



REQUEST FOR QUALIFICATIONS

**CONSTRUCTION MANAGER-AT-RISK (CMAR) SERVICES
FOR
CHARLOTTE-MECKLENBURG GOVERNMENT CENTER (CMGC) -
ADA IMPLEMENTATION PHASE II**

RFQ# 269-2024-132

DATE ISSUED:

JUNE 20, 2024

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CONSTRUCTION MANAGER-AT-RISK (CMAR) SERVICES
FOR
CHARLOTTE-MECKLENBURG GOVERNMENT CENTER (CMGC) -
ADA IMPLEMENTATION PHASE II

June 20, 2024

Dear Proposer:

The City of Charlotte, located in the state of North Carolina, is now accepting Statement of Qualifications for Construction Manager-at-Risk (CMAR) Services for CMGC ADA Implementation Phase II project. The requirements for submitting a Statement of Qualification (SOQ) are stated in the attached Request for Qualifications (the "RFQ"). Please review them carefully.

The City of Charlotte is using the Bonfire e-Procurement Portal ("Procurement Portal" - <https://charlottenc.bonfirehub.com>) to accept and evaluate proposals for this RFQ. Proposals must be submitted electronically through the Procurement Portal on or before the Due Date in order to be accepted.

A **non-mandatory** Pre-Submittal Conference for the purpose of reviewing the RFQ and answering questions regarding the Services will be held on Tuesday, July 2, 2024, at 1 PM, at the Charlotte-Mecklenburg Government Center, 600 East 4th Street, Charlotte, NC 28202. Refer to the RFQ for additional instructions regarding the Pre-Submittal Conference. While attendance at the Pre-Submittal Conference is not mandatory, all interested Service Provider(s) are encouraged to participate.

Please have a copy of the RFQ available for reviewing during the Pre-Submittal Meeting.

The City is an equal opportunity purchaser.

Sincerely,

Sadia Mujib Khan

Sadia Khan, PE, PhD, Assoc. DBIA
Construction, AES, and Facilities Assistant Procurement Manager
General Services – City Procurement

Checklist for submitting a Proposal:

- Step 1** **Read the document fully.**
- Step 2** Review the solicitation timeline and upcoming events in the Procurement Portal and download copies of any documents if you plan to submit a Proposal.
- Step 3** (Optional) Submit any questions via the Procurement Portal by the deadline(s) noted for the solicitation.
- Step 4** Conduct a thorough review of the Sample Contract. Any exceptions to the Sample Contract must be uploaded in word format (with redlines/tracked changes)
- Step 5** Monitor the Procurement Portal for any addendums and/or responses to questions.

If you plan to submit a Proposal, you must submit all required documents and respond to all questions within the Procurement Portal for the RFQ.

TABLE OF CONTENTS

1	REQUEST FOR QUALIFICATIONS (RFQ) INSTRUCTIONS.....	6
1.1	PUBLIC NOTICE	6
1.2	PROJECT OVERVIEW	6
1.3	RFQ SCHEDULE OF EVENTS AND SOQ SUBMISSION	9
1.4	EVALUATION CRITERIA AND PROCESS.....	10
1.5	SOQ FORMAT	11
1.6	SOQ CONTENT	11
	Cover Letter: General Information.....	11
	Tab 1: Qualifications and Relevant Experience of Firm and Key Team Members in Providing Similar Services for Similar Projects	12
	Tab 2: Success in Meeting Established Schedules and Budgets as Evidenced in Previous Projects	13
	Tab 3: Availability of the Firm and Key Team Members for This Project	13
	Tab 4: Familiarity with Local Conditions, Codes and Practices as Evidenced in Previous Projects	13
	Tab 5: Project Understanding, Methodology and Approach	13
	Tab 6: Charlotte Business INCLUSION Minority, Women, and Small Business (MWSBE) Inclusion Strategy	14
	Tab 7: Required Forms	15
2	REPRESENTATIONS, CONDITIONS, AND OTHER REQUIREMENTS	16
2.1	COMMUNICATIONS	16
2.2	DUTIES AND OBLIGATIONS OF FIRMS IN THE RFQ PROCESS.....	16
2.3	ADDENDA	16
2.4	NO COLLUSION, BRIBERY, LOBBYING OR CONFLICT OF INTEREST	16
2.5	PUBLIC RECORDS	16
2.6	COST OF SOQ PREPARATION	17
2.7	ADVERTISING	17
2.8	VENDOR REGISTRATION WITH CITY OF CHARLOTTE	17
2.9	REGISTRATION WITH SECRETARY OF STATE FOR NORTH CAROLINA; LICENSED GENERAL CONTRACTORS	17
2.10	FINANCIAL CAPACITY; INSURANCE REQUIREMENTS	18
2.11	OWNERSHIP OF WORK PRODUCTS	18
2.12	CITY RIGHTS AND RESERVATIONS	18
2.13	CONTRACT	18
2.14	EQUAL OPPORTUNITY	18
2.15	E-VERIFY CERTIFICATION	19
2.16	FAMILIARITY AND COMPLIANCE WITH LAWS AND ORDINANCES.....	19
2.17	INSURANCE REQUIREMENTS.....	19
2.18	BACKGROUND CHECKS.....	20
2.19	NORTH CAROLINA PROHIBITION ON CONTRACTS WITH COMPANIES THAT INVEST IN IRAN OR BOYCOTT ISRAEL.....	20
2.20	CHARLOTTE BUSINESS INCLUSION	20
	FORM 1 – EXECUTION OF SOQ.....	22
	FORM 2 – SUBCONTRACTOR / SUPPLIER UTILIZATION COMMITMENT	23
	FORM 3 – COMMERCIAL NON-DISCRIMINATION CERTIFICATION	25
	FORM 4 – VENDOR DEBARMENT CERTIFICATION	26
	FORM 5 – BYRD ANTI-LOBBYING CERTIFICATION	27
	FORM 6– REFERENCES.....	28
	FORM 7 – KEY TEAM MEMBER MATRIX	29

EXHIBIT A – SCOPE OF WORK	30
EXHIBIT B – POLICY FOR SUSTAINABLE CITY FACILITIES	34
EXHIBIT C – SAMPLE MWSBE OUTREACH PLAN.....	35
EXHIBIT D – CITY OF CHARLOTTE PRE-QUALIFICATION POLICY FOR CONSTRUCTION PROJECTS.....	38
EXHIBIT E – SAMPLE PRE-CONSTRUCTION CONTRACT	39

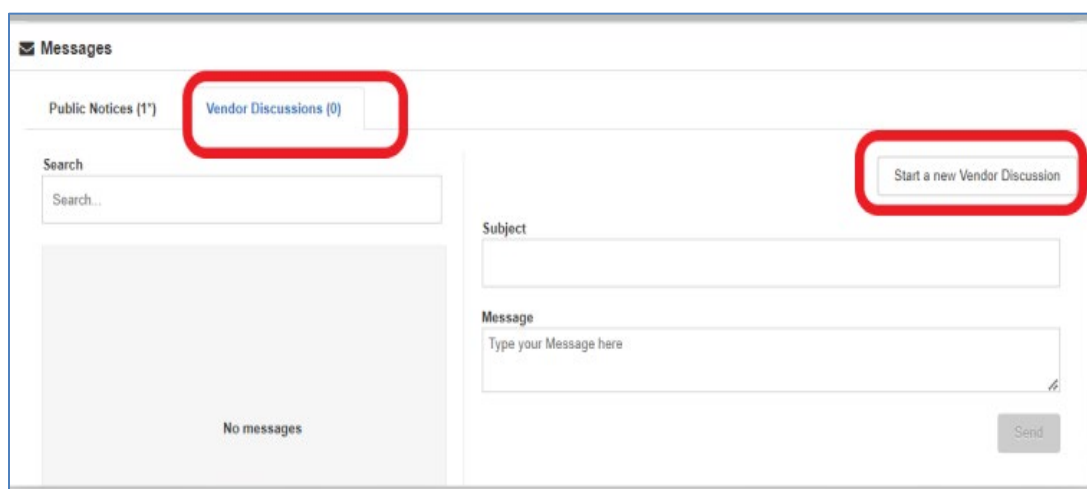
1 REQUEST FOR QUALIFICATIONS (RFQ) INSTRUCTIONS

1.1 Public Notice

This Request for Qualifications (“RFQ”) is issued by the City of Charlotte (“City”) to acquire the services of a Construction Manager-at-Risk (“CMAR” and/or “Proposer”) for the Charlotte-Mecklenburg Government Center (CMGC) ADA Implementation Phase II project (“Project”). The Guaranteed Maximum Price (“GMP”) estimates for this project is \$5,250,000. The City is accepting Statements of Qualifications (“SOQ”) from Firms whose combination of relevant experience and personnel will provide timely professional services to the City for this project.

Information related to this solicitation, including any addenda, will be posted electronically through the Bonfire e-Procurement Portal (“Procurement Portal” - <https://charlottenc.bonfirehub.com>). Questions related to this solicitation must be submitted the following way:

Submit your question via the **Vendor Discussion** section on the [Procurement Portal](#):

A screenshot of the Bonfire e-Procurement Portal interface. At the top, there's a 'Messages' header. Below it, two tabs are visible: 'Public Notices (1*)' and 'Vendor Discussions (0)'. The 'Vendor Discussions (0)' tab is highlighted with a red rectangle. To the right of the tabs, there's a button labeled 'Start a new Vendor Discussion', also highlighted with a red rectangle. Below the tabs, there's a search bar with the placeholder text 'Search...'. To the right of the search bar, there's a 'Subject' input field. Below the subject field, there's a 'Message' input field with the placeholder text 'Type your Message here'. At the bottom right of the message field, there's a 'Send' button. The main content area on the left shows 'No messages'.

1.2 Project Overview

City's ADA Implementation Plan

The City's Americans with Disabilities Act (ADA) Transition Plan (the Plan) is intended to benefit the City of Charlotte in implementing and further establishing a culture of inclusivity for all residents and staff regardless of their ability or disability. The Plan was developed from a 3rd party audit of 1,489 program, services & activities, 241 policies & procedures, and physical, non-conforming barriers in 175 City-owned facilities, including City-leased facilities, with the goal of establishing a City-wide culture of accessibility. Under the Implementation Plan, the City is endeavoring to address the physical, non-conforming barriers identified in the Plan through Design and Construction delivery methods.

Charlotte-Mecklenburg Government Center – ADA Implementation – Phase II

Existing Conditions

The Charlotte-Mecklenburg Government Center (CMGC) and the adjacent parking garage have been identified in the City-wide ADA Transition Plan for Program Implementation (Program).

The City's General Services Department has selected Gensler to provide Architectural and Engineering design services to address the barriers for the facilities. The CMGC facility is an existing 14-story, nominally 440,000 square foot building, located at 600 East 4th Street (parcel ID 12502601) and houses several City & County Departments. The adjacent CMGC Parking Garage (parcel 12502501) is a 5-story concrete deck and serves both the public and employees of the main CMGC facility.

Project Overview

Phase II of this ADA Implementation includes all public and non-public facing spaces of the facilities (with the exception of the Council Chambers) and will resolve the physical, non-conforming ADA barriers identified in the ADA Transition Plan, or as required to meet the City of Charlotte ADA Design Guidelines and the 2010 ADA Standards for Accessible Design.

The CMGC is required to stay open to the public and staff during all phases of the project. Active coordination with tenants, facilities staff, and stakeholders will be critical for the successful completion of this project.

The Estimated Construction Cost for this project is \$5.25M.

More detailed information about the ADA Implementation – Phase II is below:

This project is expected to include the following:

- Bathroom Renovations.
- Exterior Renovations, including the Plaza deck and building access points.
- Removal and relocation of barriers within ADA routes and other spaces.
- Removal, relocation, and adjustment of openings to meet ADA requirements.

Construction Manager-a-Risk (CMAR) Services Overview

In addition to the scope of services in the Exhibit A, the following representative list of services to be provided by the CMAR is for illustrative purposes only and is not intended to be exhaustive or exclusive.

The CMAR is expected to be onboarded at approximately during the Schematic Design phase.

(a) General

The City intends to use the CMAR construction delivery method for the Project. The City proposes to enter a contract with the selected CMAR firm that will include pre-construction services only, with a provision for adding construction services through later acceptance of a Guaranteed Maximum Price (GMP) by subsequent contract amendment or second contract. If a team member carries over to the GMP contract from the pre-construction contract, approved rates from the pre-construction contract are subject to further inspection. The selected CMAR will submit General Conditions/General Requirements to be

included as exhibits for the construction phase contract; the initial submittal will be an estimate and then subsequently paid out as direct costs.

The CMAR shall contract directly with the City for all construction; shall publicly advertise as prescribed in NCGS 143-129; and shall prequalify and accept all bids from first-tier subcontractors for all construction work under this project. The CMAR shall use the prequalification process determined by the City in accordance with NCGS 143-135.8 and City's Prequalification Policy for Construction dated 10/26/2015 (Exhibit – D), provided that the City and the CMAR shall jointly develop the assessment tool and criteria for the specific project, which must include the prequalification scoring and minimum required score for prequalification on the project. The City shall require the CMAR to submit its plan for compliance with NCGS 143-128.2 for approval by the City prior to soliciting bids for the project's first-tier subcontractors.

The CMAR shall provide consulting, scheduling, estimating, and cost control services. The CMAR will collaborate with all members of the Project Team in the assembly of Work Packages to break the Project into tasks and will manage the Work related to the Project. As part of its duties as a general contractor, the CMAR will be responsible for:

- Developing an initial GMP to construct the Project and related work, and amending the GMP during the Preconstruction Phase;
- Performing and delivering the Project to the Project Team within the approved GMP;
- Scheduling, estimating, and performing portions of the Work;
- Recommending optimal construction phasing, if applicable, and sequences; and
- Coordinating and sequencing with all owner-provided vendors.

(b) Preconstruction Phase Services

Preconstruction Phase Services may include, but are not limited to the following (depends on status of the project):

- Collaboration with the Owner, Architect and the Project Team to develop the Project;
- Identification and mitigation of risk through analysis and assessment;
- Developing and updating Project schedules;
- Developing an Interim Life Safety Measures (ILSM) Program;
- Developing detailed cost estimates and transparency of costs for the various design sets that are issued;
- Develop specific studies to understand cost implications of particular design solutions and or material selections;
- Performance of constructability review services;
- Site evaluation and preconstruction planning; and
- Participation in value engineering exercises to maintain the project construction budget in collaboration with the Project Team.

(c) Construction Phase Services

Upon execution of any Early Work Amendment or GMP Amendment, the CMAR shall provide Construction Phase Services as provided in the Contract Documents, including without limitation:

- Collaborate with the Project Team to execute the Project;

- Provide optimum coordination of subcontractors in a fully occupied Government facility throughout the duration of the work; project phasing shall be considered;
- Develop, update, and achieve Project schedules;
- Prequalify subcontract bidders in compliance with NCGS 143-135.8;
- Manage subcontract bidding;
- Provide reporting and Project management of CMAR forces;
- Provide construction management services during construction;
- Implement ILMS Program;
- Develop safety and quality assurance measures;
- Maintain an electronic system for tracking submittals;
- Coordinate, conduct, and document regular construction meetings;
- Reconcile construction contract requirements with the construction budget;
- Obtain permits and inspections;
- Document activities associated with administration, management, and construction of the Project;
- Certify monthly all work in place and approve all subcontractor and vendor payment requests;
- Enforce, monitor, and report on all Charlotte Business INClusion program requirements on a monthly basis;
- Develop means and methods of construction; and
- Coordinate with owner provided vendors.

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.

Advertisement of RFQ:	Thursday, June 20, 2024
Pre-Submittal Meeting (In-Person):	Tuesday, July 2, 2024 at 1 pm (EST) <u>Meeting Location:</u> Charlotte-Mecklenburg Government Center (CMGC), Room # CH-14 at Basement Level. 600 East 4 th Street, Charlotte, NC 28202
Deadline for Questions:	Thursday, July 11, 2024 at 5 pm (EST)
DUE DATE & TIME FOR SUBMITTALS:	Thursday, July 25, 2024 at 2 pm (EST)
Evaluation Meeting:	Wednesday, August 14, 2024
Short Listed Contractor Notification:	Thursday, August 15, 2024
Interviews (if needed):	Between August 19 and August 23, 2024 (dates and times to be determined)
Selection Announcement (anticipated):	August 27, 2024

Attendance at the pre-submittal meeting is not mandatory but is highly recommended.

SOQs shall be submitted electronically through the [Procurement Portal](#). It is the sole responsibility of the firm to ensure that the SOQ package is

uploaded and submitted to the Procurement Portal no later than the established due date and time. SOQs received after the due date and time will not be considered. SOQs submitted by any other means will not be accepted.

1.4 Evaluation Criteria and Process

Firms will not be considered unless the following minimum qualifications are met:

- The firm must have an Experience Modification Rate (“EMR”) average of no greater than 1.0 over the last three years. If the firm is a joint venture company with less than three years of experience, each contributor to the venture must submit evidence of an EMR average of no greater than 1.0 over the last three years; provide verification with the cover letter.
- The firm must have bonding capacity to provide a payment and performance bond for the total cost of the work. A letter from a surety stating that the firm has sufficient bonding capacity must be submitted with the cover letter. The letter should also indicate the grade of the bonding agency.
- The firm must be properly registered with the Office of the Secretary of State of North Carolina.
- The firm shall hold a valid North Carolina General Construction License.
- The firm shall not have any recent or pending litigation with the City.
- The firm shall comply with NCGS §133-1.

The City will appoint an evaluation committee whose responsibilities will include performing technical evaluations of each SOQ and making selection recommendations based on the evaluation criteria provided below.

For the purpose of evaluating and shortlisting submittals, the evaluation criteria will be given the following relative strength:

Criteria		Weight	
		Written SOQ	Interview
1.	Qualifications and experience of firm and key team members in providing similar services for similar projects (Tab 1 of SOQ).	20%	20%
2.	Success in meeting established schedules and budgets, as evidenced in previous projects (Tab 2 of SOQ).	20%	20%
3.	Availability of key team members for this Project (Tab 3 of SOQ).	15%	15%
4.	Familiarity with local conditions, codes and practices, as evidenced in previous projects (Tab 4 of SOQ)	10%	10%
5.	Project understanding, methodology and approach (Tab 5 of SOQ)	20%	20%
6.	Charlotte Business INclusion Outreach Plan and Documentation (Tab 6 of SOQ)	10%	10%

7.	Quality, completeness, readability, organization and clarity of SOQ package or interview	5%	5%
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Evaluations will focus on identifying the relative strengths, weaknesses, deficiencies, and risks associated with each SOQ. The City reserves the right to obtain clarification or additional information from any firm in regards to its SOQ. The City also reserve the right to contact the references provided with the SOQ. Interviews with finalists are anticipated but may be waived at the discretion of the evaluation committee.

The City reserves the sole right to select the most qualified firms(s) based on best overall SOQ (s) that is most advantageous to the City. Firms that submit SOQs will be notified of the selection results. Final approval of any selected firm is subject to the approval of City Council and/or City officials.

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, as required. Interested Firms must submit these materials in PDF format.

SOQs are limited to a maximum of **twenty (20)** numbered pages. Type size should be no smaller than 11 points for narrative sections, but may be reduced for captions, footnotes, etc., while maintaining legibility. Required forms, resumes, covers, sub-tabs and dividers 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 should be arranged as follows:

Cover Letter: General Information

- A. Describe your interest in this Project and the unique advantage your firm and team brings.
- B. Provide a letter from a surety company confirming the Firm's ability to provide bonding for the estimated amount for the Project.
- C. Provide a letter on the letterhead of the firm's insurance company stating the Worker's Compensation Experience Modification Rate (EMR) for the past three years.
- D. Describe any claims, disputes, and/or litigation, currently in process or resolved/settled within the past five (5) years, with the City or with any developer. State the type of project delivery method for each project that resulted in a claim.
- E. Provide a description of the company(ies) 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 to the contract(s) with the City. Include a list of proposed subcontractor(s)

- for Pre-Construction Services, with legal names and contact information, and describe their responsibilities.
- F. List any exceptions to the contract terms and conditions in the sample preconstruction contract attached to this RFQ (Exhibit E).
- G. Provide acknowledgement that your firm shall comply with NCGS §133-1.

Tab 1: Qualifications and Relevant Experience of Firm and Key Team Members in Providing Similar Services for Similar Projects

- A. List a maximum of five (5) most recent and relevant projects, which may include City of Charlotte projects, either currently in progress or complete, as follows:
- List only projects involving the key team members or subcontractors proposed for this Project. When listing key team members involvement on similar projects, list team members place of employment at the time of involvement on similar 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 firm's work, include the contact name, organization, phone, email, address on Form 6;
 - Contract dollar amount and total time period involved;
 - GMP vs. actual cost history;
 - Established Minority, Women, and Small Business (MWSBE) goals vs. final utilization;
 - Discuss the methods, approach and controls used on the project;
 - Discuss approach and methodology for preconstruction cost estimating efforts and value engineering; and
 - Discuss approach for successful incorporation of phased construction with multiple owner-provided vendors and yearlong ongoing events during construction.
- B. Provide an organization chart of all key team members who will be directly involved in providing services, including any first-tier subcontractors, to be assigned specifically to this project. Identify the Project Manager who will be empowered to make decisions for and act on behalf of the firm. Identify any member of the team that is certified as a minority, woman, or small business firm. Please note that City approval will be required if the CMAR desires to replace any subcontractors after they have been approved for the Project.
- C. Describe any previous collaboration(s) between key team members, the responsibilities of each team member during these collaborations, and the project(s) outcome. Cite any significant achievements reached as a result of this collaboration. Discuss the successes of the team collaboration, and any problems encountered and methods used to mitigate issues.

- D. Submit one page resume for each proposed key team member and ensure home office location is identified. Resume should highlight relevant experience, including their role served specific to each project listed. Resumes will not be counted towards the page limit.

Tab 2: Success in Meeting Established Schedules and Budgets as Evidenced in Previous Projects

- A. Describe the firm's and the key team members' past success in meeting established schedules and budgets for major projects as construction manager. Describe the methods, procedures, and policies used to maintain schedules and budgets.

Tab 3: Availability of the Firm and Key Team Members for This Project

- A. Discuss the availability of your key team members, particularly for the next 36 months.
- B. Provide a chart of key team members current and committed assignments, and an indication (in terms of percentage of time) of his/her time commitment to each current or committed assignment and identify whether the individual shall be assigned to the Preconstruction Period and/or Construction Period of the Project, and the percentage of that individual's time to be devoted to the relevant phase. Also, indicate any other projects that these individuals are assigned to currently that would impact their ability to perform their stated role on the Project.

Tab 4: Familiarity with Local Conditions, Codes and Practices as Evidenced in Previous Projects

- A. Discuss your firm's familiarity with local conditions, codes and practices and how these were applied on previous projects.

Tab 5: Project Understanding, Methodology and Approach

- A. Describe the firm's Project Management and Quality Control procedures, processes for performance, and past involvement of these types of projects.
- B. Discuss the firm's management and quality control procedures related to subcontractors.
- C. Preconstruction Services. Describe your capability and approach to providing Preconstruction services, including cost estimating, constructability review, phasing, scheduling, value engineering and other preconstruction planning. With respect to cost estimating during Conceptual Design, Schematic Design, Design Development and Construction Document design phases, describe your experience in providing estimates for projects comparable to the Project, and how those estimates compared to the eventual construction costs or GMPs.
- D. Share your vision of a smooth transition of information from preconstruction team members to construction team members.
- E. Project Procurement. Provide a detailed description of the proposed bid packages and the plan to secure performance on a timely basis. Identify long-lead items and proposed materials that may be difficult or costly to procure and describe your approach to the

management of these procurements. Identify the biggest risks affecting cost-certainty & strategies recommended to reduce these risks.

- F. Project Controls. Describe your approach, methodology, and project management software used for implementing project controls relating to budget and schedule compliance, with examples of your experience in successfully constructing or managing comparable facilities that were constructed within the established budget and fulfilled the defined project program.
- G. Site Logistic Plan. Provide your preliminary site logistic plan generally demonstrating your strategy for completing the Project while describing your firm's approach to Project site safety management.
- H. Construction Changes and Disputes. Describe your Firm's practices and processes in monitoring and managing construction activities and subcontractor performance so as to minimize requests for change orders from the Construction Manager or subcontractors and avoid or mitigate construction related disputes.
- I. Close-out. Provide a detailed description of your process for closing out the Project, specifically addressing the amount of time that you would anticipate for the necessary inspections to confirm Final Completion, and the resources that would be dedicated to the close-out process.
- J. Proposed Form of Estimate of Construction Cost. Please provide the form of estimate of construction cost in the format that your firm would typically provide as part of your preconstruction services.
- K. State of the Industry. Please provide insight on your company's approach to mitigating the current pressures on the construction industry. Provide your specific insights on the following:
 - a. Supply Chain and procurement
 - b. Labor Shortages Escalation

Tab 6: Charlotte Business INclusion Minority, Women, and Small Business (MWSBE) Inclusion Strategy

- A. Please detail MWSBE participation on past, similar projects, including a brief description, established goal, total goal achieved and total number of MWSBE firms utilized.
- B. Describe how your firm plans to comply with the Charlotte Business INclusion (CBI) Program.
- C. Identify outreach efforts that will be employed by the Proposer to maximize inclusion; identify outreach efforts that have already been conducted in connection with this RFQ. A sample outreach plan and criteria are attached with this RFQ under Exhibit C.
- D. Please identify MWSBE firms that will be utilized during the Pre-Construction Phase Services;
- E. Please identify specific scopes of work to be performed by MWSBE firms during Pre-Construction Phase;
- F. Document efforts your firm will utilize to ensure maximum utilization for Construction Phase Services, and

- G. Provide Form 2 – Subcontractor / Supplier Utilization Commitment detailing the MWSBE firms your firm intend to utilize during the pre-construction phase.

For more information on Charlotte Business INclusion please refer to Section 2 of this RFQ.

Tab 7: Required Forms

Forms provided with this RFQ shall be completed and submitted with the SOQ. Required Forms will not be counted towards the page limit. Failure to submit required forms may be grounds for rejection of submission at the sole discretion of the City.

2 REPRESENTATIONS, CONDITIONS, AND OTHER REQUIREMENTS

2.1 Communications

All communication of any nature with respect to this RFQ shall be addressed to the Contracts Administrator identified in this RFQ. With the exception of communications with the Contracts Administrator and Charlotte Business INclusion (CBI) 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 Procurement Portal](#). Any requests for additional information or clarifications should be submitted through the **Vendor Discussion** section on the Procurement Portal or via email 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 must specifically and clearly be identified by separating them from the rest of the Proposal and marked as “Trade Secret – Confidential and Proprietary Information – Do Not Disclose Except for the Purpose of Evaluating this SOQ” on each page of the trade secret

and (b) the document(s) containing the trade secret designations must be uploaded separately in the Procurement Portal.

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 General Contractors

Any firm wishing to be considered for the Services must be properly registered with the Office of the Secretary of State and with the North Carolina Licensing Board for General Contractors 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 North Carolina Licensing Board for General Contractors, 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 (<https://nclbgc.org/laws-regulations/> and/or <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 firm 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:

- **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.
- **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.
- **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.
- **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 Charlotte Business INclusion

Pursuant to Charlotte City Council's adoption of the Charlotte Business INclusion (CBI) Policy, the CBI program seeks to enhance competition and participation of Minority-owned, Women-owned, and Small Business Enterprises (MWSBEs) in City contracting. To accomplish this, the City has examined its procurements and set specific MWSBE participation goals on a contract-by-contract basis. In addition, CBI makes a concerted effort to expand its certified MWSBE vendor pool and assist city-certified firms in growing, enhancing, and developing their businesses. CBI currently offers numerous development programs that support certified businesses in organizational training, strategic development, and networking opportunities.

The CBI Policy and CBI Manual are posted online here: www.charlottebusinessinclusion.com

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-owned, women-owned, and small business suppliers and subconsultants, but also for other subconsultants and suppliers. As a condition for receiving payments under this Contract, the Proposer agrees to submit any payment record into InclusionCLT, or any subsequent system designated by the City, detailing the amounts paid by the Consultant to all subconsultants and suppliers receiving payment in connection with this Contract.

An M/W/SBE goal will be negotiated with the selected firm for the pre-construction services associated with the project.

An MBE and W/SBE construction goal will be established during the pre-construction phase of the project.

The City would like the Company to submit the firms it intends to utilize to meet this goal. Therefore, the Company is required to submit the Form 2– Subcontractor / Supplier Utilization Commitment attached herein. Failure to submit this form with the Proposal shall render the Proposal non-responsive.

In addition to the MWSBE participation plan, we recommend the firm provide a mentoring plan for the MWSBE during the life of the project. The firm would provide documentation on a quarterly basis during the project on the progress of the mentor/protégé partnership.

City certified MWSBE firms can be found in the City’s InclusionCLT system:
<https://charlotte.diversitycompliance.com/>

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

The documentation required in this section shall be submitted with the firm’s Proposal (collectively “Minority, Women & Small Business (MWSBE) Inclusion Strategy”).

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Form 1 – Execution of SOQ

Construction Manager-At-Risk (CMAR) Services for CMGC ADA Implementation **Phase II**

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.

The undersigned acknowledges receipt of the following addenda if any issued (initial next to each addendum number):

1: _____ # 2: _____ # 3: _____ # 4: _____ # 5: _____ # 6: _____ # 7: _____ # 8: _____ # 9: _____

Type of Consultant:

(check 1 box)

☐ **Sole Proprietor**

☐ **Partnership**

☐ **Corporation** _____ *(identify the State of incorporation)*

☐ **Limited Liability Company** _____ *(identify the State of incorporation)*

☐ **Joint Venture**

(if joint venture, complete this "Proposal Submission" sheet for each joint venture company and identify the "Name of Joint Venture" on each sheet)

NAME OF JOINT VENTURE: _____

Company Legal Name: _____

Mailing Address: _____

City/State/Zip: _____

Phone: _____

Email: _____

Printed Name: _____

Title: _____

Signature: _____

Date: _____

Form 2 – Subcontractor / Supplier Utilization Commitment

Page 1 of 2

This form **MUST** be submitted at the time of Bid Opening. *Copy this CBI Form 3 as needed.*
Failure to properly complete and submit Form 3 with the Bid constitutes grounds for rejection of the Bid.

Per Section 3.5 of the CBI Administrative Procedures Manual, the Subcontractor/Supplier Utilization Commitment (**CBI Form 3**), captures information regarding the MWSBEs and other subcontractors and suppliers that the Bidder intends to use on the Contract **FOR ALL TIERS**.

M/W/SBEs must satisfy the requirements of Section 2 of the CBI Administrative Procedures Manual in order to count the work they intend to perform on the contract with its own current workforces towards the Contract Goal, and must list themselves below.

Bidder Name:			
Project Name:	Construction Manager-At-Risk (CMAR) Services for CMGC ADA Implementation Phase II		
MWBE Goal:		MBE Goal:	
MSBE Goal:		WBE Goal:	
MWSBE Goal:		SBE Goal:	

List below all **M/W/SBEs** that you intend to use on this Contract. **NOTE:** You will only receive credit for M/W/SBEs that are currently certified with the City as of the Bid Opening Date.

M/W/SBE Vendor Name	Description of work / materials	NIGP Code

CBI FORM 3: Subcontractor / Supplier Utilization Commitment

List below all **non-M/W/SBEs (subcontractors and suppliers)** that you intend to use on this Contract

Vendor Name	Description of work / materials	NIGP Commodity Code

Version 06-2023

Letters of Intent submitted upon notice from the City

Per Section 3.5 of the CBI Administrative Procedures Manual, within three (3) Business Days after receiving a request from the City (or within such longer time as may be communicated by the City in writing), Bidders must submit a separate Letter of Intent (**CBI Form 4**) for each M/W/SBE listed on **CBI Form 3**. Each Letter of Intent must be executed by both the M/W/SBE and the Bidder. The City shall not count proposed M/W/SBE utilization for which it has not received a Letter of Intent by this deadline. The Bidder is still obligated to pay the M/W/SBE the full amount listed on the Contract with the M/W/SBE regardless of what percentage is actually counted towards the M/W/SBE Goal.

Adding subcontractors or suppliers after submitting this form

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

- You must maintain the level of M/W/SBE participation stated in the Contract throughout the duration of the Contract, except as specifically allowed in Section 5
- If you need to terminate or replace a M/W/SBE, you must comply with Section 5.3
- If the scope of work on the Contract increases, or if you elect to subcontract any portion of work not identified on this form as being subcontracted, then you must comply with Section 5.4
- A Letter of Intent (**CBI Form 4**) must also be submitted for each M/W/SBE you add subsequent to contract award.

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

Pursuant to the City's Vendor Registration Policy, each subcontractor or supplier (non-MBE/SBE, WBEs, SBEs and MBEs) that you use on this contract must be registered in the City's vendor database.

Signature

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

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

Signature of Authorized
Official

Printed Name

Title

Submittal Date

Version 06-2023

Form 3 – Commercial Non-Discrimination Certification

Project Name: Construction Manager-At-Risk (CMAR) Services for CMGC ADA
Consultant's Name: Implementation Phase II

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

1. In preparing its Bid, the Bidder has considered all 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 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”):

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

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

☐ **I hereby certify as stated above:**

(Print Name)

Signature

Title

Date

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

(Print Name)

Signature

Title

Date

Form 5 – Byrd Anti-Lobbying Certification

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

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

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

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

(Print Name)

Company Name

Authorized Signature

Address

Date

City/State/Zip

Form 6- References

RFQ # 269-2024-132 - Construction Manager-At-Risk (CMAR) Services for CMGC ADA Implementation Phase II

Provide references for projects where your firm has provided services of a nature and quality similar to those described herein.

Reference 1	
Company Name	
Contact Name	
Phone Number	
Email	
Reference 2	
Company Name	
Contact Name	
Phone Number	
Email	
Reference 3	
Company Name	
Contact Name	
Phone Number	
Email	
Reference 4	
Company Name	
Contact Name	
Phone Number	
Email	
Reference 5	
Company Name	
Contact Name	
Phone Number	
Email	

Form 7 – Key Team Member Matrix

(Attach additional sheets as necessary)

KEY TEAM MEMBERS	Key Team Member 1	Key Team Member 2	Key Team Member 3
Name			
Professional Certifications/Licenses (include Certification/License #)			
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			
List Notable Projects/Experience			

Exhibit A – Scope of Work

PRECONSTRUCTION SERVICES OVERVIEW

1. Provide preliminary evaluation of the program and Project budget requirements, each in terms of the other. Assist the Owner in achieving mutually agreed upon program and Project budget requirements and other design parameters. Provide cost evaluations of alternative materials and systems.
2. The CMAR shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and CMAR agree on a GMP for the Work.
3. If a cost estimating services is engaged as a Supplemental Service, and a discrepancy exists between the CMAR's cost estimates and the supplemental service cost estimate, the CMAR and the Architect/Owner shall work together to reconcile the cost estimates.
4. Review designs during their development. Advise on site coordination, selection of materials, building systems and equipment and methods of Project delivery and procurement. Provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to cost including, but not limited to, costs of alternative designs or materials, preliminary budgets and possible economies.
5. Provide for the Architect and the Owner's review and acceptance, and periodically update, a Project Schedule that coordinates and integrates the Contractor's services, Owner Provided Vendor's Services, the Architect's services, Owner's responsibilities and ongoing Spectrum Center events and operations; and identify items that affect the Project's timely completion with anticipated construction schedules. Such schedule, and any updates thereto, shall be made using the most current version of Primavera P6 software.
6. Prepare for the Owner's approval a more detailed estimate of Construction Cost, developed for the GMP based upon the 100% Design Development Documents, and a final GMP based upon the Construction Documents. Advise the Owner if it appears that the Construction Cost may exceed the Project budget. Make recommendations for corrective action.
7. Coordinate Contract Documents by consulting with the Architect regarding Drawings and Specifications as they are being prepared and recommending alternative solutions whenever design details affect construction feasibility, cost or schedules.
8. Develop a Project Construction Schedule providing for all major elements such as phasing of construction and times of commencement and completion. Investigate and recommend a schedule for the purchase of materials and equipment requiring long lead time procurement and coordinate the schedule with the early preparation of portions of the Contract Documents.
9. Establish a prequalification process and scoring system with the Owner to prequalify bidders and develop bidders' interest in the Project, following the General Statutes, with a focus on CBI

- inclusion. Establish bidding schedules. Conduct pre-bid conferences, advertisements to familiarize Bidders with the Bidding Documents and with any special systems, materials or methods. Assist the Architect with the receipt of questions from bidders, and with the issuance of Addenda.
10. Receive Bids and prepare bid analysis for final award with recommendations.
 11. Provide recommendations about accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The CMAR shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues, availability of labor and overlapping trade jurisdictions.
 12. Advise on the division of the Project into individual scope of Work packages for various categories of Work and make recommendations as required so that and proper coordination has been provided for phased construction. The CMAR shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.
 13. Develop bidders' interest in the Project. Prepare and submit to the Owner, for review and information, all necessary bidding information, instructions to bidders, bidding forms, special conditions, subcontract agreement forms and other documents to be submitted to bidders, incorporating the Drawings and Specifications as prepared by Architect and including a scope of Work defining what is included in each trade contract bid package.
 14. Prepare, for the Owner, a procurement schedule for items that must be ordered in advance of construction. The CMAR shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions reasonably acceptable to the CMAR. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the CMAR and the CMAR shall thereafter accept responsibility for them.
 15. The CMAR shall comply with all applicable laws during the performance of its preconstruction phase services.
 16. CMAR shall develop and present a specific safety program wherein areas of risk are identified and controls are put in place to mitigate any hazards. CMAR shall establish a safety program for all personnel following guidelines of incident and injury free ("IIF") and adherent to applicable safety regulations, including, without limitation, local, state, regional, and national regulations governing Mecklenburg County, North Carolina.
 17. CMAR shall review the Drawings and Specifications for each bid package to minimize areas of conflict, gaps and overlapping in the Work to be performed by the various trade contractors. Using all methods as are consistent with the Standard of Care, CMAR shall identify in writing any and all areas CMAR reasonably believes have incomplete documentation or less than fully coordinated multi-discipline Work.

18. CMAR shall obtain, in coordination with the Owner and Architect, the building permits for the Work, including Project site development, shoring and excavation, substructure and superstructure and finishing components as sequenced in negotiation with appropriate building department officials and required for the Work. CMAR shall arrange and coordinate other permits, licenses or approvals that are necessary for proper execution and completion of the Work and that are required by Governmental Authorities and customarily obtained by construction contractors in Mecklenburg County, North Carolina.
19. If requested by Owner, CMAR shall provide the materials for presentations or Owner's Documents to any applicable Governmental Authority or other entity as designated by Owner or Project Manager. To the extent applicable, the materials for presentations shall be in the form of site logistics plans, schedules, construction photographs, and other documents in sufficient detail necessary to convey the purpose of the document. The materials shall also be provided in an electronic format that allows the Owner to insert such materials into a Project website or in other electronic communications or social media supporting the Project. The CMAR shall furnish ten sets of all documents produced in connection with the Services at no additional expense to Owner.

SPECIFIC ACTIVITIES

Ongoing Activities

- Attend scheduled Project Team meetings to consult and collaborate with the Owner in developing the Project and establishing early work packages
- Develop detailed cost estimates (construction documents/GMP)
- Analyze design (materials, finishes, equipment) and systems (mechanical, electrical, plumbing, specialty systems, etc.) with regard to cost, schedule, and constructability
- Provide site logistics and construction planning and phasing development. This plan is to be used for common construction operations, allocating space for storage, parking, temporary facilities, and the like for the Project. CMAR shall plan for Owner- approved security procedures to control the common access to and the activities performed on the site.
- Attend City and County permit/approval meetings and assist in permit submission
- Develop and update detailed project schedules
- Provide consultation and input on an ongoing basis as needed
- Develop project specific MWSBE plan
- Risk identification and mitigation through analysis and assessment
- Provide recommendations consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication.

Estimating

- Prepare project construction document cost study at the conclusion of the construction document phase of the project and compare to budget, if needed
- Provide detailed cost and quantity breakdowns of all cost studies
- Provide detailed assumptions, clarifications, and qualifications of all cost studies
- Review construction means, materials, methods, and constructability and provide recommendations in conjunction with each design phase

- Provide schedule for construction in conjunction with the construction documents cost study with appropriate phasing to work, if needed.
- Prepare detailed trade bid packages and bidding procedures
- Development of Guaranteed Maximum Price (GMP) to construct the Project.

Exhibit B – Policy for Sustainable City Facilities

[SEPERATELY NUMBERED PAGES]



Sustainable Facilities Policy

Revision Date Effective: Council adopted on _____

POLICY STATEMENT

The City of Charlotte is committed to operating its buildings and facilities responsibly and sustainably. The City of Charlotte City Council unanimously passed the city's Strategic Energy Action Plan (SEAP) in December 2018. The SEAP is the City's plan to reduce its carbon footprint through a number of actions, including those focused on buildings and energy generation. The Sustainable and Resilient Charlotte resolution states:

“NOW, THEREFORE, BE IT FURTHER RESOLVED that the City of Charlotte will strive to source 100% of its energy use in buildings and fleet from zero carbon sources by 2030.”

In order to meet the goal of the resolution, the SEAP identified five stages to advance the city to a zero carbon future by 2030:

1. Shifting energy demand;
2. Reducing energy consumption;
3. Changing the energy the City consumes away from fossil fuels;
4. Generating energy on-site; and
5. Meeting the remainder through energy purchases.

The revised Sustainable Facilities Policy (SFP) is intended to direct City departments to design, construct, and operate City buildings in a manner aligned with stated 2030 SEAP goals. The focus of this revised policy builds on the elements of the original policy and subsequent updates (*established in 2009, revised in 2016, and revised in 2021*) and incorporates new topic areas that further reduce energy usage, facilitate more renewable energy generation and use on-site, prepare for growth in electric vehicle (EV) use, and provide a mechanism by which progress toward the 2030 zero carbon buildings goal can be regularly and accurately measured.

The revised SFP is organized into the following sections:

- I. Overview
- II. New Construction & Renovation
- III. Operations & Maintenance

- IV. Reporting & Certifications
- V. Exceptions & Compliance
- VI. Definitions

Technical details supporting specific policy elements have been included in a supplemental SFP Guidance Document. Compliance with the SFP necessarily means compliance with the SFP Guidance Document. Note that federal and state regulations supersede the provisions of this policy in the event of a conflict.

POLICY

I. Overview:

- 1) This Policy shall be guided by the City's sustainability priorities and the relevant goals of the SEAP, including:
 - a. Development of Smart Data Approaches
 - b. 100% Zero Carbon Municipal Buildings by 2030
 - c. 100% Zero Carbon City Fleet by 2030
 - d. Facilitating the Rapid Uptake of Sustainable Modes of Transportation
 - e. Development of a Green Workforce Pipeline in Support of Energy Transition
- 2) This Policy encourages any staff member with facility construction and/or renovation responsibilities to pursue the LEED Green Associate credential or other relevant credentials in the area of sustainable facilities. This Policy encourages any staff member with facilities operations and maintenance responsibilities to pursue relevant credentials in the area of energy efficient building operations, specifically encouraging pursuit of a Professional Energy Manager (PEM) certification.
- 3) The SFP will be reviewed annually to determine the need for revisions due to changes in Council's sustainability priorities or goals, the availability of tools for designing sustainable facilities, the roles prescribed by the SFP, and other relevant factors. The SFP Guidance Document will also be reviewed and revised as needed to ensure the intent of the SFP is accurately reflected within operational considerations and measures.
- 4) The SFP includes a substantive focus on building performance benchmarking, reporting, and goal tracking. As such, the SFP also includes elements that standardize creation and collection of building attribute data and ensures the data is accurately maintained.
- 5) This Policy allows for exemptions if compliance with one or more policies is demonstrated as uniquely cost prohibitive, however value-engineering that would increase the energy usage of the building is strongly discouraged. Requests for exemptions shall be made following guidance in *Section V: Exceptions and Compliance*.

II. New Construction & Major Renovations

- 1) All City-owned and City-managed new construction and major renovation of regularly occupied building projects (*see Section VI: Definitions, for what qualifies as a major*

renovation) will be designed and constructed to be formally LEED certified as well as achieve Designed to Earn ENERGY STAR® Certification (*where applicable*). Green Globes Certification is an acceptable substitute for LEED. Refer to *Section V: Exceptions and Compliance* for details on documentation submission requirements for project teams pursuing LEED/Green Globes certification as well as details on how project teams can seek exemptions from LEED/Green Globes certification.

- 2) Commissioning is required for all new construction projects and must include commissioning of mechanical, electrical, plumbing, building envelope, and renewable energy systems in the scope. Refer to *Section V: Exceptions and Compliance* for commissioning submittal requirements.
- 3) This Policy shall emphasize a site location and selection process that considers the adaptive re-use of existing City-owned and community resources (existing structures, available infrastructure, and brownfield/grayfield real properties) over the development of new facilities/structures and the development of greenfield sites. Project teams must also look for opportunities to co-locate facilities in an effort to minimize land disturbance. Project teams should seek innovation points for site selection and co-location if pursuing LEED or Green Globes certification.
- 4) All new construction and building addition projects for regularly occupied facilities and spaces > 5,000 square feet (*and also are 'opted in' to the Duke Energy EE Rider*) as well as all major renovation projects (*refer to Section VII: Definitions*) involving gutting and equipment replacement must utilize the Energy Design Assistance services offered by Duke Energy (or comparable program if Duke Energy's offering changes). Refer to *Section V: Exceptions and Compliance* for details on complying with this policy element.
- 5) Employee and municipal fleet vehicle parking areas of newly constructed facilities as well as qualifying renovation projects are required to provide electrical vehicle supply equipment (EVSE) infrastructure at a level consistent with our municipal fleet transition to electric vehicles and the anticipated 2040 EV market. Qualifying renovation projects are any capital projects where parking spaces are added or where >50% of the existing parking spaces are being repaved. Public parking spaces at municipal facilities are exempt from this policy requirement.
- 6) All new construction projects for buildings >5,000 square feet as well as all roof replacement projects on buildings of the same minimum size requirements must install cool roofs and include an on-site solar photovoltaic (PV) energy system as part of the capital project scope, so long as the inclusion of solar PV energy system has a net present value (NPV) at least 15% below the initial investment. For instances that an on-site solar PV energy system does not meet the NPV requirement, then the project must, at a minimum, scope the project such that the facility is deemed 'solar ready' upon completion of the project.
- 7) To maximize the amount of solar energy used on site and to reduce the facility's peak demand, all new construction projects that are installing an on-site solar PV energy system per *Section II.6* above, shall also include energy storage system as part of the capital project scope, so long as the inclusion of the energy storage system has an NPV greater than or equal to zero.

- 8) All new construction projects for regularly occupied buildings will be required to:
 - a. Be all electric. Except for emergency backup generation, all equipment used in the facility shall be powered by electricity. Combustion of carbon-emitting fuel on site shall not be permitted. This includes, but is not limited to, space conditioning, water heating, cooking appliances, and clothes dryers.
 - b. Where site conditions permit, utilize geothermal systems for heating and/or cooling.
 - c. Include building automation systems(s) to provide visibility and control over the building's systems.
 - d. Conduct a preliminary feasibility and cost analysis to determine if net zero energy use can be achieved within the site parameters.
 - e. Seek to obtain the LEED Environmental Product Declarations (EPD) credit.
- 9) To reduce energy use associated with plug and process loads (PPL) through the automatic control of a portion of the circuits that serve plug loads, a minimum of 50% of circuits serving convenience receptacles shall meet the requirements specified in the Plug Load Management Requirements detailed within the SFP Guidance Document. Facilities that operate 24/7 must implement PPL control minimums for that building's load profile.
- 10) Concrete or other "Smart" surfaces shall be used when constructing site amenities like parking in new construction projects. When existing site amenities are renovated (i.e. repaving), "Smart" surface materials will be considered and utilized if sufficient funding is available.
- 11) For regularly occupied facilities that meet the Bicycle Network requirement of the LEED Bicycle Facilities credit, new construction projects shall pursue the LEED Bicycle Facilities credit and major renovation projects shall seek to meet the LEED Bicycle Facilities credit's intent.

III. Operations & Maintenance

- 1) This Policy advocates a "Fix-it-First" focus when addressing repair and replacement of existing equipment and systems in occupied facilities, in accordance with the City's Capital Investment Plan (CIP) Program Policies for developing and implementing the CIP. This allows the City to meet energy reduction and sustainability goals while minimizing the need to build new facilities.
- 2) All regularly occupied City-owned and City-managed buildings are required to benchmark their energy use intensity (EUI). Benchmarking updates must be made by the end of Q4 each fiscal year. Requests for exceptions shall be made following guidance in *Section V: Exceptions and Compliance*.
- 3) On an annual cycle, the City will utilize the benchmarking outcomes to (1) identify the least energy efficient facilities and the facilities with the largest potential for carbon reduction, and (2) take data-driven steps to address energy inefficiencies. A *Focus on Efficiency* report will be prepared each fiscal year that highlights the bottom quartile of buildings based on energy performance. Then each building in the bottom quartile will be reviewed and assigned to one of three action categories: (1) Retro-Commissioning, (2) Capital Project Integration, or (3) Deferred Action.

- 4) An electrification analysis shall be completed for all Heating, Ventilation, and Air Conditioning (HVAC) and water heater replacement projects anticipated for design/construction over the next three fiscal years. Electrification of these systems shall occur when the results of the system analysis meet the requirements set forth in the SFP Guidance Document.
- 5) For all City-owned and City-managed buildings, temperature set points will be standardized and set according to the ANSI/ASHRAE Standard 55 (Thermal Environmental Conditions for Human Occupancy) and within the range of temperature control as provided by OSHA and the U.S. Department of Labor.
- 6) The use of space heaters is prohibited. Space heaters are prohibited due to the fact that the devices:
 - a. Are a fire hazard,
 - b. Have power demand that causes problems with the electrical circuits which may lead to damage to computers and other equipment, and
 - c. Waste energy and work against building HVAC systems.

Facilities Management will provide (where deemed necessary) approved space heaters only in those limited instances where the building systems cannot provide temperatures within acceptable variation of the ranges stated above. All other space heaters and/or portable A/C units in any other spaces are subject to removal by the Fire Marshall, Environmental Health & Safety, or Facilities Management. Energy efficient table or pedestal fans are permitted and considered acceptable.

- 7) Personal-type appliances are not to be used in areas that are not considered as ‘common areas.’ ‘Common areas’ are those reasonably designated by the Director/Department Head or Division Head as ones which serve a group of people in the building. Examples include conference rooms, break rooms, kitchens, work areas, and lounges. Personal-type appliances that are affected, include but are not limited to:
 - a. Coffee makers
 - b. Refrigerators (mini-fridges)
 - c. Toaster ovens
 - d. Microwaves

Personal-type appliances for legitimate medical needs such as nursing mothers and those individuals with prescribed medications requiring refrigeration are exempt from this requirement.

IV. Reporting and Certifications

- 1) The Office of Sustainability & Resilience will publish an annual benchmarking report that discloses building energy performance publicly.

V. Exceptions and Compliance

1) Exceptions

- a. LEED/Green Globes Certification
 - Relevant Department head(s) in collaboration with the project management team may request consideration of an exemption. If an exemption is granted, the design and project management team is expected to include as many sustainable features as possible and must submit a LEED or Green Globes scorecard indicating the sustainable features included.
 - Departments may request consideration and approval of the use of an alternative rating system to LEED or Green Globes, if appropriate.
- b. Temperature Set Points
 - Requests for exemptions from this policy must be submitted as described below:
 - Temporary (≤ 1 week) set point adjustments require approval by the relevant building facilities manager.
 - Longer-term (≥ 1 week) set point adjustments require approval by the relevant Assistant City Manager.
 - Permanent set point adjustment requests require approval by the City Manager.
- c. Solar PV and Solar PV Ready Roofs
 - Projects where solar PV system installations are not feasible due to structural roof constraints or applicable regulations/governing agencies (such as the FAA or other environmental regs) are exempt from this policy. Project managers for exempted projects must document evidence supporting this exemption.
 - Roof replacement projects on buildings scheduled to be demolished in less than 10 years are exempt from this policy requirement.
- d. Building Performance Benchmarking
 - Requests for exceptions to building performance benchmarking, including requests for the use of alternative performance metrics, must be submitted to the Sustainable Facilities Oversight Team.
- e. New Facilities Constructed as All Electric
 - Exceptions may be granted for industrial processes and equipment essential to the operation of the facility for which there is not an electric powered alternative. Requests for such exceptions must be submitted to the Sustainable Facilities Oversight Team during the initial planning of the facility.

2) Compliance

- a. Duke Energy Design Assistance Program (or comparable program if Duke Energy's offering changes)
 - Copies of the final Bundle Requirements Document prepared by Duke Energy contractors through the Energy Design Assistance program must be shared with the Sustainable Facilities Oversight Team.
- b. Commissioning
 - Project teams must submit final reports of the project's Commissioning Agent to the Sustainable Facilities Oversight Team.

c. Annual Benchmarking Report

- Each year an annual benchmarking report is required that contains, at a minimum:
 - Comparisons of City buildings to relevant national EPA ENERGY STAR® benchmarking averages,
 - Year over year changes in building energy performance,
 - Breakout of percentage of total energy consumption by building classification type, and
 - Energy efficiency project highlights.

d. Uniquely Cost Prohibitive

- Projects claiming a uniquely cost prohibitive exemption must submit evidence demonstrating a >15% cost premium for SFP compliance.

VI. Definitions

Benchmarking: A method used to determine whether a building is using more or less energy than its peer facilities with similar occupancies, climates, and sizes. Benchmarking is done by taking a buildings total energy use and dividing by the building's total area. This number is frequently referred to as the Energy Usage Intensity or EUI, is then compared to buildings of the same use type to determine how efficiently the building is utilizing energy.

Bicycle Network: As defined by USGBC: a continuous network consisting of any combination of the following 1) off-street bicycle paths or trails at least 8 feet wide for a two-way path and at least 5 feet wide for a one-way path 2) physically designated on-street bicycle lanes at least 5 feet wide 3) streets designed for a target speed of 25 mph or less.

City-owned and/or managed: Facilities owned and/or managed by the City.

Designed to Earn ENERGY STAR®: Recognizes a design project that meets strict EPA criteria for estimated energy performance. It signifies that, once built, the building is poised to achieve top energy performance and will be eligible to earn ENERGY STAR® certification.

Electric Vehicle Supply Equipment (EVSE): Electric vehicle supply equipment (EVSE) supplies electricity to an electric vehicle (EV). Commonly called charging stations or charging docks, they provide electric power to the vehicle and use that to recharge the vehicle's batteries. EVSE systems include the electrical conductors, related equipment, software, and communications protocols that deliver energy efficiently and safely to the vehicle.

Energy Audit: An inspection survey and an analysis of energy flows for energy conservation in a building. It may include a process or system to reduce the amount of energy input into the system without negatively affecting the output. An energy audit is the first step in identifying opportunities to reduce energy expense and carbon footprint.

ENERGY STAR® Certification: Recognizes an existing building that meets strict EPA criteria for estimated energy performance. It signifies the building achieves top energy performance.

Facilities Manager: The designated person at each City building who is responsible for submitting maintenance work orders.

LEED (Leadership in Energy and Environmental Design): Consensus based generalized point rating system for locating, designing, constructing, operating and certifying sustainable

buildings. Rating system addresses environmental predetermined categories that include sustainable sites, water efficiency, energy & atmosphere, materials & resources, indoor environmental quality, and design and process innovation.

Major Renovation: Extensive alteration work in addition to work on the exterior shell of the building and/or primary structural components and/or the core and peripheral mechanical, electrical, and plumbing and service systems and/or site work. A project shall be considered a major renovation when the project work includes at least 2 of the following: HVAC, roof replacement, 50% or more of gross floor area, 50% or more of lighting fixtures, or 50% or more of the building's exterior wall envelope. See guidance document for specific exceptions.

Net Present Value (NPV): Net present value (NPV) is the difference between the present value of cash inflows and the present value of cash outflows over a period of time. NPV is used in capital budgeting and investment planning to analyze the profitability of a projected investment or project. The SFP Guidance Document will specify the cash flows to be included on applicable projects including, but not limited to, rebates, grants, and other incentives.

New Construction: City-owned buildings and facilities that are to be planned and constructed on a new or existing site, including, but not limited to, new office, arena, and fire and police stations.

Occupied facility/space: A facility or enclosed space providing for human activity on a regular basis, including parking decks.

Retro-commissioning: the application of the commissioning process to existing buildings. Retro-commissioning is a process that seeks to improve how building equipment and systems function together. Depending on the age of the building, retro-commissioning can often resolve problems that occurred during design or construction, or address problems that have developed throughout the building's life. In all, retro-commissioning improves a building's operations and maintenance procedures to enhance overall building performance. Retro-commissioning work should follow ASHRAE Guideline 0.2-2015, Commissioning Process for Existing Building Systems and Assemblies.

Uniquely Cost Prohibitive: A cost premium greater than 15% of the total project budget due to the inclusion of sustainable features and associated design fees per certification of new and existing facilities. The cost premium calculation shall include the Total Cost of Ownership of the sustainable features. Cost premiums can occur due to site constraints, building or zoning regulations, or other unique conditions that cannot be reasonably overcome.

Exhibit C – Sample MWSBE Outreach Plan

Sample Outreach Plan

Public Media Announcement

Place an ad in local news papers to announce award and express firm's commitment to local and diverse contracting opportunities for this project

Timeline: ASAP after selection announcement

Outreach Event - MWSBE Community Meet & Greet

In person event to the MWSBE contractor community to learn more about the project, project timelines and give MWSBE Firms the opportunity to meet the project team.

Timeline: Month/year (early in project, prior to bid opening)

MSBE Community Bidding Class

Firm will present & host a series of bidding workshops utilizing local community partnerships & membership in professional associations and engage CBI certified firms on the bidding process for the project.

Timeline: (prior to bid opening)

- Class One (Community Partner) (Date)
- Class Two (Professional Organization) (Date)

Firm Breakdown of Bid Packages & Compliance Overview

Selected Firm will coordinate & host a project scope review meeting to identify package breakdown opportunities. This meeting is internal to project team and owners only and intended to maximize MWSBE participation.

Timeline: Month, Year (prior to bid opening)

Outreach Event – Project Kick Off

Meet the Project Team, provide detailed project description, timeline for solicitation & bid opening, introduction of CBI requirements to interested bidders, package descriptions, Q&A.

Timeline: Month, Year (prior to bid opening)

Outreach Event: First Tier – Second Tier Matchmaking

Introduce first tier subcontractors to potential second tier CBI certified vendors. Mandatory for first tier subcontractors.

Timeline (after bid opening; prior to bid day)

Open Office Hours - Bid Compliance

Leading up to bid day, open office hours for bidders with the option to review required documents/CBI forms for compliance. (Not a review of the bid / bid budget)

Timeline: multiple dates, 0-21 days prior to bid day

MWSBE Partner Orientation

Selected Firm will host a MWSBE Partner Trade Orientation to focused on "how to be successful on the job; confirm project contacts; requirements/expectations; resources available on jobsite; etc.

Timeline: after subcontractor selection; prior to project start date

Opportunity to be included in Private Partner Programs

If selected firm has a Supplier Diversity Program &/or Resources available for Diverse Suppliers, CBI vendors would be given the opportunity to be included. Examples include: Educational Opportunities (Contractor Development Programs); Workforce Development Opportunities etc.

Sample MWSBE Outreach Plan Components

Define Participation Plan Goal	Examples i. <i>Maximize Utilization & Inclusion of MWSBE Firms</i> ii. <i>Commitment to MWSBE firm Growth & Development</i>
Define Target MWSBE Market	Example i. <i>Charlotte Region MWSBE firms</i>
Community Partner Engagement	Identify potential community partners i. <i>CLT can provide assistance in identifying potential community partners</i>
Communication Methods that will be used to inform target audience about upcoming opportunities.	Examples: i. <i>Project Website or Page to list Subcontracting Opportunities</i> ii. <i>Email Blasts to potential subcontractors</i> iii. <i>Social Media posts</i> iv. <i>News & Trade Journals</i>
Outreach Events	Examples: i. <i>Meet & Great Outreach Meeting</i> ii. <i>Bidding Class to assist MWBE Firms interested in submitting a bid</i> iii. <i>Bid Package Review– to review project scope & identify opportunities to breakdown packages in scope</i> iv. <i>MSWBE Firms & Subcontractor Matchmaking – host meet and greet to introduce MWSBE firms with established subcontractors</i>
Communication/Outreach Calendar	Commitment to creating a calendar to schedule these meetings if selected

Exhibit D – City of Charlotte Pre-qualification Policy for Construction Projects

[SEPERATELY NUMBERED PAGES]

CITY OF CHARLOTTE

PREQUALIFICATION POLICY FOR BIDDERS ON CONSTRUCTION PROJECTS

(October 26, 2015)

A. General

This Prequalification Policy is in effect for all prequalification of bidders on construction or repair projects let by the City. The Prequalification Policy applies to separate-prime, single-prime and dual bidding delivery methods and to first-tier subcontractors under construction management at risk contracts. The City is not required to prequalify bidders for a particular project, however, a bidder shall not be allowed to submit a bid on a construction project subject to prequalification unless the bidder has been prequalified in accordance with the Prequalification Policy. The prequalification of a bidder shall not preclude the City from subsequently concluding that the bidder is not the lowest responsible, responsive bidder under applicable law. Prequalification of a bidder for a project shall only apply to the individual project. The City designates the Contracts Officers Community of Practice (COCOP) group to administer the Prequalification Policy.

All construction and repair contracts shall be awarded to the lowest responsive and responsible bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract. Prequalification is prohibited for contracts for architectural, engineering, surveying, construction management at risk services, design-build services, and public-private partnership construction services.

B. Governing Law (Session Law 2014-42; N.C. Gen. Stat. §143-135.8)

The prequalification law requires the governing body of the governmental entity to “adopt an objective prequalification policy applicable to all construction or repair work prior to the advertisement of the contract for which the governmental entity intends to prequalify bidders.” This Council-adopted policy satisfies this requirement for the City. Specifically, prequalification is defined as, “a process of evaluating and determining whether potential bidders have the skill, judgment, integrity, sufficient financial resources, and ability necessary to the faithful performance of a contract for construction or repair work.” If the City opts to prequalify bidders, bids submitted by any bidder not prequalified shall be deemed nonresponsive and shall be rejected accordingly.

Pursuant to G.S. 143-128.1, a construction manager at risk under contract with the City shall use the process outlined in this Prequalification Policy for prequalification and acceptance of bids of first-tier subcontractors. The construction manager at risk and the City shall jointly develop the assessment tool and criteria for that specific project, including the prequalification scoring values and minimum required score for prequalification on that project.

C. Requirements for Prequalification Criteria Form and Assessment

1. Uniform, consistent, and transparent in its application to all bidders.
2. All bidders who meet the prequalification criteria to be prequalified are allowed to bid on the construction or repair work project.

3. Criteria must be rationally related to construction or repair work.
4. The bidder is not required to have been previously awarded a construction or repair project by the City.
5. Bidders are permitted to submit history or experience with projects of similar size, scope or complexity.
6. Assessment process of prequalification is stated in this policy.
7. A process for a denied bidder to protest is stated below in this policy.
8. A process for notifying a denied prequalified bidder is stated below in this policy.

D. Application Process

1. **Prequalification Committee** – The City department administering the project, and construction manager at risk when utilized, shall agree upon the members of the project’s prequalification committee. The project prequalification committee will review and score prequalification applications submitted by bidders and will determine whether each bidder is prequalified for the project.
2. **Review of Application** – The prequalification committee shall use objective assessment criteria and a prequalification application developed for the project. The prequalification application shall, at a minimum, include the following assessment criteria: organizational structure; classification; project-specific experience; financial history; litigation/claims; capacity; and legal authorization. The prequalification committee shall approve or deny applications in accordance with the assessment criteria and scoring system established for the project.
3. **Notice of Decision** – All bidders that submitted prequalification applications shall be promptly notified by e-mail of the prequalification committee’s decision. Notices of denial should include an explanation for the denial. Notices of decision shall be sent within three (3) business days of the prequalification committee’s decision.

E. Appeals Procedure

1. **Appeal** – A bidder denied prequalification may protest the prequalification committee’s decision by filing a written appeal via hand-delivery or e-mail to the City department head administering the project or his/her designee (Appeal Representative) within three (3) business days of receiving the notice of decision that the bidder has been denied prequalification. The Appeal Representative shall not be a member of the prequalification committee. The date of receipt of the notice of decision shall be deemed to be the date the notice of decision was emailed to the bidder.

The written appeal shall clearly articulate the reasons why the bidder is contesting the denial (i.e., explains how the bidder satisfied all assessment criteria in its prequalification application) and attach all documents supporting the bidder’s appeal. The Appeal Representative may contact the bidder for additional information prior to ruling on the appeal, but is not required to do so. The Appeal Representative must notify the denied bidder of his/her final decision on the appeal in writing before the advertisement of the project. In the event the Appeal Representative is unable to review the appeal within this timeframe, he/she may designate another Appeal Representative who is not a member of the prequalification committee to decide the appeal. If the Appeal Representative is satisfied that the bidder

should be prequalified, the bidder shall be notified via email that it is prequalified to bid on the project and allowed to participate in the bid process. If the Appeal Representative upholds its denial, the bidder shall be promptly notified in writing via e-mail.

2. **Decision on Appeal** – The decision of the Appeal Representative on the appeal shall be final, and the bidder shall be promptly notified of the decision via email.
3. **General Rules for Protests and Appeals** – Bidders submitting prequalification applications shall be provided an e-mail address for communication with the City and/or construction manager at risk during the appeal process. The bidder shall provide at least two (2) e-mail addresses for use by the City and/or construction manager at risk in communicating decisions regarding an appeal with the bidder. In the event the Appeal Representative is unable to render a decision on the appeal prior to the advertisement date, the bidder shall be allowed to submit a bid on the project subject to a final decision on the appeal. Bids received from bidders who have been disqualified shall not be opened and shall be returned to the bidder. A bidder's failure to comply with any requirements of the appeals procedures under this Prequalification Policy shall result in the bidder's appeal being denied.

CERTIFICATION

I, Emily A. Kunze, Deputy City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of the City of Charlotte Prequalification Policy for Bidders on Construction Projects, adopted by the City Council of Charlotte, North Carolina, in regular session convened on the 26th day of October, 2015, the reference having been made in Minute Book 139.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the 26th day of October, 2015.



A handwritten signature in cursive script that reads 'Emily A. Kunze'.

Emily A. Kunze, Deputy City Clerk

Exhibit E – Sample Pre-Construction Contract

CONTRACT NUMBER: _____

AWARD DATE: _____

EXPIRATION DATE: _____



**CONTRACT FOR CONSTRUCTION MANAGER AT RISK
PRECONSTRUCTION SERVICES**

PROJECT:

Charlotte-Mecklenburg Government Center (CMGC) ADA Implementation Phase II
Construction Manager-At-Risk (CMAR)
Pre-Construction Phase Services

OWNER:

City of Charlotte

CONSTRUCTION MANAGER AT RISK:

This CONTRACT made and entered into this _____ day of _____, 2024 ("Effective Date"), by and between the CITY OF CHARLOTTE, a North Carolina municipal corporation, hereinafter referred to as the "City", and [COMPANY NAME] authorized to do business in North Carolina, with a principal place of business located in North Carolina, hereinafter referred to as the Construction Manager at Risk ("CMAR").

GENERAL RECITALS

WHEREAS, the City advertised a Request for Qualifications RFQ 269-2024-132 for Construction Manager-At-Risk (CMAR) Services for the Charlotte-Mecklenburg Government Center (CMGC) ADA Implementation Phase II (the "Project") on June 20, 2024;

WHEREAS, [COMPANY NAME] submitted a Statement of Qualifications in response to the RFQ;

WHEREAS, the City desires to engage [COMPANY NAME] to provide CMAR Pre-Construction Phase Services for the Project as outlined hereinafter upon the terms and conditions as set out herein;

WHEREAS, [COMPANY NAME] desires to provide such CMAR 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 CMAR 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

1. 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 A-1: The Services
- EXHIBIT B: Project Schedule
- EXHIBIT C: Fee/Cost Breakdown
- EXHIBIT D: Key Personnel
- EXHIBIT E: Charlotte Business INclusion Program
- EXHIBIT F: Commercial Non-Discrimination Certification
- EXHIBIT G: Certificate of Insurance

2. 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.

ADDITIONAL SERVICES, to be included as an ALLOWANCE in the Contract, refers to those additional services that are performed by or under the direction of Architect at the request of City pursuant to an Amendment Directive.

AMENDMENT refers to a written order of City for the provision of additional services by Architect.

AMENDMENT DIRECTIVE refers to a written request executed by City delivered to Architect authorizing Architect to perform additional services.

BASIC SERVICES refers to the Services (excluding Additional Services) to be performed by, or under the direction of, CMAR pursuant to this Contract, including but not limited to those services described in Section 3 and Exhibit A, to be performed by the CMAR and CMAR's Consultants.

CONSTRUCTION MANAGER AT RISK refers to the Construction Manager at Risk engaged by City to construct the Project.

CONTRACT refers to this written agreement executed by the City and the CMAR 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 best interests of the City for this Project.

CMAR PROJECT MANAGER refers to the specified CMAR employee representing the best interests of the CMAR for this Project.

DELIVERABLES refer to all tasks, reports, information, estimates, schedules, documents, services and other items, which the CMAR is required to complete and deliver to the City in connection with this Contract.

DEPARTMENT refers to a department within the City of Charlotte.

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 CMAR or its subcontractors, including without limitation all end user manuals, training manuals, guides, program listing, data models, flow charts, logic diagrams, and other materials related to or for use with the Deliverables or Services.

EFFECTIVE DATE refers to the date this Contract is fully executed by all parties to the Contract.

GOVERNMENTAL AUTHORITIES refers to any and all federal, state, county and city governments, and quasi-governmental authorities, including but not limited to the City (in its regulatory capacity), all agencies, subdivisions and special purpose districts thereof, having jurisdiction over the development, design and construction of the Project, or governmental authorities or special purpose districts.

GUARANTEED MAXIMUM PRICE (GMP) refers to the “Guaranteed Maximum Price” that will be set forth in the construction phase of this Project.

PROJECT BUDGET refers to the costs for the Project as set and approved by City Council, which is an amount not to exceed \$TBD for the Project.

SERVICES refer to the services or preconstruction scope of work to be performed by the CMAR 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 CMAR 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, estimates, schedule and items developed by the CMAR in connection with this Contract, and all partial, intermediate or preliminary versions of any of the foregoing.

3. DESCRIPTION OF SERVICES

The CMAR shall perform the services described in Exhibit A attached to this Contract and incorporated herein by reference (the “Services”). The CMAR shall perform the Services in Charlotte, North Carolina, except to the extent the City specifically agrees in writing to the contrary. Unless otherwise provided in Exhibit A, the CMAR shall obtain and provide all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Services.

The CMAR will comply with the schedule set forth in Exhibit B, as amended from time to time during the Contract Period, in performing the Services. The parties agree that time is of the essence in having the CMAR provide the Services specified in Exhibit A. 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.

3.1 CMAR’s Services Generally

CMAR shall have overall responsibility for the preconstruction of elements of the Project as designated by this Contract. CMAR shall be responsible for services provided under this Contract whether such Services are provided directly by CMAR or by any of its subcontractors. The CMAR shall perform the Basic Services described in Exhibit A, attached to this Contract and incorporated

herein by reference to complete the Services. Unless otherwise provided in Exhibits A, the CMAR shall obtain and provide all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Services.

3.2 *Standard of Care for CMAR and CMAR's Subcontractors*

The City and CMAR agree that the services provided by the CMAR and CMAR's subcontractors pursuant to this Contract shall be performed in accordance with the Standard of Care. CMAR shall at all times use its efforts, skill, judgment, and abilities in accordance with the Standard of Care to further the interests of the City in accordance with the City's requirements and procedures. By written contract and in its review and approval of their work, CMAR shall impose upon and require of CMAR's subcontractors and their work the same obligations required of CMAR under this Contract.

CMAR represents, covenants and agrees that all of the Services to be furnished by CMAR and its subcontractors to the City (including all Basic Services, Additional Services and all obligations to meet certain requirements described herein) shall be performed in a manner consistent with the Standard of Care. The approval of any document by City or any of City's representatives or agents shall not relieve the CMAR from such liability as the CMAR might otherwise have for professional errors or omissions in the conduct of its obligations under this Contract.

3.1 *CMAR's Representative.* CMAR designates its Principal-in-Charge (as reflected on Exhibit D) as CMAR's authorized representative to represent and act for CMAR in connection with this Contract and the Project. All written communications given to the authorized representative by City shall be deemed given to and binding on CMAR. CMAR may from time to time replace CMAR's authorized representative with another individual acceptable to City or name up to two additional authorized representatives acceptable to City, each of which acting alone shall have authority to represent and act for CMAR and receive communications from City on behalf of CMAR. City may at any time, with or without cause, require CMAR to replace the authorized representative or name additional authorized representatives acceptable to City.

3.2 *Conflicts of Interest.* Without limiting in any way CMAR's other responsibilities to City, CMAR agrees that except with City's full knowledge and prior written consent, it shall not accept, nor permit any CMAR subcontractor to accept, any trade discounts or undertake any activity or employment, or have any significant financial or other interest or accept any contribution, if it could reasonably appear that such activity, employment, interest or contribution could compromise the professional judgment of CMAR or CMAR's subcontractors or prevent CMAR or CMAR's subcontractors from serving the best interests of City. So long as this Contract remains in effect, CMAR shall not agree to perform services on any other projects, if such work would constitute a conflict of interest (including the appearance of a conflict of interest) or be reasonably likely to interfere with CMAR's ability to perform all of its services for the Project under this Contract in accordance with the Project Schedule.

3.3 *Certifications and Licenses.* CMAR represents and warrants to City that it is licensed to render construction services as a construction manager at risk in the State of North Carolina. During the term of this Contract, CMAR shall maintain in full force and effect, and cause its personnel working on the Project, and CMAR's subcontractors and all their respective personnel working on the

Project, to maintain in full force and effect all necessary professional certifications and licenses in the State of North Carolina and as may be otherwise required for the Project. To this end and without limiting any of the foregoing, CMAR shall take all necessary steps and cause all necessary and appropriate documentation to be filed with the appropriate authorities so as to comply with all laws applicable to the performance of construction manager at risk services in the State of North Carolina. Upon City's request, CMAR shall provide promptly to City copies of all such documentation and authorizations. CMAR's subcontractors shall perform all professional services as required under applicable laws.

- 3.4 *Cooperation.* Recognizing the necessity of a close working relationship with the City, CMAR's principals and employees shall furnish the skill, efforts and judgment of its organization in the performance of their duties and responsibilities under this Contract, subject at all times to City's discretion, and provide their knowledge, ideas, experience and abilities relating to the efficient construction of the Project. As part of the Basic Services, CMAR shall coordinate its services on the Project with the City, and other consultants hired by the City, as and when applicable, and consult with them as necessary for the performance of CMAR's obligations under this Contract.

4. COMPENSATION

The maximum total fees and charges payable to the CMAR under this Contract, including payment for all services performed and all reimbursable expenses, shall not exceed \$_____. It will be a sum of the items listed below. The maximum total fees and charges will not be increased except by a written amendment duly executed by both parties.

4.1 HOURLY AND UNIT PRICE BASIS FEES

Until the execution of the final GMP by City and CMAR, CMAR shall perform Services during preconstruction for a Services Fee. The Services Fee and reimbursable expenses for Contractor's Services up to and including the execution of the final GMP shall not exceed \$_____.

The City agrees to pay the CMAR 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 in an amount not to exceed \$_____.

4.2 ALLOWANCES FOR UNSPECIFIED ADDITIONAL SERVICES

Additional services shall be performed by the CMAR 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 \$_____.

4.3 REIMBURSABLE EXPENSE ALLOWANCE

Reimbursable expenses shall be limited to the actual expenditures made by the CMAR during the performance of the Services. The following expenses may be reimbursed at cost in amount not to exceed \$_____ as set forth in Exhibit C:

Travel

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

- b. Parking fees;
- c. Airline tickets (with prior written approval from the City Project Manager); and
- d. Meals and lodging in connection with out-of-town travel (with prior written approval from the City Project Manager).

Permitting Fees

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

Subcontractors and Consultants

Payments made by the CMAR to Subcontractors and/or consultants in accordance with the requirements of the subcontracts.

4.4 DOCUMENTATION REQUIRED FOR EXPENSE REIMBURSEMENT

Notwithstanding anything in this Contract to the contrary, original, itemized receipts must be submitted to City as a condition to precedent to CMAR's right to reimbursement under this Contract. Receipts must be electronically captured through digital photographs or exact copies of originals in electronic format and include any notations that describe the expense (e.g., attending personnel and third parties, if any, etc.). Original (or exact copies of originals), itemized receipts will be required for all meals, rental cars, taxi fares, parking and other costs for which receipts can be typically obtained. All expenses must have a receipt in order to be reimbursed (i.e., tips, tolls or mileage to and from the airport), should be reasonable for the service provided and must be supported by a personal log or other similar record. Any meal charges for business-related meetings must include the names of all individuals, the business relationship and documentation of the business discussion and exclude alcohol.

4.5 COSTS NOT TO BE REIMBURSED

- 4.5.1 Mileage between CMAR's or CMAR's subcontractors' place of business and Project site;
- 4.5.3 Expenses of the Contractor's principal office and offices other than the Project site office.
- 4.5.4 Overhead and general expenses, legal expenses, and administrative expenses.
- 4.5.5 The CMAR's capital expenses, including interest on the Contractor's capital employed for the work.
- 4.5.6 Costs incurred due to the act or omission, or the fault or negligence or failure to fulfill a specific responsibility of the CMAR, subcontractors, Sub-subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.
- 4.5.7 Sales, use, or similar taxes imposed by a Governmental Authority where the purchase was subject to a sales, use, or other similar tax exemptions.

- 4.5.8 Franchise, income, or other taxes ordinarily paid for by a general contractor in its regular course of business and imposed by a Governmental Authority.
- 4.5.9 Notwithstanding anything herein to the contrary, costs incurred by CMAR pursuant to its defense and indemnification obligations in the Contract Documents.
- 4.5.10 Fines or assessments attributable to CMAR's failure to timely secure permits and licenses, as required by the Contract Documents.
- 4.5.11 Acceleration or premium time costs to recover time lost resulting from error or faulty by the CMAR or any subcontractor, sub-subcontractor or material supplier, but only to the extent it was caused or contributed to by the negligence of the CMAR or CMAR's breach of its contractual obligations arising hereunder.
- 4.5.12 Travel that has not been pre-approved by City;
- 4.5.13 Hotels that are not a City-approved accommodation;
- 4.5.14 Alcoholic drinks;
- 4.5.15 In-room movies and in-room bar charges;
- 4.5.16 In-flight alcohol or movies;
- 4.5.17 Any meal costs not compliant with City's travel regulations.

4.6 INVOICES

Each month, the CMAR shall submit an invoice to the City Project Manager stating the nature and quantity of Services performed and 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.

The CMAR shall not charge the City at overtime rates (as defined by the Fair Labor Standards Act), regardless of the number of hours worked in a given day or week.

The Consultant shall email all invoices to City Project Manager prior to submitting to cocap@charlottenc.gov

Each invoice must contain the following information:

Contract Number: _____

Purchase Order Number: _____

City Contact Name: _____

City Contact Department: General Services – Facilities Construction

- 4.6.1 Provided a proper and complete invoice is received pursuant to Section 4.6 not later than the 25th day of a month, the City will pay undisputed, properly submitted invoices within thirty (30) days after the receipt from the CMAR of an accurate, undisputed properly submitted invoice by the City. 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.
- 4.6.2 As a condition of payment, the CMAR must invoice the City for Services within sixty (60) days after such Services are performed. The CMAR waives the right to payment for any services that have not been invoiced to the City within sixty (60) days after such services were rendered.
- 4.6.3 Following the execution and approval of a the final GMP, no further costs will be incurred or approved as part of the Services under this Contract. In the event a final GMP is not executed or otherwise achieved, the Services under this Contract shall be terminated, and the City shall have the right to terminate this Agreement. The Services do not anticipate any on-site costs to perform construction management or supervision on the Project site.
- 4.6.4 City shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor in acting on the Contractor's invoice.
- 4.7 *TIME RECORDS*
The CMAR shall be responsible for keeping documentation sufficient to verify the time billed to the City. The City shall have the right to audit the CMAR's timecards, invoices, reports and other documents relating to the Services performed under this Contract, and shall not be required to pay for: (a) any time billed that was excessive in light of the result achieved, or (b) any Services that did not meet the standards and requirements referenced in this Contract. The CMAR shall make such documents available for inspection and copying by the City in Charlotte, North Carolina between the hours of 9:00 AM to 5:00 PM Monday through Friday, whenever requested by the City.
- 4.8 *PRE-CONTRACT COSTS*
The City shall not be charged for any Services or other work performed by the CMAR prior to the Effective Date of this Contract.
- 4.9 *EMPLOYMENT TAXES AND EMPLOYEE BENEFITS*
The CMAR acknowledges and agrees that its employees and subcontractors are not employees of the City. The CMAR represents warrants and covenants that it will pay all withholding tax, social security, Medicare, unemployment tax, worker's compensation and other payments and deductions which are required by law in connection with provision of the Services.
- 4.10 *COST OVERRUNS*
If it appears during the course of the services that any of the estimated fees and allowances may be exceeded, the CMAR 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 CMAR's expense.

4.11 ACCOUNTING AND AUDITING

The CMAR 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 CMAR 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 CMAR pursuant to this Contract.

The City's agent or authorized representative shall have access to the CMAR'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 CMAR reasonable advance notice of planned inspections. If, as the result of an audit hereunder, the CMAR is determined to have charged the City for amounts that are not allocable or verifiable, the CMAR shall promptly reimburse the City for said amount.

CMAR shall require each of CMAR's subcontractors to keep books and records relating to its Services on the Project and to make such books and records available at its offices for inspection and copying by CMAR, City and their respective authorized representatives during the term of this Contract and for a period of three (3) years after final completion of the Project or such longer time period as Applicable Law may require.

To the extent that an audit by City, City's independent auditors, or their designees disclose excess charges inaccurately or improperly attributed to this Project by the CMAR, CMAR agrees to remit the amount of the overpayment to City, together with any of City's out-of-pocket expenses related to the discovery and recovery of such overpayments, within 10 business days after demand.

4.12 WITHHOLDING OF PAYMENTS

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

4.13 PAYMENT REPORTING

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-owned, women-owned, and small business

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

Failure to comply with 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.

4.14 PROMPT PAYMENT TO SUBCONTRACTORS

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

4.15 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 CMAR 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.

5. CONTRACT PERIOD

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

6. DUTY OF CMAR TO IDENTIFY AND REQUEST INFORMATION, PERSONNEL AND FACILITIES

The CMAR shall identify and request in writing from the City in a timely manner: (i) all information reasonably required by the CMAR to perform the Services, (ii) a list of the City's personnel whose presence or assistance reasonably may be required by the CMAR to perform the Services, and (iii) any other equipment, facility or resource reasonably required by the CMAR to perform the Services. Notwithstanding the foregoing, the CMAR 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 CMAR 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 CMAR 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 CMAR 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 CMAR of any claim or defense it may otherwise have based on the City's failure to provide such information, personnel, facility or resource.

7. POINTS OF CONTACT; NOTIFICATIONS

7.1 CITY PROJECT MANAGER

The duties of the City Project Manager, in coordination with the Project Team, include:

- a. Examining the documents submitted by the CMAR and will expedite decisions concerning the documents in order to avoid unreasonable delay in the progress of the CMAR's Services
- b. Ensuring that the CMAR delivers all requirements and specifications outlined in this Contract;
- c. Coordinating the City's resource assignment as required to fulfill the City's obligations pursuant to this Contract;
- d. Promptly respond to the CMAR'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]
Project Manager
City of Charlotte
General Services | Facilities Construction Division
600 E. 4th Street
Charlotte, NC 28202
XXX-XXX-XXXX [Phone Number]
_____@charlottenc.gov

7.2 CMAR PROJECT MANAGER

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

- a. Coordination of Project schedules and the CMAR's resource assignment based upon the City's requirements and schedule constraints;
- b. Management of the overall Project by monitoring and reporting on the status of the Project and actual versus projected progress, and by consulting with the City 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 CMAR's specialist resources that may be needed to supplement the CMAR's normal implementation staff;
- d. Acting as the CMAR's point of contact for all aspects of contract administration, including invoicing for Services, and status reporting;
- e. Facilitation of review meetings and conferences between the City and the CMAR's staff when scheduled or requested by the City;

- f. Communication among and between the City and the CMAR's staff;
- g. Promptly responding to the City 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 CMAR's Services in the manner contemplated by the Contract (with "timely" meaning immediately after the CMAR becomes aware of them);
- i. Ensuring that adequate quality assurance procedures are in place through the Project; and
- j. Meeting with other entities working on City projects that relate to this effort as necessary to resolve problems and coordinate the Services.

The CMAR Project Manager is:

	[CMAR's Project Manager's Name]
	[Title]
	[Name of Firm]
	[Street Address]
	[City/State/Zip]
	[Phone]
	[Email]

7.3 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:

Kathleen Cishek
Deputy City Engineer
City of Charlotte
General Services | Facilities Construction Division
600 East 4th Street
Charlotte, NC 28202
Phone: (704) 336-2640
kathleen.cishek@charlottenc.gov

For the CMAR:

	[CMAR'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.

8. REMOVAL, REPLACEMENT AND PROMOTION OF CMAR PERSONNEL

The City will have the right to require the removal and replacement of any personnel of the CMAR or the CMAR's subcontractors who are assigned to perform Services to the City. The City shall be entitled to exercise such right in its sole discretion by providing written notice to the CMAR.

CMAR shall not, for so long as any individual on the CMAR's project team is employed by CMAR, remove, substitute or reduce the level of effort of such individual without City's prior written approval, which may be granted or withheld in City's sole discretion. If any of the members of the CMAR's project team cease to be associated with CMAR or become unable to perform their duties with respect to the Project, CMAR shall replace them immediately with an individual having at least the same level of experience with sports venue design and construction, subject to the prior written approval of City. City shall not be liable to pay or reimburse CMAR for any cost or added financial burden resulting from the removal or replacement of any member of the CMAR's project team for any reason. CMAR shall cause each of the members of CMAR's project team to treat the Project as his or her highest priority work and devote as much of his or her working time to the Project as shall be required to complete CMAR's Services in accordance with the Project Schedule and this Contract.

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 CMAR proposes to hire or transfer to such positions. As used in this Contract, the term "Key Personnel" shall mean any personnel of the CMAR or its subcontractors 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 CMAR as fulfilling a key role in the Project. Unless approved by the City in writing, the CMAR will not: (i) remove the CMAR's Key Personnel from the Project or permit its subcontractors to remove Key Personnel from the Project; or (ii) materially reduce the involvement of the CMAR's Key Personnel in the Project or allow its subcontractors to materially reduce the involvement of Key Personnel in the Project.

If CMAR substantially or completely ceases its business operations, City shall have the right, but not the obligation, without liability or obligation to CMAR or any other person, to directly engage the services of any member of CMAR's project team. Furthermore, in the event that CMAR learns that any of the CMAR's project team will be leaving the employ of CMAR, CMAR shall promptly notify City, and City shall then have the right to engage directly the services of such individuals.

9. PROGRESS REPORTS

The CMAR shall prepare and submit to the City, electronically in PDF format, 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 CMAR 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 CMAR, 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.

10. QUALITY CONTROL PROGRAM

The CMAR 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 CMAR.

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

11. 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 CMAR 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 CMAR 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 CMAR 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 CMAR and without obligation to pay for the defective work.

These revisions will be made without adjustments to the fee, unless revisions are made to Services previously approved in writing by the City, in which case such revision services may be compensated as Additional Services. Prior to performing any revision work which CMAR claims to be an Additional Service, CMAR shall deliver notice thereof to the City and obtain approval in the form of an Additional Service directive signed by the City Project Manager before proceeding with the work as an Additional Service. No payment of any nature whatsoever will be owed or made to CMAR for Additional Services without such written approval.

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 CMAR 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 CMAR does not meet this time frame).

12. NON-EXCLUSIVITY -

The CMAR 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 CMAR for any particular project.

13. REPRESENTATIONS AND WARRANTIES OF CMAR

13.1 GENERAL WARRANTIES.

- a. The Services shall satisfy all requirements set forth in the Contract, including but not limited to the attached Exhibits;
- b. The Services provided by the CMAR under the Contract will not infringe or misappropriate any patent, copyright, trademark, or trade secret rights of any third party;
- c. The CMAR 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 CMAR;
- d. All Services performed by the CMAR and/or its subcontractors pursuant to this Contract shall meet the highest industry standards and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;
- e. Neither the Services, nor any Deliverables provided by the CMAR under this Contract will infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party. The CMAR shall not violate any non-compete agreement or any other agreement with any third party by entering into or performing this Contract;
- f. The CMAR and each employee provided by the CMAR to the City for this project shall have the qualifications, skills and experience necessary to perform the Services described or referenced in Exhibit A;
- g. All information provided by the CMAR about each employee is accurate; and
- h. Each employee is an employee of the CMAR, and the CMAR shall make all payments and withholdings required for by law for the CMAR for such employee.

13.2 ADDITIONAL WARRANTIES

The CMAR 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 CMAR;
- 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 CMAR and each employee provided by the CMAR 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).

14. OTHER OBLIGATIONS OF THE CMAR

14.1 WORK ON CITY PREMISES

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

14.2 RESPECTFUL AND COURTEOUS BEHAVIOR

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

14.3 REGENERATION OF LOST OR DAMAGED DATA

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

14.4 REPAIR OR REPLACEMENT OF DAMAGED EQUIPMENT OR FACILITIES

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

15. REMEDIES

15.1 RIGHT TO COVER

If the CMAR 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 CMAR 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 the CMAR and, should the City's cost of obtaining or performing the Services exceed the amount due the CMAR, collect the amount due from the CMAR.

15.2 RIGHT TO WITHHOLD PAYMENT

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

15.3 SPECIFIC PERFORMANCE AND INJUNCTIVE RELIEF

The CMAR agrees that monetary damages are not an adequate remedy for the CMAR'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 CMAR hereby consents to an order granting specific performance of such obligations of the CMAR in a court of competent jurisdiction within the State of North Carolina. The CMAR further consents to the City obtaining injunctive relief (including a temporary restraining order) to assure performance in the event the CMAR breaches the Contract.

15.5 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.

16. TERMINATION OF CONTRACT

16.1 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 CMAR. In the event the Contract is terminated pursuant to this Section, the CMAR 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, CMAR 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 CMAR for Services rendered through the termination date at the rates set forth in **Exhibit C**. The foregoing payment obligation is contingent upon: (i) the CMAR having fully complied with this Section; and (ii) the CMAR 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.

16.2 *TERMINATION FOR DEFAULT*

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

- a. Failure of the CMAR to complete a particular task by the completion date set forth in this Contract;
- b. The CMAR 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 CMAR 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 CMAR 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 CMAR attempts to assign, terminate or cancel the Contract contrary to the terms hereof;
- f. The CMAR 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 CMAR'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 CMAR for default, the CMAR 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.

16.3 *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 CMAR 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 CMAR shall submit a statement to the City showing in detail the Services performed under this Contract to the date of termination.

16.4 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.

16.5 OBLIGATIONS UPON EXPIRATION OR TERMINATION

Upon expiration or termination of this Contract, the CMAR 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.

16.6 NO EFFECT ON TAXES, FEES, CHARGES OR REPORTS

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

16.7 OTHER REMEDIES

The remedies set forth herein shall be deemed cumulative and not exclusive, and may be exercised successively or concurrently, in addition to any other remedies available under this Contract or at law or in equity.

16.8 TRANSITION SERVICES UPON TERMINATION

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

17. SUSPENSION

The City shall have the right to suspend, from time to time, the Services of CMAR under this Contract. The suspension shall be effective on the date indicated on the written notice of suspension delivered by City to CMAR. As of the effective date of suspension, CMAR shall cease its performance of all Services and the performance of all Services of all CMAR's subcontractors related to the Project in such a way that would allow for an orderly and efficient restart of their Services on the Project at a later date, if necessary. City shall pay CMAR for Services rendered in accordance with this Contract and Reimbursable Expenses incurred up to the actual date of the

shutdown. Performance of Services may be resumed only after the delivery by City to CMAR of a written notice of resumption. If the duration of any continuous period of suspension is more than 365 days or if the aggregate of all suspensions exceeds 365 days, then CMAR and City shall use good faith efforts to provide for an adjustment in CMAR's compensation for Basic Services due to the effects of increases in CMAR's costs, if any, of performing the Basic Services remaining to be performed under this Contract. If the duration of any continuous suspensions by City exceeds 9 months, CMAR shall have the right to terminate this Contract at any time prior to receipt by CMAR of a written notice of resumption. City shall not be deemed to be in default based upon such suspensions, and CMAR shall not be entitled to any further compensation or damages based upon the suspensions or CMAR's election to terminate this Contract. City shall have no responsibility for any costs or expenses incurred by CMAR in the termination or suspension of contracts that CMAR may have with CMAR's subcontractors. The calculation of any days of suspension shall not include any suspensions that may have occurred prior to the effective date of this Contract.

18. 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. CMAR shall nevertheless continue to render performance under this Contract in accordance with its unchanged terms and conditions

19. 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.

20. 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 CMAR hereby assigns and transfers all rights in the Intellectual Property to the City. The CMAR 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 CMAR 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 CMAR a royalty-free, non-exclusive license to use and copy the Intellectual Property to the extent necessary to perform this Contract. The CMAR shall not be entitled to use the Intellectual Property for other purposes without the City's prior written consent.

The CMAR 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 CMAR further represents and warrants that it has the right to grant the rights granted to the City in this Section on behalf of the CMAR subcontractors.

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 CMAR 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 CMAR has no responsibility for any Discrepancies in the Intellectual Property that are beyond the CMAR's reasonable control. The CMAR 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 CMAR shall provide the City with the Intellectual Property in electronic form, and the City agrees to release the CMAR 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 CMAR's reasonable control.

21. LICENSING

The CMAR 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 CMAR 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. CMAR shall provide notarized copies of all valid licenses and certificates required for performance of the Services. The notarized copies shall be delivered to the City no later than ten (10) days after the CMAR receives the notice of award from the City. Current notarized copies of licenses and certificates shall be provided to the City within twenty-four (24) hours of demand at any time during the contract term. Licenses and certificates required for this Contract include, by way of illustration and not limitation, the following: 1) a business license valid in North Carolina; 2) any additional licenses pertaining to or that may be required to be held by field professionals participating in the contract work

22. INDEMNIFICATION

To the fullest extent permitted by law, the CMAR shall indemnify, defend and hold harmless each of the “Indemnitees” (as defined below) from and against any and all “Charges” (as defined below) paid or incurred by any of them as a result of any claims, demands, lawsuits, actions, or proceedings: (i) alleging violation, misappropriation or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to the 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 CMAR or its subcontractors in connection with this Contract; (iii) arising from the CMAR’s failure to perform its obligations under this Contract, or from any act of negligence or willful misconduct by the CMAR 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 CMAR or an employee or subcontractor of the CMAR 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 City’s and such federal agency’s officers, officials, employees, agents and independent contractors (excluding the CMAR); 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 CMAR 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 CMAR is unable to comply with the preceding sentence within thirty days after the City is directed to cease use of a product or service, the CMAR shall promptly refund to the City all amounts paid under this Contract.

This Section 22 shall remain in force despite termination of this Contract (whether by expiration of the term or otherwise).

23. SUBCONTRACTING

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

24. INSURANCE

Throughout the term of this Contract, the CMAR shall comply with the insurance requirements described in this Section. In the event the CMAR fails to procure and maintain each type of insurance required by this Contract, or in the event the CMAR 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 CMAR.

24.1 *General Requirements*

The CMAR 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 CMAR shall not allow any subcontractor to commence work on its subcontract until all insurance required of the subcontractor has been obtained and approved.

All insurance policies required by 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 CMAR shall name the City as an additional insured under the commercial general liability policy required by Section.

The CMAR'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 CMAR's operations under this agreement. The CMAR and each of its subcontractors 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 CMAR and/or subcontractor providing such insurance.

Prior to execution of this Contract, the CMAR 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 CMAR 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 CMAR shall not relieve the CMAR 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 CMAR 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 subcontractor 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 CMAR from meeting all insurance requirements or otherwise being responsible for the subcontractor.

24.2 *Types of Insurance*

CMAR shall obtain and maintain during the life of this Contract, with an insurance company 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 CMAR and any subcontractor 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 CMAR, any subcontractor, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate, or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, 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 CMAR 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.

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

25. BACKGROUND CHECKS

Prior to starting work under this Contract, the CMAR is required to conduct a background check on each CMAR employee assigned to work under the Contract, and shall require its subcontractors (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 CMAR is required to perform a Background Check for each new CMAR employee assigned to work under the Contract, and shall require its subcontractors (if any) to do the same for each of their new employees. If the CMAR undertakes a new project under the Contract, then prior to commencing performance of the project the CMAR shall perform a Background Check for each CMAR employee assigned to work on the project, and shall require its subcontractors (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 CMAR will be required to perform (and to have its subcontractors 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 CMAR 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 subcontractors to do the same.

The CMAR 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 CMAR 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.

26. COMMERCIAL NON-DISCRIMINATION

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

27. MISCELLANEOUS

27.1 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.

27.2 CHANGE IN CONTROL

In the event of a change in "Control" of the CMAR (as defined below), the City shall have the option of terminating this Contract by written notice to the CMAR. The CMAR 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 CMAR; or
- b. The power to direct or cause the direction of the management and policies of the CMAR whether through the ownership of voting securities, by contract or otherwise.

27.3 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.

27.4 *BINDING NATURE AND ASSIGNMENT*

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

27.5 *CITY NOT LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES*

The City shall not be liable to the CMAR, its agents or representatives or any subcontractor 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.

27.6 *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.

27.7 *NO PUBLICITY*

No advertising, sales promotion or other materials of the CMAR 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 CMAR 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.

27.8 *NO BRIBERY OR LOBBY*

The CMAR certifies that to the best of its knowledge, information, and belief, neither it, any of its affiliates or subcontractors, nor any employees of any of the forgoing has bribed or lobbied, or attempted to bribe or lobby, an officer or employee of the City in connection with this Contract.

27.9 *APPROVALS*

All approvals or consents required under this Contract must be in writing, except as otherwise noted.

27.10 *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.

27.11 *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 CMAR"

Section "Termination of Contract"

Section "City Ownership of Work Product"

Section "Indemnification"

Section "Notices and Principal Contacts"

Section "Miscellaneous"

27.12 *FAMILIARITY AND COMPLIANCE WITH LAWS AND ORDINANCES*

The CMAR 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 CMAR 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.

27.13 *TAXES*

Except as specifically stated elsewhere in this Contract, the CMAR shall pay all applicable federal, state and local taxes which may be chargeable against the performance of the Services. The CMAR consents to and authorizes the City to collect any and all delinquent taxes and related interest, fines, or penalties of the CMAR by reducing any payment, whether monthly, quarterly, semi-annually, annually, or otherwise, made by the City to the CMAR pursuant to this Contract for an amount equal to any and all taxes and related interest, fines, or penalties owed by the CMAR to the City. The CMAR 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 CMAR from filing an appeal of the assessment of the delinquent tax if such appeal is within the time prescribed by law.

27.14 *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.

27.15 *TRAVEL UPGRADES*

The City has no obligation to reimburse the CMAR 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 CMAR'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 contractor 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.

27.16 DELAYS AND EXTENSIONS

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

27.17 FORCE MAJEURE

The CMAR 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 CMAR 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 CMAR continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

The CMAR 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 CMAR from performing its obligations for more than thirty (30) days, the City may terminate this Contract.

28. DISPUTE RESOLUTION

28.1 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).

28.2 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.

- 28.3 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.
- 28.4 The City and any Party contracting with the City or with any first-tier or lower-tier subcontractor 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): CMAR, independent contractor(s) of the City, surety(ies), subcontractor(s), and supplier(s).
- 28.5 The CMAR 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.
- 28.6 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.
- 28.7 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.
- 28.8 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.
- 28.9 In addition to such matters as are required by the Rules, a request for mediation shall include the amount of the monetary relief requested.

- 28.10 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.
- 28.11 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.
- 28.12 All expenses incurred by a Party to a dispute in preparing and presenting any claim or defense at the mediation shall be paid by the Party. Such expenses include without limitation preparation and production of witnesses and exhibits and attorney fees. All other expenses of the mediation, including filing fees and required traveling and other expenses of the mediator, shall be borne as follows: one half by the Party requesting the mediation, with the remaining parties paying equal shares of the remaining expenses and costs; provided that, if the City is named as a party to the mediation, the City shall pay at least one-third of the mediation expenses and costs divided among the Parties. If more than one Party to a dispute requests a mediation, the mediation expenses and costs to be divided among the Parties shall be borne equally by the Parties to the dispute; provided that, if the City is named as a Party to the mediation, the City shall pay at least one-third of the mediation expenses and costs divided among the Parties.
- 28.13 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.
- 28.14 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.
- 28.15 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

CMAR 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 CMAR 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 CMAR 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 CMAR 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 CMAR 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

THIS CONTRACT, entered into as of the day and year first written above for Construction Manager at Risk Pre-Construction Phase Services for [REDACTED] [Name of Project], Contract Number [REDACTED], in an amount not to exceed \$[REDACTED].

[REDACTED] **[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

Rates will be submitted and reviewed based on actual hourly rates plus the approved broken-down burden rate.

Note: Any personnel listed herein that will be on the Construction Phase Services, will be subject to a different rate review.

Hourly and Unit Price Rates for Additional Services

[illegible]

EXHIBIT D – KEY PERSONNEL

[Insert Org Chart or list of key personnel]

SAMPLE

EXHIBIT E – CHARLOTTE BUSINESS INCLUSION PROGRAM

Pursuant to Charlotte City Council's adoption of the Charlotte Business INclusion (CBI) Policy, the CBI program seeks to enhance competition and participation of Minority-owned, Women-owned, and Small Business Enterprises (MWSBEs) in City contracting. To accomplish this, the City has examined its procurements and set specific MWSBE participation goals on a contract-by-contract basis. In addition, CBI makes a concerted effort to expand its certified MWSBE vendor pool and assist city-certified firms in growing, enhancing, and developing their businesses. CBI currently offers numerous development programs that support certified businesses in organizational training, strategic development, and networking opportunities.

The CBI Policy and CBI Manual are posted online here: www.charlottebusinessinclusion.com.

1. APPLICATION:

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

Internet: www.charlottebusinessinclusion.com

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

Capitalized terms used in this document shall have the meanings set forth in the CBI Manual. Each reference to "Consultant", "you" or "your" in these provisions refers to any entity that submits a bid, proposal or statement of qualifications on a City contract, and any entity that enters into a contract with the City.

2. MWSBE Goals

[Use statement when a Goal is to be negotiated.]

This Project has a negotiated M/W/SBE goal of X%. The City would like the Company to submit the firms it intends to utilize to meet this goal. Therefore, the Company is required to submit Section 6, Form 5 attached herein. Failure to submit this form with the Proposal shall render the Proposal non-responsive.

Consultant must submit proposed MWSBE utilization for this Contract on CBI Form 3 (Subcontractor/Supplier Utilization Commitment Form) listing subconsultants and suppliers that will be providing goods or services.

Consultant must state the projected dollar amount (if known) for each MWSBE listed on their CBI Form 3. In the event Consultant has no MWSBE participation, Consultant is still required to indicate this on CBI Form 3 by entering the word or number zero. Blank forms will be deemed to represent zero participation.

MWSBEs listed on CBI Form 3 must be actively certified with the City of Charlotte as of the bid opening date or proposal submission date and must be performing a Commercially Useful Function as defined in the CBI Manual, in order to be counted toward the project goal. MWSBE firms who are dual registered cannot be double counted toward more than one MWSBE Goal.

Consultant must submit a separate CBI Form 4 for each MWSBE identified on CBI Form 3 within three (3) Business Days after the City requests it.

3. CBI POLICY PROVISIONS APPLICABLE AFTER CONTRACT AWARD

Upon being awarded a Contract with the City, the Consultant should note Section 5 (Responsibilities After Contract Award) and Section 6 (Remedies and Liquidated Damages) of the CBI Manual.

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

4. CBI CONTRACT PROVISIONS

The following provisions are incorporated into the contract.

The parties acknowledge and agree that:

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

Remedies for Violation of CBI Policy.

A violation of the CBI Program by a Consultant is deemed to be a material breach of the Contract. The City shall be entitled to: (i) exercise all rights and remedies at law or at equity; (ii) terminate the Contract for default; (iii) suspend the Contract for default; (iv) withhold all payments due to the Consultant until the violation has been fully cured; (v) withhold all payments due to the Contract until a mutually agreeable resolution has been reached with the City; and/or (vi) assess any liquidated damages under Section 6.2. of

the CBI Manual. The remedies set forth herein shall be deemed cumulative and not exclusive, and may be exercised successively or concurrently, in addition to any other available remedy.

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

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

Affiliate. In the event of any overlap between Section 6.2.7 of the CBI Manual and Section 6.2.2 of the CBI Manual, then the damages set forth in Section 6.2.2 of the CBI Manual shall apply.

VIII. Quick Pay Commitment

If a Quick Pay Commitment is offered to any MWSBE Subconsultant in the Vendor Documents but is not subsequently honored, then the City may assess the lesser of: (a) \$50,000 or (b) ten percent (10%) of the dollar amount listed on the MWSBE Subconsultant's letter of intent.

IX. Violation of Exempt Performance Allowance

If a Consultant submits an affidavit under Section 3.2 of the CBI Manual but Subcontracts thereafter, then the City may assess the lesser of: (a) \$25,000 per incident; or (b) the dollar amount of the work performed by any and all Subconsultants.

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

5. CBI FORMS

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

CBI Form	Submission Requirements
<u>CBI Form 3: Subcontractor/Supplier Utilization Commitment.</u> Identifies all MWSBE and non-MWSBE subconsultants and suppliers to be utilized on the contract and dollar amounts committed to MWSBEs (if known).	Must be submitted at time of bid/proposal
<u>CBI Form 4: Letter of Intent.</u> Consultant must submit a separate Letter of Intent executed by each MWSBE listed on CBI Form that Consultant commit to utilize on the Contract.	Must be submitted within three (3) Business Days after requested by the City.

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

MWSBE vendors can be found on the City's InclusionCLT system:

<https://charlotte.diversitycompliance.com/>



CBI FORM 3: Subcontractor / Supplier Utilization Commitment

This form **MUST** be submitted at the time of Bid Opening. *Copy this CBI Form 3 as needed.*

Failure to properly complete and submit Form 3 with the Bid constitutes grounds for rejection of the Bid.

Per Section 3.5 of the CBI Administrative Procedures Manual, the Subcontractor/Supplier Utilization Commitment (**CBI Form 3**), captures information regarding the MWSBEs and other subcontractors and suppliers that the Bidder intends to use on the Contract **FOR ALL TIERS**.

M/W/SBEs must satisfy the requirements of Section 2 of the CBI Administrative Procedures Manual in order to count the work they intend to perform on the contract with its own current workforces towards the Contract Goal and must list themselves below.

Bidder Name:			
Project Name:			
		Established MBE Goal:	
		Established WBE Goal:	
		Established SBE Goal:	

List below all **M/W/SBEs** that you intend to use on this Contract. **NOTE:** You will only receive credit for M/W/SBEs that are currently certified with the City as of the Bid Opening Date.

M/W/SBE Vendor Name (Non-Hauling Services)	Description of work / materials	NIGP Code

List below all **non-M/W/SBEs (subcontractors and suppliers)** that you intend to use on this Contract:

Vendor Name	Description of work / materials	NIGP Commodity Code

Letters of Intent submitted upon notice from the City

Per Section 3.5 of the CBI Administrative Procedures Manual, within three (3) Business Days after receiving a request from the City (or within such longer time as may be communicated by the City in writing), Bidders must submit a separate Letter of Intent (**CBI Form 4**) for each M/W/SBE listed on **CBI Form 3**. Each Letter of Intent must be executed by both the M/W/SBE and the Bidder. The City shall not count proposed M/W/SBE utilization for which it has not received a Letter of Intent by this deadline. The Bidder is still obligated to pay the M/W/SBE the full amount listed on the Contract with the M/W/SBE regardless of what percentage is actually counted towards the M/W/SBE Goal.

Adding subcontractors or suppliers after submitting this form

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

- You must maintain the level of M/W/SBE participation stated in the Contract throughout the duration of the Contract, except as specifically allowed in Section 5
- If you need to terminate or replace a M/W/SBE, you must comply with Section 5.3
- If the scope of work on the Contract increases, or if you elect to subcontract any portion of work not identified on this form as being subcontracted, then you must comply with Section 5.4
- A Letter of Intent (**CBI Form 4**) must also be submitted for each M/W/SBE you add subsequent to contract award.

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

Pursuant to the City's Vendor Registration Policy, each subcontractor or supplier (non-MBE/SBE, WBEs, SBEs and MBEs) that you use on this contract must be registered in the City's vendor database.

Signature

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

- It has complied with all provisions of the CBI Policy and Administrative Procedures Manual; and,
- Failure to properly document such compliance in the manner and within the time periods established by the CBI Policy and Administrative Procedures Manual shall constitute grounds for rejection of your bid.

Signature of Authorized
Official

Printed Name

Title

Submittal Date



CBI FORM 4: Letter of Intent

Per Section 3.5 of the CBI Manual, within three (3) Business Days after receiving a request from the City (or within such longer time as may be communicated by the City in writing), a Bidder must submit a separate Letter of Intent for each MWSBE listed on CBI Form 3 and CBI Form 3A (if applicable).

Project Name:	
----------------------	--

To be completed by the Bidder	
Name of Bidder:	
Address:	
Contact Person:	Email:
Telephone:	Fax:

If the Bidder has entered into a Quick Pay Agreement, in association with this Letter of Intent and as defined in the CBI Manual, please attach a copy of the executed Agreement with the undersigned MWSBE.

Identify in complete detail the scope of work to be performed or item(s) to be supplied by the MWSBE.

Cost of work to be performed by the MWSBE: \$ _____

To be completed by the MWSBE	
Name of the MWSBE:	
Address:	
Contact Person:	Email:
Telephone:	Fax:

Upon execution of a Prime Contract with the City for the above referenced project, the Bidder certifies that it intends to utilize the MWSBE listed above, and that the description, cost and percentage of work to be performed by the MWSBE as described above is accurate. The MWSBE firm certifies that it has agreed to provide such work/supplies for the amount stated above.

Bidder:	Signature and Title	Date:	
MWSBE Firm: (Circle one or both)	Signature and Title	Date:	

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.
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: _____

EXHIBIT G – CERTIFICATE OF INSURANCE

[Insert COI]

SAMPLE