure to withhold taxes and the like. For purposes of this Section: (a) the term "Indemnitees" means the City, any federal agency that funds all or part of this Contract, and each of the City's and such federal agency's officers, officials, employees, agents and independent contractors (excluding the Consultant); and (b) the term "Charges" means any and all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, royalties, interest charges and other liabilities (including settlement amounts).

If an Infringement Claim occurs, the Consultant shall either: (i) procure for the City the right to continue using the affected product or service; or (ii) repair or replace the infringing product or service so that it becomes non-infringing, provided that the performance of the overall product(s) and service(s) provided to the City shall not be adversely affected by such replacement or modification. If the Consultant is unable to comply with the preceding sentence within thirty (30) days after the City is directed to cease use of a product or service, the Consultant shall promptly refund to the City all amounts paid under this Contract.

### SUBCONTRACTING

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

### INSURANCE

Throughout the term of this Contract, the Consultant shall comply with the insurance requirements described in this Section. In the event the Consultant fails to procure and maintain each type of insurance required by this Contract, or in the event the Consultant fails to provide the City with the required certificates of insurance, the City shall be entitled to terminate this Contract immediately upon written notice to the Consultant.

#### *General Requirements*

The Consultant shall not commence any work in connection with this Contract until it has obtained all of the types of insurance set forth in this Section and the City has approved such insurance. The Consultant shall not allow any subconsultant to commence work on its subcontract until all insurance required of the subconsultant has been obtained and approved.

All insurance policies required by this Section shall be with insurers qualified and doing business in North Carolina recognized by the Secretary of State and the Insurance Commissioner's Office. The Consultant shall name the City as an additional insured under the commercial general liability policy required by this Section.

The Consultant's insurance shall be primary of any self-funding and/or insurance otherwise carried by the City for all loss or damages arising from the Consultant's operations under this agreement. The Consultant and each of its subconsultants shall and does waive all rights of subrogation against the City and each of the Indemnitees (as defined in **Section 22**).

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 Consultant and/or subconsultant providing such insurance.

## SAMPLE CONTRACT

Prior to execution of this Contract, the Consultant shall provide the City with certificates of insurance documenting that the insurance requirements set forth in this Section have been met, and that the City be given thirty (30) days' written notice of any intent to amend coverage or make material changes to or terminate any policy by either the insured or the insurer. The Consultant shall further provide such certificates of insurance to the City at any time requested by the City after execution of this Contract, and shall provide such certificates within five (5) days after the City's request. The City's failure to review a certificate of insurance sent by or on behalf of the Consultant shall not relieve the Consultant of its obligation to meet the insurance requirements set forth in this Contract.

Should any or all of the required insurance coverage be self-funded/self-insured, the Consultant shall furnish to the City a copy of the Certificate of Self-Insurance or other documentation from the North Carolina Department of Insurance.

If any part of the work under this Contract is sublet, the subconsultant shall be required to meet all insurance requirements set forth in this Section, provided that the amounts of the various types of insurance shall be such amounts as are approved by the City in writing. However, this will in no way relieve the Consultant from meeting all insurance requirements or otherwise being responsible for the subconsultant.

### *Types of Insurance*

Consultant shall obtain and maintain during the life of this Contract, with an insurance Consultant rated not less than "A" by A.M. Best, authorized to do business in the State of North Carolina, acceptable to the Charlotte-Mecklenburg, Risk Management Division the following insurance:

Automobile Liability. Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit - bodily injury and property damage.

Commercial General Liability. Bodily injury and property damage liability as shall protect the Consultant and any subconsultant performing work under this Contract, from claims of bodily injury or property damage which arise from operation of this Contract, whether such operations are performed by the Consultant, any subconsultant, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate, or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, operations, personal injury liability and contractual liability, assumed under the indemnity provision of this Contract. The City of Charlotte shall be listed as an additional insured under this coverage.

Workers' Compensation Insurance. The Consultant shall meet the statutory requirements of the State of North Carolina, \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit.



## SAMPLE CONTRACT

Professional Liability Insurance in an amount of not less than \$1,000,000 each claim and \$1,000,000 aggregate.

### BACKGROUND CHECKS

Prior to starting work under this Contract, the Consultant is required to conduct a background check on each Consultant employee assigned to work under the Contract, and shall require its subconsultants (if any) to perform a background check on each of their employees assigned to work under the Contract (collectively, the "Background Checks"). Each Background Check must include: (a) the person's criminal conviction record from the states and counties where the person lives or has lived in the past seven years; and (b) a reference check.

After starting work under this Contract, the Consultant is required to perform a Background Check for each new Consultant employee assigned to work under the Contract, and shall require its subconsultants (if any) to do the same for each of their new employees. If the Consultant undertakes a new project under the Contract, then prior to commencing performance of the project the Consultant shall perform a Background Check for each Consultant employee assigned to work on the project, and shall require its subconsultants (if any) to do the same for each of their employees.

If a person's duties under the Contract fall within the categories described below, the Background Checks that the Consultant will be required to perform (and to have its subconsultants perform) shall also include the following additional investigation:

- a. If the job duties require driving: A motor vehicle records check.
- b. If the job duties include responsibility for initiating or affecting financial transactions: A credit history check.
- c. If job duties include entering a private household or interaction with children: A sexual offender registry check.

The Consultant must follow all State and Federal laws when conducting Background Checks, including but not limited to the Fair Credit Reporting Act requirements, and shall require its subconsultants to do the same. The Consultant shall notify the City of any information discovered in the Background Checks that may be of potential concern for any reason.

The City may conduct its own background checks on principals of the Consultant as the City deems appropriate. By operation of the public records law, background checks conducted by the City are subject to public review upon request.

### COMMERCIAL NON-DISCRIMINATION

As a condition of entering into this agreement, the Company represents and warrants that it will fully comply with the City's commercial non-discrimination policy, as described in Section 2, Article V of the Charlotte City Code, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the Company shall not discriminate on the basis of a Protected Class in the solicitation, selection, hiring, or treatment of subcontractors, vendors, suppliers, or commercial customers in connection with a City contract or contract solicitation process, nor shall the Company retaliate against any person or entity for reporting instances of such discrimination. The Company shall provide equal opportunity for

## SAMPLE CONTRACT

subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on City contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace.

As a condition of entering into this agreement, the Company agrees to:

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

The Company understands and agrees that a violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of the company from participating in City contracts or other sanctions.

For purposes of this section, "Protected Class" means a person's race, color, gender, religion, national origin, ethnicity, age, familial status, sex (including sexual orientation, gender identity and gender expression), veteran status, pregnancy, natural hairstyle or disability, as those terms are further defined in Section 2, Article V of the Charlotte City Code."

### **MISCELLANEOUS**

#### *ENTIRE AGREEMENT*

This Contract 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 with respect to such subject matter. This Contract supersedes all prior agreements, negotiations, representations and proposals, written or oral.

#### *CHANGE IN CONTROL*

In the event of a change in "Control" of the Consultant (as defined below), the City shall have the option of terminating this Contract by written notice to the Consultant. The Consultant shall notify the City within ten (10) days of the occurrence of a change in control. As used in this Contract, the term "Control" shall mean the possession, direct or indirect, of either:

- 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 Consultant; or

## SAMPLE CONTRACT

- b. The power to direct or cause the direction of the management and policies of the Consultant whether through the ownership of voting securities, by contract or otherwise.

### *GOVERNING LAW, JURISDICTION AND VENUE*

North Carolina law shall govern interpretation and enforcement of this Contract and any other matters relating to this Contract (all without regard to North Carolina conflicts of law principles). Any and all legal actions or proceedings relating to this Contract shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By the execution of this Contract, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections that they may have with respect to venue in any court sitting in Mecklenburg County, North Carolina. This Section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this Section.

### *BINDING NATURE AND ASSIGNMENT*

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

### *CITY NOT LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES*

The City shall not be liable to the Consultant, its agents or representatives or any subconsultant for or on account of any stoppages or delay in the performance of any obligations of the City, or any other consequential, indirect or special damages or lost profits related to this Contract.

### *SEVERABILITY*

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

### *NO PUBLICITY*

No advertising, sales promotion or other materials of the Consultant or its agents or representations may identify or reference this Contract or the City in any manner absent the written consent of the City. Notwithstanding the forgoing, the parties agree that the Consultant may list the City as a reference in responses to requests for proposals, and may identify the City as a customer in presentations to potential customers.

### *NO BRIBERY OR LOBBY*

The Consultant certifies that to the best of its knowledge, information, and belief, neither it, any of its affiliates or subconsultants, 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 Contract.

### *APPROVALS*

All approvals or consents required under this Contract must be in writing.

**WAIVER**

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

**SURVIVAL OF PROVISIONS**

All provisions of this Contract which by their nature and effect are required to be observed, kept or performed after termination of this Contract shall survive the termination of this Contract and remain binding thereafter, including but not limited to the following  
Section "Representations and Warranties of Consultant"  
Section "Termination of Contract"  
Section "City Ownership of Work Product"  
Section "Indemnification"  
Section "Notices and Principal Contacts"  
Section "Miscellaneous"

**FAMILIARITY AND COMPLIANCE WITH LAWS AND ORDINANCES**

The Consultant agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Services. The Consultant further agrees that it will at all times during the term of this Contract be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all OSHA regulations applicable to the work.

**TAXES**

Except as specifically stated elsewhere in this Contract, the Consultant shall pay all applicable federal, state and local taxes which may be chargeable against the performance of the Services. The Consultant consents to and authorizes the City to collect any and all delinquent taxes and related interest, fines, or penalties of the Consultant by reducing any payment, whether monthly, quarterly, semi-annually, annually, or otherwise, made by the City to the Consultant pursuant to this Contract for an amount equal to any and all taxes and related interest, fines, or penalties owed by the Consultant to the City. The Consultant hereby waives any requirements for notice under North Carolina law for each and every instance that the City collects delinquent taxes pursuant to this paragraph. This paragraph shall not be construed to prevent the Consultant from filing an appeal of the assessment of the delinquent tax if such appeal is within the time prescribed by law.

**CONSTRUCTION OF TERMS**

Each of the parties has agreed to the use of the particular language of the provisions of this Contract and any questions of doubtful interpretation shall not be resolved by any rule or interpretation against the drafters, but rather in accordance with the fair meaning thereof, having

due regard to the benefits and rights intended to be conferred upon the parties hereto and the limitations and restrictions upon such rights and benefits intended to be provided.

*TRAVEL UPGRADES*

The City has no obligation to reimburse the Consultant for any travel or other expenses incurred in connection with this Contract unless this Contract specifically requires reimbursement. If this Contract requires reimbursement by the City: (a) the City will only pay coach/economy rate airline fares, and (b) the Consultant's invoices shall include sufficient detail of travel expenses to demonstrate that fares were at coach/economy rates. Notwithstanding the forgoing, nothing in this provision shall preclude complimentary upgrades to first class or business class seating, mileage, points, or credits based upgrades, or upgrades paid for by the Consultant so long as the City is not charged for or asked to reimburse the upgrade charge or the value of the miles, points, or credits used.

*DELAYS AND EXTENSIONS*

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

*FORCE MAJEURE*

The Consultant shall not be liable for any failure or delay in the performance of its obligations pursuant to this Contract and such failure or delay shall not be deemed a default of this Contract or grounds for termination hereunder, except as set forth below, 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 by fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, strikes, lockouts or court order (each, a "Force Majeure Event").

Upon the occurrence of a Force Majeure Event, the Consultant shall be excused from any further performance of those of its obligations pursuant to this Contract affected by the Force Majeure Event for as long as: (i) such Force Majeure Event continues and (ii) the Consultant continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

The Consultant shall promptly notify the City by telephone or other means available (to be confirmed by written notice within five (5) business days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents the Consultant from performing its obligations for more than thirty (30) days, the City may terminate this Contract.

*ENDORSEMENT OF DOCUMENTS*

The Consultant shall sign and seal, or 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 Consultant under this Contract.

*CADD STANDARDS; FINAL PLANS*

The Consultant shall submit an electronic copy of all plans in the current version of AutoCAD. The Consultant will not be required to seal electronic files. In addition to the digital files, the Consultant shall submit a hard copy of the final design plans.

*CORRECTION OF DEFECTS AND FAILURES*

Any defective designs, specifications, plats, or surveys furnished by the Consultant and any failure of any Services performed by the Consultant to comply with any requirements set forth in this Contract shall be promptly corrected by the Consultant at no cost to the City. The City's approval, acceptance, use of, or payment for all or any part of the Consultant's Services or of the Project itself shall in no way alter the Consultant's obligations or the City's rights under this Contract.

**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).

- 28.1 Any dispute arising between or among the Parties listed in Section 28.3 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.
- 28.2 For purposes of this Article the following definitions shall apply:
  - a. Party or Parties refers to the parties listed in Section 28.3 of this Article.
  - b. Project means project pursuant to this Contract.
- 28.3 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): Consultant, independent contractor(s) of the City, surety(ies), subconsultant(s), and supplier(s).

## SAMPLE CONTRACT

- 28.4 The Consultant 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.
- 28.5 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.
- 28.6 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.
- 28.7 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.
- 28.8 In addition to such matters as are required by the Rules, a request for mediation shall include the amount of the monetary relief requested.
- 28.9 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.
- 28.10 If a Party breaches any provision of Section 28.9 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.
- 28.11 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

## SAMPLE CONTRACT

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.

- 28.12 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.
- 28.13 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.
- 28.14 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.

**29. NORTH CAROLINA PROHIBITION ON CONTRACTS WITH COMPANIES THAT INVEST IN IRAN OR BOYCOTT ISRAEL**

Consultant 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 Consultant 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 Consultant 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 Consultant appearing on the Treasurer's IDA List or the Treasurer's IB List at any time before or during the term of this Contract.

**30. E-VERIFY**

The Consultant shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and shall require each of its subcontractors to do so as well.

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**SAMPLE CONTRACT**

THIS CONTRACT, entered into as of the day and year first written above for \_\_\_\_\_ Services for \_\_\_\_\_ [Name of Project], Contract Number \_\_\_\_\_ in an amount not to exceed \$ \_\_\_\_\_.

\_\_\_\_\_ [NAME OF FIRM IN CAPS]

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**CITY OF CHARLOTTE:**

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**EXHIBIT A – SCOPE OF WORK**

**[Insert scope of work]**

SAMPLE

**EXHIBIT B – PROJECT SCHEDULE**

The approximate Project schedule is as follows:

SAMPLE

EXHIBIT C – FEE/COST BREAKDOWN

**Hourly and Unit Price Rates for Additional Services**

[Prime Consultant Name]		
<i>Job Classification</i>	<i>Employee Name</i>	<i>Hourly Rate</i>
		\$
[Subconsultant Name]		
<i>Job Classification</i>	<i>Employee Name</i>	<i>Hourly Rate</i>
[Subconsultant Name]		
<i>Job Classification</i>	<i>Employee Name</i>	<i>Hourly Rate</i>
[Subconsultant Name]		
<i>Job Classification</i>	<i>Employee Name</i>	<i>Hourly Rate</i>
[Subconsultant Name]		
<i>Job Classification</i>	<i>Employee Name</i>	<i>Hourly Rate</i>
[Subconsultant Name]		
		<i>Unit Rate</i>

**EXHIBIT D – KEY PERSONNEL**

[Insert Org Chart or list of key personnel]

SAMPLE

# EXHIBIT E – FEDERAL TERMS

## FEDERAL TRANSIT ADMINISTRATION CONTRACTING TERMS

This Attachment is attached and incorporated into the {---Contract Title---} (the “Contract”) between the City of Charlotte and {---Vendor Legal Name---} (“{---Vendor Reference Name---}”). Capitalized terms not defined in this Attachment shall have the meanings assigned to such terms in the Contract. In the event of a conflict between this Attachment and the terms of the main body of the Contract or any other Attachment or appendix, the terms of this Attachment shall govern.

### 1. THE COMPANY SHALL COMPLY WITH ALL FEDERAL REQUIREMENTS.

- A. The Company acknowledges and understands that this Contract will be financed at least partially with funding from the federal government. The Company further acknowledges and understands that this Contract is therefore subject to: (1) all applicable federal laws, (2) all applicable federal regulations, (3) all applicable federal policies, (4) the conditions and requirements of all federal grants that in any way will fund any part of the work under this Contract, and (5) the most recent Federal Transit Administration’s “Master Agreement,” including any certifications or contract provisions that the Master Agreement requires to be included in this Contract. For purposes of these Federal Contracting Requirements, items (1) through (5) in the immediately preceding sentence, as those items may be amended or updated from time to time, are referred to collectively as “Federal Law.”
- B. All provisions of Federal Law are incorporated into this Contract by reference and are fully binding on the Company as if they were recited here verbatim. The Company shall ensure that all provisions of Federal Law are incorporated into all subcontracts (of every tier) and in all contracts with those supplying any materials, equipment, or other products related in any way to this Contract, such that all subcontractors of every tier and all suppliers are contractually required to comply with all provisions of Federal Law.
- C. The Company at all times shall: (1) fully comply with all provisions of Federal Law, (2) ensure that all work under this Contract (including, by example only, all subcontracted work) fully complies with all provisions of Federal Law, and (3) ensure that no aspect of the Company’s performance under this Contract would cause the City or any of its officials, employees, or agents to be at any risk of violating any provision of Federal Law. In addition, the Company shall not perform any act, fail to perform any act, or refuse to comply with any City request to the extent that doing any of those things would create any risk of the City or any of its officials, employees, or agents being in violation of any provision of Federal Law.
- D. These Federal Contracting Requirements identify and summarize many provisions of Federal Law. However, the Company acknowledges and agrees that the Company is fully and ultimately responsible for identifying and learning about all provisions of Federal Law. If these Federal Contracting Requirements omit any provision or requirement of Federal Law, the Company shall remain fully responsible for identifying

and learning about that provision or requirement and for fully satisfying the Company’s obligations under Article 1.1.C of these Federal Contracting Requirements with respect to that provision or requirement. The Company shall not be excused from ensuring full compliance with any provision or requirement of Federal Law because that provision or requirement is omitted from these Federal Contracting Requirements, nor shall the Company have any claim or remedy against the City because any such provision or requirement has been so omitted.

- E. By executing this Contract, the Company represents to the City and covenants with the City that, as of the date that this Contract takes effect, the Company has fully complied with all provisions of Federal Law and that the Company shall continue to fully comply with all provisions of Federal Law at all times while this Contract is in effect.
  - F. Notwithstanding any other provision in this Contract, the Company and the City agree that Federal Law and these Federal Contracting Requirements take priority over all other Contract provisions. This means that, if a conflict arises between another Contract provision and any provision of Federal Law or of these Federal Contracting Requirements, such that the Company cannot satisfy both provisions, the Company shall fully comply with the provision of Federal Law or of these Federal Contracting Requirements. In such a situation, the Company shall disregard the other, conflicting Contract provision, but the Company shall do so only to the minimal extent needed to comply fully with Federal Law and with these Federal Contracting Requirements, and the Company otherwise shall fully comply with that conflicting Contract provision to the extent possible.
  - G. The Company and the City agree that, in any situation where the Company can comply with both another Contract provision and with a provision of Federal Law or of these Federal Contracting Requirements, even if the two provisions address the same subject matter (e.g., if another Contract provision imposes an obligation on the Company beyond those obligations imposed by Federal Law), that will not be deemed a conflict. Rather, in such a situation, the Company shall fully comply with Federal Law, with these Federal Contracting Requirements, and with the other Contract provision.
- ### 2. ACCESS TO CONTRACT RECORDS.
- A. For purposes of this Article 2 of these Federal Contracting Requirements, “Contract Records” means all documents (whether in hard copy, digital, or other

format) that refer or relate to any aspect of this Contract or to the Company's performance under this Contract. By example only (and not for purposes of limitation), Contract Records include all of the following to the extent that they refer or relate to any aspect of this Contract or to the Company's performance under this Contract: subcontracts, contracts with suppliers and other third parties, invoices and other billing records, audits and other financial and accounting records, memos, letters, and emails.

B. For purposes of this Article 2 of these Federal Contracting Requirements, "Retention End Date" means the later of:

(a) The third anniversary of the date on which this Contract is terminated or expires, or

(b) If, on or before that third anniversary, the Company has received notice (from the City or otherwise) of one or more lawsuits, legal proceedings, disputes, audits, or investigations related in any way to this Contract, the date on which the City later notifies the Company in writing that all such lawsuits, legal proceedings, disputes, audits, and investigations have fully and finally concluded. The City and the Company intend for all Contract Records to be retained, maintained, and made available for inspection and copying until all such lawsuits, legal proceedings, disputes, audits, and investigations have fully and finally concluded, even if that requires retaining, maintaining, and making those records available after the third anniversary of this Contract's termination or expiration.

C. Through and including the Retention End Date, (a) the Company shall retain and maintain all Contract Records that the Company ever creates, receives, or otherwise possesses or controls so that those Contract Records are always complete, legible, and readily accessible, (b) as the City may request from time to time, the Company shall promptly make any and all Contract Records available for inspection and copying by the City, by the federal government, and by their respective Companies and agents, and (c) the Company shall comply with all requirements imposed by 2 C.F.R. §200.333.

D. Through and including the Retention End Date, the Company shall ensure that each subcontractor (of every tier) and each supplier providing any material, equipment, or other product shall: (a) retain and maintain all Contract Records that the subcontractor or supplier ever creates, receives, or otherwise possesses or controls so that those Contract Records are always complete, legible, and readily accessible, (b) as the City may request from time to time, promptly make any and all Contract Records in that subcontractor's or that supplier's possession or control available for inspection and copying by the City, by the federal government, and

by their respective Companies and agents, and (c) comply with all requirements imposed by 2 C.F.R. §200.333.

E. In addition to taking all other necessary and appropriate steps to satisfy its obligations under Article 2.B(2) of these Federal Contracting Requirements, the Company shall ensure that each subcontract (of every tier) and each supplier contract includes provisions requiring that the subcontractor or the supplier retain, maintain, and make available Contract Records as required by Article 2.B(2).

F. This Article 2 will survive this Contract's termination or expiration regardless of how, when, or under what circumstances this Contract is terminated or expires.

### 3. RESERVED.

### 4. CIVIL RIGHTS LAWS AND REGULATIONS.

The Company acknowledges that the City must comply with all applicable federal civil rights laws and regulations and with 49 U.S.C. § 5323(h) (3) to the extent that the statute is applicable. The Company acknowledges and agrees that "Federal Law" for purposes of Article 1.1 of these Federal Contracting Requirements includes all applicable federal civil rights laws and regulations, as they may be amended from time to time. Some of those civil rights laws and regulations are identified and summarized below, and the Company acknowledges that its obligations under Article 1.1 of these Federal Contracting Requirements include an obligation to fully comply with the laws and regulations identified below and to ensure that all suppliers and all subcontractors (of every tier) fully comply with those laws and regulations. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 4, the Company shall ensure that each subcontract (of every tier) and each supplier contract includes provisions requiring that the subcontractor or the supplier fully comply with this Article 4 and with all applicable federal civil rights laws and regulations. Applicable federal civil rights laws and regulations include, by example only and not for purposes of limitation:

A. **Nondiscrimination.** 49 U.S.C. § 5332 and its implementing regulations, which prohibit discriminating against any employee or any applicant for employment because of race, color, religion, national origin, sex, disability, or age.

B. **Race, Color, Religion, National Origin, Sex.** Federal laws and regulations requiring that all job applicants must be employed, and all employees must be treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). For example, a person's race, color, religion, national origin, or sex cannot be considered for purposes of hiring; promotion; demotion or transfer; recruitment or recruitment advertising; layoff or termination; determining rates of pay or other forms of compensation; or selection for training, including

apprenticeship. The laws and regulations imposing these requirements include for example Title VII of the Civil Rights Act (42 U.S.C. § 2000e *et seq.*); 49 U.S.C. § 5332 and its implementing regulations; United States Department of Labor regulations ("Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor") found in 41 C.F.R., Chapter 60; and Executive Order No. 11246 ("Equal Employment Opportunity in Federal Employment") dated September 24, 1965 and found at 42 U.S.C. § 2000e.

- C. **Age.** Federal laws and regulations prohibit discriminating against current or prospective employees on the basis of age. These laws and regulations include for example the Age Discrimination in Employment Act (29 U.S.C. §§ 621-634); United States Equal Employment Opportunity Commission (U.S. EEOC) regulations ("Age Discrimination in Employment Act") found in 29 C.F.R. part 1625; the Age Discrimination Act of 1975 (42 U.S.C. § 6101 *et seq.*); United States Department of Health and Human Services regulations ("Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance") found in 45 C.F.R. part 90; and 49 U.S.C. § 5332 and the regulations implementing that statute.
- D. **Disabilities.** Federal laws and regulations prohibit discriminating against individuals on the basis of disability. These laws and regulations include for example Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794); the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*); the Architectural Barriers Act of 1968 (42 U.S.C. § 4151 *et seq.*); and 49 U.S.C. § 5332 and the regulations implementing that statute.
- E. **Access to Services for Persons with Limited English Proficiency.** The Company shall facilitate compliance with, and shall ensure that all suppliers and all subcontractors (of every tier) facilitate compliance with: (1) Executive Order No. 13166 ("Improving Access to Services for Persons with Limited English Proficiency"), found at 42 U.S.C. § 2000d-1 note and (2) applicable provisions of the United States Department of Transportation Notice ("DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons") found at 70 Fed. Reg. 74087 and dated December 14, 2005.
- F. **Environmental Justice.** The Company shall facilitate compliance with, and shall ensure that all suppliers and all subcontractors (of every tier) facilitate compliance with: (1) Executive Order No. 12898 ("Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations") found at 42 U.S.C. § 4321 note and (2) United States Department of Transportation Order 5620.3 ("Department of Transportation Actions To Address Environmental

Justice in Minority Populations and Low-Income Populations") found at 62 Fed. Reg. 18377 *et seq.* and dated April 15, 1997.

## 5. EMPLOYEE PROTECTIONS.

- A. The Company shall comply with all federal laws, regulations, and requirements providing wage and hour protections for nonconstruction employees, including Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5. The Company also shall comply with the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 *et seq.* to the extent that the FLSA applies to employees performing work with federal assistance involving commerce and as the federal government otherwise determines applicable.
- B. The Company shall ensure that every subcontractor (of all tiers) and all suppliers fully comply with the laws and regulations referenced in Article 1.5.A of these Federal Contracting Requirements. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 5.B, the Company shall ensure that each subcontract (of every tier) and each supplier contract includes provisions requiring that the subcontractor or the supplier fully comply with this Article 5 and with all with all of the laws and regulations referenced in Article 5.A.

## 6. ENERGY CONSERVATION.

The Company shall fully comply with the standards and policies related to energy efficiency in the state energy conservation plan issued under the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321, *et seq.* The Company also shall ensure that each supplier and each subcontractor (of every tier) fully complies with those same standards and policies. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 6, the Company shall ensure that each subcontract (at every tier) and each supplier contract includes provisions requiring that the subcontractor or the supplier fully comply with this Article 6.

## 7. GOVERNMENT-WIDE DEBARMENT & SUSPENSION.

- A. The Company shall fully comply with, and shall facilitate the City's compliance with, those United States Department of Transportation regulations entitled "Nonprocurement Suspension and Debarment," which are found in 2 C.F.R. part 1200 and which adopt and supplement the United States Office of Management and Budget's "Guidelines to Agencies on Government Wide Debarment and Suspension (Nonprocurement)," which are found in 2 C.F.R. part 180. The Company acknowledges that these regulations govern: (1) every



contract at any tier under which compensation of \$25,000 or more will be paid, (2) every contract at any tier for a federally required audit (irrespective of the contract amount), and (3) every contract at any tier that must be approved by the FTA (irrespective of the contract amount).

- B. The Company shall ensure that it and all of its officers, principals, affiliates, suppliers, and subcontractors (of every tier) are fully eligible, without limitation, to participate in this federally funded Contract and are not currently declared by any federal department or agency to be:
  - a) Debarred from participation in any federally assisted award;
  - b) Suspended from participation in any federally assisted award;
  - c) Proposed for debarment from participation in any federally assisted award;
  - d) Declared ineligible to participate in any federally assisted award;
  - e) Voluntarily excluded from participation in any federally assisted award; or
  - f) Disqualified from participation in any federally assisted Award.
- C. The Company at all times shall fully comply with the regulations in 2 C.F.R. part 180, subpart C, as supplemented by the regulations in 2 C.F.R. part 1200.
- D. The Company shall ensure that, at all times, all suppliers and all subcontractors (of every tier) fully comply with all provisions of this Article 7 to the same extent that the Company is required to do so. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 7.D, the Company shall ensure that each subcontract (at every tier) and each supplier contract includes provisions requiring that the subcontractor or the supplier fully comply with this Article 7.
- E. By executing this Contract, the Company certifies to the City that the Company has fully complied as of the date that this Contract takes effect with all provisions in this Article 7 and that the Company shall continue to fully comply with all provisions in this Article 7 at all times while this Contract remains in effect. The Company acknowledges and agrees that the certification provided by the Company under this Article 7.E is a material representation of fact on which the City shall rely. If at any time this certification is found by the City to be false or inaccurate in any way, that shall be deemed a material breach of this Contract by the Company, and in such a situation the City may pursue any and all remedies available to it under this Contract and otherwise at law. Additionally, the Company acknowledges that, if such a breach happens, the

federal government also may choose to pursue any and all remedies available to it, including for example seeking the suspension and/or debarment of the Company.

**8. NO GOVERNMENT OBLIGATION TO THIRD PARTIES.**

- A. The City and the Company acknowledge and agree that the federal government is not a party to this Contract and that the federal government shall not, because of this Contract, have any obligations or liabilities to the City, to the Company, or to anyone else. The City and the Company acknowledge and agree that the first sentence of this paragraph shall not be affected by the federal government concurring in, or approving of, the solicitation or award of this Contract unless the federal government explicitly consents in writing to being a party to this Contract.
- B. The Company shall ensure that each subcontract (of every tier) and each supplier contract includes a provision in which the parties to that subcontract or supplier contract acknowledge and agree that the federal government is not a party to that subcontract or supplier contract and that the federal government shall not, because of that subcontract or supplier contract, have any obligations or liabilities to that subcontract's or supplier contract's parties or to anyone else.

**9. PROGRAM FRAUD & FALSE OR FRAUDULENT STATEMENTS & RELATED ACTS.**

- A. The Company shall fully comply with all provisions of the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. §§3801 *et seq.*) and with the United States Department of Transportation regulations entitled "Program Fraud Civil Remedies" that are found in 49 CFR Part 31.
- B. By executing this Contract, the Company certifies to the City the complete truthfulness and total accuracy of every statement that the Company has made, has caused to be made, shall make, or shall cause to be made that relates in any way to this Contract. The Company acknowledges and agrees that the certification provided by the Company under this Article 9.B is a material representation of fact on which the City will rely. If at any time this certification is found by the City to be false or inaccurate in any way, that shall be deemed a material breach of this Contract by the Company, and in such a situation the City may pursue any and all remedies available to it under this Contract and/or otherwise at law. Additionally, the Company acknowledges that, if such a breach happens, the federal government also may choose to pursue any and all remedies available to it, including for example imposing penalties on the Company under the Program Fraud Civil Remedies Act of 1986, 18 U.S.C. §1001, and/or 49 U.S.C. §5307(n)(1).
- C. The Company shall ensure that, at all times, all suppliers and all subcontractors (of every tier) fully comply with all provisions of this Article 9 to the same extent that the Company is required to do so. In addition to taking

all other necessary and appropriate steps to satisfy its obligations under this Article 9.C, the Company shall ensure that each subcontract and each supplier contract includes provisions requiring that the subcontractor or the supplier fully comply with this Article 9.

**10. RECYCLED PRODUCTS.**

- A. When procuring any items designated in Subpart B of 40 C.F.R. Part 247, the Company shall fully comply with all requirements imposed by: (1) the Resource Conservation and Recovery Act (RCRA) §6002, as amended and now found in 42 U.S.C. 6962, (2) 40 CFR Part 247, and (3) Executive Order 12873.
- B. The Company shall ensure that all suppliers and all subcontractors (of every tier) fully comply with the requirements of Article 10.A of these Federal Contracting Requirements to the same extent that the Company is required to do so. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 10.B, the Company shall ensure that each subcontract and each supplier contract includes provisions requiring that the subcontractor or the supplier fully comply with Article 10.A just as the Company is required to do.

**11. SAFE OPERATION OF MOTOR VEHICLES.**

- A. The Company shall adopt and promote on-the-job seat belt use policies and programs for its employees and for anyone else who shall operate any vehicles in relation to this Contract, regardless of whether those vehicles are owned or leased by the Company, the City, or another person or entity.
- B. The Company shall adopt and enforce workplace safety policies to minimize crashes caused by distracted drivers. These policies shall include policies that ban and discourage text messaging by anyone operating a vehicle in relation to this Contract, regardless of whether those vehicles are owned or leased by the Company, the City, or another person or entity.

**12. FEDERAL CHANGES.**

- A. The Company at all times shall fully comply with all applicable FTA regulations, policies, procedures, and directives, including for example those listed or by reference in the FTA Master Agreement, as they may be issued or amended from time to time. Any failure by the Company to do so shall be a material breach of this Contract by the Company.
- B. The Company shall ensure that all suppliers and all subcontractors (of every tier) at all times fully comply with all applicable FTA regulations, policies, procedures, and directives to the same extent that the Company is required to do so. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 12.B, the Company shall ensure that each subcontract (of every tier) and each supplier contract includes provisions requiring that the

subcontractor or the supplier fully comply with this Article 12 just as the Company is required to do.

**13. INCORPORATION OF FTA TERMS.**

- A. The Company and the City acknowledge and agree that the United States Department of Transportation requires certain provisions (the "Applicable FTA Clauses") to be included in this Contract because this Contract is funded at least partially with federal funds. The Applicable FTA Clauses are specified in Federal Law and are also summarized in FTA Circular 4220.1F, as it may be amended or superseded from time to time. The City and the Company have tried to expressly include all Applicable FTA Clauses in these Federal Contracting Requirements or elsewhere in this Contract. However, the City and the Company agree that, if any of the Applicable FTA Clauses have not been expressly included in this Contract, those Applicable FTA Clauses are nonetheless deemed incorporated into this Contract by reference and shall be fully binding on the Company as if they had been expressly included in this Contract.
- B. Notwithstanding any other provision in this Contract, the Company and the City agree that the Applicable FTA Clauses shall take priority over all other Contract provisions. This means that, if a conflict arises between another Contract provision and any provision of the Applicable FTA Clauses, such that the Company cannot satisfy both, the Company shall fully comply with the Applicable FTA Clauses. In such a situation, the Company shall disregard the other, conflicting Contract provision, but the Company shall do so only to the minimal extent needed to comply fully with the Applicable FTA Clauses, and the Company otherwise shall fully comply with that conflicting provision. In contrast, in any situation where the Company can comply with both another Contract provision and with the Applicable FTA Clauses, even if these provisions address the same matter (for example, if another Contract provision imposes an obligation on the Company beyond those imposed by the Applicable FTA Clauses), that will not be deemed a conflict, and in such a situation the Company shall fully comply with the Applicable FTA Clauses and with the other Contract provision.
- C. The Company at all times shall: (1) fully comply with all provisions of the Applicable FTA Clauses, (2) ensure that all of the work under this Contract (including, by example only and not for purposes of limitation, all subcontracted work) fully complies with all provisions of the Applicable FTA Clauses, and (3) ensure that no aspect of the work under this Contract and no aspect of the Company's performance under this Contract would cause the City or any of its officials, employees, or agents to violate any provision of the Applicable FTA Clauses. In addition, the Company shall not perform any act, fail to perform any act, or refuse to comply with any City request to the extent that doing any of those things

would create a risk of the City or any of its officials, employees, or agents being in violation of any provision in the Applicable FTA Clauses.

- D. The Company shall ensure that all provisions of the Applicable FTA Clauses (including of any Applicable FTA Clauses not expressly included in this Contract) are incorporated into all subcontracts (of any tier) and in all contracts with those supplying any materials, equipment, or other products such that all subcontractors of every tier and all suppliers are contractually required to comply with all provisions of the Applicable Federal Clauses.

**14. FEDERAL ACQUISITION REGULATIONS (F.A.R.) COMPLIANCE.**

To the extent that this Contract provides for or allows for any adjustment to the Company's compensation based on costs or expenses incurred by the Company, any such adjustment will be determined based solely on any costs or expenses that: (A) are incurred in full compliance with all of this Contract's provisions, (B) for which the City is clearly required under this Contract to reimburse the Company, (C) are allowable, allocable, and reasonable, as those terms are defined and used in the Contract Cost Principles of the Federal Acquisition Regulations (F.A.R.) System (found in 48 CFR, Ch.1, Pt.31), including as those principles may be further defined or implemented by regulations or guidance adopted by the federal government, and (D) are otherwise allowed under applicable law.

**15. CLEAN AIR.**

- A. The Company shall fully comply with all applicable standards, orders, and regulations issued under the Clean Air Act (42 U.S.C. §§ 7401, *et. seq.*, as amended). The Company shall promptly notify the City if the Company receives notice of any possible or actual violation (a "Clean Air Act Violation") of the Clean Air Act or of any of those standards, orders, or regulations, and the Company shall provide the City with all information that the Company has about the actual or possible violation. The Company acknowledges and agrees that the City may be required by law to report (or that the City may choose to report, even if not required by law) any actual or possible Clean Air Act Violation to the FTA, to one or more EPA Regional Offices, and/or to other governmental entities, and the Company shall not be entitled to any remedy because the City does so.
- B. The Company shall ensure that all subcontracts (of every tier) and all contracts with those supplying any materials, equipment, or other products include provisions: (1) requiring each subcontractor and each supplier to promptly notify the Company and the City if the subcontractor or supplier receives notice of any possible or actual Clean Air Act Violation and to provide the Company and the City with all information that the subcontractor or supplier has about the actual or possible violation and (2) in which each subcontractor

and each supplier acknowledges and agrees that the City may be required by law to report (or that the City may choose to report, even if not required by law) any actual or possible Clean Air Act Violation to the FTA, to one or more EPA Regional Offices, and/or to other governmental entities and that the subcontractor or supplier shall have no claim, right, or remedy against the City or against any City official, employee, or agent because the City does so.

**16. CLEAN WATER.**

- A. The Company shall fully comply with all applicable standards, orders, and regulations issued under the Water Pollution Control Act (33 U.S.C. §§1251, *et. seq.*, as amended). The Company shall promptly notify the City if the Company receives notice of any possible or actual violation (a "Clean Water Act Violation") of the Water Pollution Control Act or of any of those standards, orders, or regulations, and the Company shall provide the City with all information that the Company has about the actual or possible violation. The Company acknowledges and agrees that the City may be required by law to report (or that the City may choose to report, even if not required by law) any actual or possible Clean Water Act Violation to the FTA, to one or more EPA Regional Offices, and/or to other governmental entities, and the Company shall not be entitled to any remedy because the City does so.
- B. The Company shall ensure that all subcontracts (of any tier) and all contracts with those supplying any materials, equipment, or other products include provisions: (1) requiring each subcontractor and each supplier to promptly notify the Company and the City if the subcontractor or supplier receives notice of any possible or actual Clean Water Act Violation and to provide the Company and the City with all information that the subcontractor or supplier has about the actual or possible violation and (2) in which each subcontractor and each supplier acknowledges and agrees that the City may be required by law to report (or that the City may choose to report, even if not required by law) any actual or possible Clean Water Act Violation to the FTA, to one or more EPA Regional Offices, and/or to other governmental entities and that the subcontractor or supplier shall have no claim, right, or remedy against the City or against any City official, employee, or agent because the City does so.

**17. LOBBYING.**

- A. The Company shall fully comply with 31 U.S.C. 1352, as amended; with any regulations implementing that statute; and with any non-superseded guidance about that statute issued by the federal government (this statute, those regulations, and that guidance together are the "Byrd Anti-Lobbying Amendment").
- B. The Company shall ensure that each subcontractor (of every tier) and all of those supplying any materials, equipment, or other products fully comply with all

requirements imposed by the Byrd Anti-Lobbying Amendment. In addition to taking any other steps necessary and appropriate to satisfy its obligations under this Article 17.B, the Company shall ensure that all subcontracts (of every tier) and all contracts with those supplying any materials, equipment, or other products include provisions requiring each subcontractor and each supplier to fully comply with all requirements imposed by the Byrd Anti-Lobbying Amendment and by this Article 17.

C. In addition to complying with all other requirements of the Byrd Anti-Lobbying Amendment, in order to comply fully with the Byrd Anti-Lobbying Amendment for purposes of this Article 17, the Company and each subcontractor and supplier must file one or more certifications as required by 49 CFR Part 20 (entitled "New Restrictions on Lobbying").

1. In addition to all other consequences and implications provided by law for filing such a certification, when a subcontractor files one, the subcontractor is deemed to certify to the Company or subcontractor at the tier immediately above it that the certifying subcontractor has not, and shall not, use any federal funds to pay any person, entity, or organization to influence or attempt to influence an officer or employee of any governmental agency, any member of Congress, any officer or employee of Congress, or any employee of a member of Congress concerning or in connection with any federal contract, federal grant, or any other award covered by the Byrd Anti-Lobbying Amendment.

2. When filing such a certification, the Company and each subcontractor and supplier also shall disclose along with that certification the name of any registrant under the Lobbying Disclosure Act of 1995 who has been paid non-federal funds to make lobbying contacts on the certifier's behalf concerning or in connection with any federal contract, federal grant, or any other award covered by the Byrd Anti-Lobbying Amendment. All of these disclosures shall be made on forms designated by the City. Each subcontractor and supplier shall promptly forward to the Company or subcontractor at the tier immediately above it all such disclosures that the subcontractor or supplier receives from anyone involved in any way in the work under this Contract (e.g., lower-tier subcontractors), and the Company shall promptly provide the City with the Company's own disclosures and with all such disclosures that the Company receives from subcontractors and suppliers.

#### **18. CONTRACT WORK HOURS & SAFETY STANDARDS ACT.**

A. No laborer or mechanic, during any workweek in which he is involved in any way with work under this Contract,

may work more than forty (40) hours unless he is paid at least one and one-half times his base pay rate for all hours over forty (40) that he works during that workweek. The obligations imposed by this Article 18.A shall be referred to as the "Overtime Requirements."

B. The Company shall ensure that the Overtime Requirements are fully satisfied with respect to any individual who performs any part of the work under this Contract, including for example with respect to any such individual who is employed by a subcontractor of any tier.

C. Any violation of the Overtime Requirements by the Company or by any subcontractor or supplier shall be: (1) a material breach of this Contract by the Company and (2) a material breach by that subcontractor or that supplier of its subcontract or its supplier contract.

1. If such a breach happens, in addition to all other remedies provided by this Contract or by the law, the Company and any subcontractor or supplier that violated the Overtime Requirements shall be jointly and severally liable to the laborer or mechanic at issue for all wages that were not paid to that laborer or mechanic in accordance with the Overtime Requirements.

2. If such a breach happens, in addition to all other remedies provided by this Contract or by the law, the Company and any subcontractor or supplier that violated the Overtime Requirements shall be jointly and severally liable to the federal government for liquidated damages. Those liquidated damages shall be computed with respect to each individual laborer or mechanic who was underpaid, including each underpaid watchman and guard, as follows: Ten dollars (\$10.00) for each calendar day that each mechanic or laborer was required or permitted to work more than forty (40) hours during a workweek without being paid in accordance with the Overtime Requirements.

3. Whether or not the federal government asks or instructs the City to do so, the City may withhold (or may cause to be withheld) from any moneys owed to the Company and/or to any subcontractor or supplier that violated the Overtime Requirements such sums that the City determines may be necessary to satisfy any liabilities of the Company and/or that subcontractor or supplier for the unpaid wages and/or for the liquidated damages contemplated by this Article 18. These sums may be withheld from any moneys owed to the Company and/or to that subcontractor or supplier under: (1) this Contract, (2) any subcontract or supplier contract, and/or (3) any other contract or subcontract, under which the compensation to be paid shall be funded at least partially with federal funds.

D. The Company shall ensure that the Company, all subcontractors (of every tier), and all suppliers shall: (i) prepare and maintain complete and accurate payroll records that fully comply with this Article 18 and with all industry standard accounting and employment practices and (ii) maintain all of those payroll records and make them available for inspection and copying as required for Contract Records under Article 2 of these Federal Contracting Requirements.

1. These payroll records must include payroll information for all individuals who perform any of the work under this Contract, including by example for all guards and watchmen who perform any of that work.
2. These payroll records must contain the following information for each employee: (a) his name and address, (b) his social security number, (c) his employment classifications, (d) the hourly or other rates at which he was paid, (e) the number of hours that he worked each day and each week, (f) detailed information about the deductions made from his pay, and (g) the actual wages paid to him.

E. The Company shall allow the City, the FTA, the federal Department of Labor, and any of their agents or representatives to interview during working hours any employees or other personnel who have performed, are performing, or are expected to perform any part of the work under this Contract. The Company also shall ensure that all subcontractors (of every tier) and all suppliers allow such interviews to be conducted.

F. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 18 to ensure that all subcontractors and all suppliers fully comply with this Article 18, the Company shall ensure that all subcontracts (of any tier) for any part of the work under this Contract and all contracts with those supplying any materials, equipment, or other products include provisions requiring each subcontractor and each supplier to fully comply with Article 1.18 of these Federal Contracting Requirements.

#### **19. PROCUREMENT OF RECOVERED MATERIALS.**

A. The Company shall fully comply with Section 6002 of the Solid Waste Disposal Act, as that statute has been amended by the Resource Conservation and Recovery Act and by any other legislation.

B. In addition to taking all other steps necessary and appropriate to satisfy its obligations under Article 19.A of these Federal Contracting Requirements, the Company shall do all of the following:

1. Ensure that, whenever any material or product is procured for or related to this Contract, and that material or product is listed or identified in those Environmental Protection Agency (EPA) regulations in 40 CFR Part 247, the material or item is procured so that it contains the highest

percentage of recovered materials that is practicable while still maintaining a satisfactory level of competition in the procurement process. Except to the extent that Federal Law may otherwise provide, the requirements of this Article 19.B.1 shall apply only where the purchase price of a particular material or product exceeds \$10,000 or where the value of the quantity of that material or product acquired during the preceding fiscal year exceeded \$10,000.

2. Ensure that all solid waste management services used for or in relation to the work under this Contract are procured in a manner that ensures that those services shall maximize energy and resource recovery.
3. Establish an affirmative program for the procurement of recovered materials identified in those Environmental Protection Agency (EPA) regulations in 40 CFR Part 24.

C. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 19 of these Federal Contracting Requirements, the Company shall ensure that all subcontracts (of every tier) and all contracts with those supplying any materials, equipment, or other products include provisions requiring each subcontractor and each supplier to fully comply with this Article 19 to the same extent that the Company must do so and to facilitate, support, and cooperate in the Company's compliance with this Article 19.

#### **20. DHS SEAL, LOGO, AND FLAGS.**

The Company shall not use, and the Company shall ensure that no subcontractor or supplier uses, any Department of Homeland Security ("DHS") seals, logos, crests, or flags, or the likeness of any DHS agency official, without specific, express, and written pre-approval to do so from DHS. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 20 to ensure that all subcontractors and all suppliers fully comply with this Article 20, the Company shall ensure that all subcontracts (of every tier) and all contracts with those supplying any materials, equipment, or other products include provisions requiring each subcontractor and each supplier to fully comply with this Article 20 of these Federal Contracting Requirements.

#### **21. FLY AMERICA.**

A. The Company shall fully comply with Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. §40118, as amended) and those United States General Services Administration regulations entitled "Use of U.S. Flag Air Carriers" that are found at 41 C.F.R. §§ 301-10.131 through 301-10.143 (together, this statute and those regulations shall be referred to as the "Air Travel Requirements").

- B. The Company shall ensure that all subcontractors (of every tier) and all suppliers fully comply with the Air Travel Requirements and with this Article 21 of these Federal Contracting Requirements. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 21.B, the Company shall ensure that all subcontracts (of every tier) and all contracts with those supplying any materials, equipment, or other products include provisions requiring each subcontractor and each supplier to fully comply with this Article 21 and with the Air Travel Requirements.
- C. In addition to taking all other steps necessary and appropriate to fully comply with the Air Travel Requirements, the Company and all subcontractors and suppliers shall use only U.S.-flag air carriers for any international air transportation that is used to transport any person or any property for or in relation to this Contract. The requirements of this Article 21.C shall not apply, however, to the extent that any needed air transportation is not provided by any U.S.-flag air carriers.

## **22. CARGO PREFERENCE.**

- A. Whenever shipping any equipment, material, other product, or other commodity needed for or otherwise related to this Contract, the Company shall use privately owned U.S.-flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers). This requirement, however, shall apply only to the extent that privately-owned U.S.-flag commercial vessels are available for such shipping at fair and reasonable rates for U.S.- flag commercial vessels.
- B. Within twenty (20) days after the date of loading for a shipment originating within the United States, and within thirty (30) days after the date of loading for a shipment originating outside of the United States, the Company shall provide complete and legible copies of a rated, "on-board" commercial ocean bill-of-lading in English for that shipment to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the City (through the Company in the case of a subcontractor's bill-of-lading).
- C. The Company shall ensure that all subcontractors (of every tier) and all suppliers fully comply with the requirements of Article 23.A and Article 23.B of these Federal Contracting Requirements to the same extent that the Company must comply with them. In addition to taking all other necessary and appropriate steps to satisfy its obligations under.

## DBE PROVISIONS AND FORMS

This Attachment is attached and incorporated into the {---Contract Title---} (the "Contract") between the City of Charlotte and {---Vendor Legal Name---} ("---Vendor Reference Name---"). Capitalized terms not defined in this Attachment shall have the meanings assigned to such terms in the Contract. In the event of a conflict between this Attachment and the terms of the main body of the Contract or any other Attachment or appendix, the terms of this Attachment shall govern.

### 1. DISADVANTAGED BUSINESS ENTERPRISE ("DBE") CONTRACT PROVISIONS AND FORMS.

**THE DBE GOAL FOR THIS CONTRACT IS: 0.0%**

**This Contract is subject to the requirements of 49 C.F.R. Part 26**

#### ***Participation by DBE in Department of Transportation Financial Assistance Programs.***

(a) Policy. As a recipient of funds from the Federal Transit Administration ("FTA"), the City has established a Disadvantaged Business Enterprise Program ("DBE Program") in accordance with regulations of the U.S. Department of Transportation ("DOT"), 49 C.F.R. Part 26 and has committed to ensuring compliance on all FTA-funded projects through monitoring, reporting, and goalsetting.

The DBE Program is incorporated into and made a part of the Bidding Documents and resulting Contract.

Copies of the DBE Program may be obtained online at <http://charmeck.org/city/charlotte/cats/about/Business/procurement/Pages/dbesbe.aspx>; under "City of Charlotte's DBE Program (document)" on the [www.ridetransit.org](http://www.ridetransit.org) "Doing Business with CATS as a DBE/SBE" page.

It is the policy of the City to ensure that DBEs, as defined in 49 C.F.R. Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. The City's objectives are as follows:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 C.F.R. Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts; and
6. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

The CATS Civil Rights Officer has been designated as the DBE Liaison Officer ("DBELO"). In that capacity, he/she is responsible for implementing all aspects of the DBE Program. Implementation of the DBE Program is accorded the same priority as compliance with all other

legal obligations incurred by the City in its financial assistance agreements with the DOT.

(b) DBE Assurances. The Contractor and its subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of this DOT-assisted Contract. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the City deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

1. The paragraph above shall be included in each subcontract the Contractor signs with any subcontractor, both DBE or non-DBE subcontractors.

(c) Prompt Payment. The Contractor is required to pay each subcontractor (DBEs and non-DBEs) under this Contract for satisfactory performance of its contract no later than seven (7) days from receipt of each progress payment or final payment the full amount the Contractor receives from the City for each subcontractor's work and materials under the subcontract. Any delay or postponement of payment from the above referenced time frame may result in liquidated damages and/or sanctions as stipulated in Contract Documents. Exceptions may occur only for good cause following written approval by the City. The Contractor is required to return retainage payments to each subcontractor within seven (7) after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City.

1. The paragraphs above apply to both DBE and non-DBE subcontractors.

2. For purposes of this Section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the City. When the City has made incremental acceptance of a portion of the Contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) DBE Goal. **Although the City has not established a DBE goal for this Contract**, DBE firms and small businesses shall have an equal opportunity to participate in this Contract. The Contractor shall adhere to the following:

1. Take affirmative steps to use as many of the race-neutral means of achieving DBE participation identified in 49 CFR 26.51(b) as practicable to afford opportunities to DBEs to participate in this Contract. A race-neutral measure is one that is, or can be, used to assist all small businesses.
2. A DBE firm must perform commercially useful function, i.e. must be responsible for the execution of a distinct element of the work and must carry out its responsibility by performing, managing and supervising the work; and
3. A DBE firm must be certified by NC-DOT before its participation is reportable under paragraph (d) below.

(e) Report to the City. Even though no separate goal has been set for this Contract, the Bidder must submit its proposed DBE (if any) and non-DBE utilization on **LIST OF SUBCONTRACTORS/SUPPLIERS – FORM A** listing **ALL** subcontractors and suppliers that will be providing goods or services under the Contract. This form is to include all subcontractors the Bidder proposes to use, not just the DBE subcontractors (if any). Bidders are required to list the names, contact information, annual gross receipts, age of firm, respective scope of work/service to be performed, NAICS Code, NCDOT Reporting Number, the dollar values of each subcontract that the Bidder proposes for participation in the Contract work, and the dollar value of total DBE participation for the Contract.

**LIST OF SUBCONTRACTORS/SUPPLIERS – FORM A** is attached in this DBE Forms and Provisions Attachment.

Even though no separate goal has been set for this Contract, the Contractor shall report its DBE participation obtained through race-neutral means throughout the period of performance. The Contractor shall submit a monthly report on DBE Participation with each request for payment from the City. Such information shall be provided for both DBE and non-DBE subcontractors on **MONTHLY PAYMENT TO SUBCONTRACTORS/SUPPLIERS –FORM B**. Failure to submit this form with every request for payment will result in delays in payment. The **MONTHLY PAYMENT TO SUBCONTRACTORS/SUPPLIERS – FORM B** is provided on the [CATS DBE Website](#).

(f) Records. On request, the Contractor shall make available for inspection, and assure that its subcontractors make available for inspection:

1. Records of prompt payments made in accordance with paragraph (c) above;
2. The names and addresses of DBE subcontractors, vendors, and suppliers under this Contract;

3. The dollar amount and nature of work of each DBE subcontractor;
4. The social/economic disadvantaged category of the DBE firms, i.e. Black American, Hispanic American, Native American, Subcontinent Asian American, Asian Pacific American, Non-Minority Women, or Other; and
5. Other related materials and information.

(g) The Contractor must promptly notify the City whenever a DBE subcontractor performing work related to this Contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor shall also promptly notify the City of a DBE subcontractor's inability or unwillingness to perform and provide reasonable documentation. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of City.

(h) A directory of DBEs may be accessed at the following website:

<https://partner.ncdot.gov/VendorDirectory/default.html>

#### **INFORMATION**

If you have any questions concerning the required documentation listed above, or concerning the DBE requirements in general, contact:

#### **CATS Civil Rights Officer**

Arlanda Rouse,  
Charlotte Area Transit System  
600 East Fourth Street  
Charlotte, NC 28202  
704-432-2566  
[arouse@charlottenc.gov](mailto:arouse@charlottenc.gov)



**LIST OF SUBCONTRACTORS- FORM A – Continuation**  
**Project DBE and non-DBE Subcontractor / Supplier Utilization Commitment**  
**Federal Disadvantaged Business Opportunity Program.**

**Note:** This **MUST** be submitted with your Bid/Proposal. Make copies as needed.

**If your company failed to meet the DBE Utilization Goal for this Project, you MUST attach documentation of your company's Good Faith Efforts with your Proposal.**

**Company Name:** \_\_\_\_\_ **Project Name:** PROJECT\_NAME\_RFP\_NUMBER

Subcontractor/Supplier's Name & Address	Contact Person	Age of Firm	Description of Work	NAICS Code	NCDOT Reporting #	Total Projected \$	% of Bid Amount
Annual Gross Receipts: <input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Over \$5M							
Annual Gross Receipts: <input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Over \$5M							
Annual Gross Receipts: <input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Over \$5M							
Annual Gross Receipts: <input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Over \$5M							
Annual Gross Receipts: <input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Over \$5M							
Annual Gross Receipts: <input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Over \$5M							
Annual Gross Receipts: <input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Over \$5M							
Annual Gross Receipts: <input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Over \$5M							

**EXHIBIT F – COMMERCIAL NON-DISCRIMINATION CERTIFICATION**

Project: \_\_\_\_\_  
Name of Company \_\_\_\_\_

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

1. In preparing its [Proposal/Bid], the [Company/Bidder] has considered all [proposals/bids] submitted from qualified, potential subcontractors and suppliers, and has not engaged in or condoned discrimination, as defined in Section 2 below.
2. For purposes of this form, discrimination means discrimination in the solicitation, selection, or treatment of any subcontractor, vendor, supplier or commercial customer on the basis of a person's race, color, gender, religion, national origin, ethnicity, age, familial status, sex (including sexual orientation, gender identity and gender expression), veteran status, pregnancy, natural hairstyle or disability, or any otherwise unlawful form of discrimination. Without limiting the foregoing, discrimination also includes retaliating against any person or other entity for reporting any incident of discrimination.”
3. Without limiting any other remedies that the City may have for a false certification, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the City to reject the proposal submitted with this certification and terminate any contract awarded based on such proposal. It shall also constitute a violation of the City’s Commercial Non-Discrimination Ordinance and shall subject the Consultant to any remedies allowed thereunder, including possible disqualification from participating in City contracts for up to two years.
4. As a condition of contracting with the City, the Consultant agrees to promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation and selection of subcontractors in connection with this contract. Failure to maintain or failure to provide such information shall constitute grounds for the City to reject the proposal submitted by the Bidder and terminate any contract awarded on such proposal. It shall also constitute a violation of the City’s Commercial Non-Discrimination Ordinance and shall subject the Consultant to any remedies allowed thereunder.
5. As part of its proposal, the Consultant shall provide to the City a list of all instances within the past ten years where a complaint was filed or pending against the Consultant in a legal or administrative proceeding alleging that the Consultant discriminated against its subcontractors, vendors or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.

**SAMPLE CONTRACT**

6. As a condition of submitting a proposal to the City, the Consultant agrees to comply with the City’s Commercial Non-Discrimination Policy as described in Section 2, Article V of the Charlotte City Code, and consents to be bound by the award of any arbitration conducted thereunder.

By: \_\_\_\_\_  
Signature of Consultant’s Authorized Representative

Title: \_\_\_\_\_

Date: \_\_\_\_\_

SAMPLE

EXHIBIT G – CERTIFICATE OF INSURANCE

SAMPLE

[Insert COI]

SAMPLE