



REQUEST FOR QUALIFICATIONS

**OWNER'S ADVISOR SERVICE FOR
BRYANT FARMS ROAD EXTENSION PHASE II
PROGRESSIVE DESIGN-BUILD PROJECT**

RFQ# 269-2025-023

Date Issued:

AUGUST 13, 2024

RFQ # 269-202-023
OWNER'S ADVISOR SERVICE FOR
BRYANT FARMS ROAD EXTENSION PHASE II
PROGRESSIVE DESIGN-BUILD PROJECT

August 13, 2024

Interested Company:

The City of Charlotte, North Carolina, is now accepting Proposals for Owner Advisor Services for Bryant Farms Extension Phase II Progressive Design-Build Project. The requirements for submitting a Proposal 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 In-Person** Pre-Submittal Conference for the purpose of reviewing the RFQ and answering questions regarding the Services will be held at the Charlotte-Mecklenburg Government Center, 600 East 4th Street, Charlotte, NC 28202. Refer to the RFQ or Addendum for date, time and 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 Conference.

The City is an equal opportunity purchaser.

Sincerely,

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.

If awarded a contract, your company will be required to provide an insurance certificate(s) that meets or exceeds the requirements set forth in the Sample Contract.

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1 REQUEST FOR QUALIFICATIONS (RFQ) INSTRUCTIONS

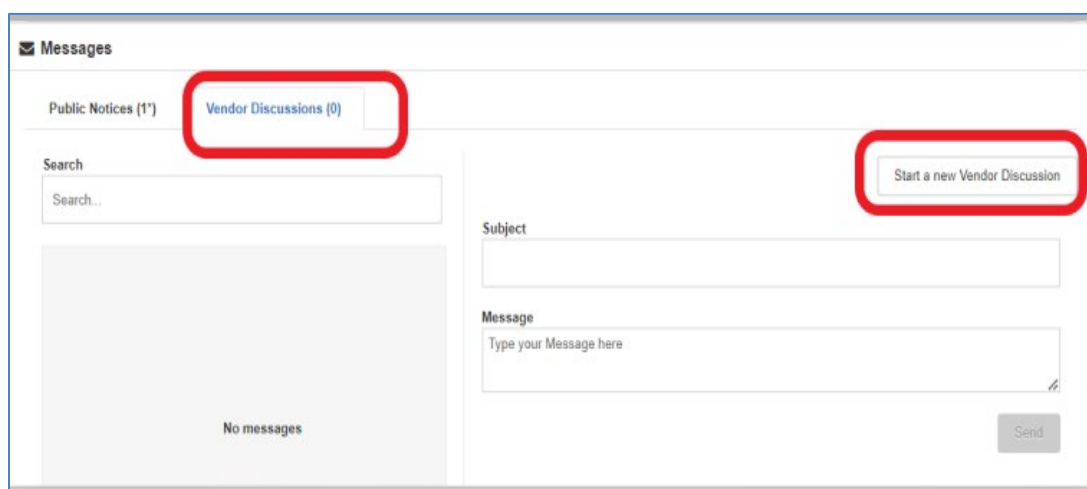
1.1 Public Notice

The City of Charlotte (City) is soliciting Statements of Qualifications (SOQs) from firms/teams (Firms) to provide advice and assistance (Services) for Bryant Farms Road Extension Phase II Progressive Design-Build Project (Project). The City anticipates selecting owner's advisors to assist with this Project. The City is seeking well qualified consultant whose combination of experience and expertise will provide timely, professional services to the City.

To avoid potential conflicts of interest, the consultant selected to provide services to the City under this RFQ will not be eligible to serve on the design-build team selected for the Project on which they are providing consultation and advice.

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](#):



The screenshot shows the 'Messages' section of the Bonfire e-Procurement Portal. At the top, there are two tabs: 'Public Notices (1*)' and 'Vendor Discussions (0)'. The 'Vendor Discussions (0)' tab is highlighted with a red rectangular box. Below the tabs is a search bar with the placeholder text 'Search...'. To the right of the search bar is a button labeled 'Start a new Vendor Discussion', which is also highlighted with a red rectangular box. Below the search bar is a large grey area with the text 'No messages'. To the right of this area is a form with a 'Subject' field and a 'Message' text area with the placeholder text 'Type your Message here'. At the bottom right of the form is a 'Send' button.

1.2 Project Overview

The City's General Services Department is intended to use progressive design-build delivery method for the following Project in conformance with North Carolina General Statute 143-128.1A, and consistent with the Design-Build Institute of America (DBIA) best practices for design-build generally, and progressive design-build specifically.

Bryant Farms Road Extension Phase II

Project Background

This purpose of the Bryant Farms Road Extension, Phase II project is to continue the street connection of Bryant Farms Road between Rea Road and Ardrey Kell Road. The design is anticipated to include a two-lane road with turn lanes, shared-use path on both sides of the road, and improvements at the intersections of Bryant Farms Road with Rea Road, Tom Short Road, and Ardrey Kell Road. The project will also build a crossing over Flat Branch stream and will run adjacent to the Flat Branch Nature Preserve for a portion of the project.

Design Build (D/B) Project Description

The City intends to use the progressive design-build delivery method for the Bryant Farms Road Extension Phase II project. The City is seeking an Owner's Advisor to assist with procurement of a Design-Builder and additional services during design and construction. The City is also seeking help to organize, guide, assist, and provide consultation and advice in developing processes and procedures for implementing the project.

The project is approximately 1.25-mile long and will extend an east-west connection that is currently lacking in the roadway network. The project limits include sections of roadway that have been constructed by development and may need some modifications.

Planning, up to 30% design, has been completed for the project and the approved overall budget for the project is currently \$53 million. The Design-Build budget is in the range of \$40-\$45 million and the budget for the owner's advisor is between \$200,000 to \$400,000 depending on the final scope of work.

1.2.1 Standard Owner's Advisor Skills

General Services is seeking consultants who possess the Owner's Advisor qualifications outlined by DBIA in the publication *Selecting and Using an Owner Advisor in Design-Build* (April 2019) and supplemented by the DBIA publications *Progressive Design-Build: A Design-Build Done Right Deeper Dive* (2023). The consultant should have the right mix of leadership, technical, and facilitative skills to enable the City to develop a successful project. Specifically, the selected consultant should demonstrate the skills listed below.

The skills and principles listed in this section and the DBIA publications referenced above are written from the perspective of vertical construction. It is the City's intent that these skills and principles be adapted and interpreted as necessary for horizontal construction as applicable.

Leadership Skills

- a. Be a master facilitator with the ability to build teams and align interests. Help the City to promote and build one team (One Team – One Goal), including laying groundwork by developing the processes to achieve this;
- b. Identify, manage, and foster healthy and collaborative relationships;
- c. Possess high emotional intelligence and display mindfulness and empathy;
- d. Create an environment of trust and collaboration characterized by the ability to create program/project alliance and build common purpose;

- e. Guide a facilitative partner approach to identify and resolve issues;
- f. Possess strong communication skills, both oral and written;
- g. Guide and create consensus with all internal and external stakeholders on project definition, intent, design, cost, and schedule;
- h. Represent the project and its goal to all the parties;
- i. Formulate and maintain an integrated and cohesive team;
- j. Recognize and address any potential conflicts of interest; and
- k. Carry out duties with integrity and character, recognizing that Owner's Advisors may be required to function in multiple roles.

Technical Skills

- a. Appropriate educational background and experience, including licenses and credentials (e.g., DBIA, CCM, PMP, PE, LEED, or Green Globes) that support a commitment to effective project delivery and lifelong learning;
- b. Experience in the progressive design-build delivery method in the field of transportation discipline .
- c. Proven experience and an in-depth understanding and knowledge of required policies, processes, and procedures, including the ability to assist the City in selecting the right team;
- d. Understanding and knowledge of appropriate risk allocation and management;
- e. Expertise with program control systems, including the ability to tailor and implement comprehensive program control and reporting systems to include, but not limited to: cost estimating; project scheduling; cash flow and accrual projections; earned value analysis; progress reporting systems; schedule loaded manpower breakdown structure and manpower requirements forecasting; and high-level reporting systems for executive management, the public, etc.;
- f. In-depth knowledge of project management information systems, technology, and tools;
- g. Knowledge of procurement processes, including the ability to assist the City with selecting the right team, as well as RFQ and agreement template development in accordance with permissible procurement statutes/regulations;
- h. Strong capability for design, project cost, and schedule review to include:
 - Ability to assist in ensuring design submissions meet the intent of the RFQ
 - Confirming that any agreed-upon enhancements and/or deviations are consistent with the contract requirements
 - Independent cost estimating skills
- i. Working knowledge and keen awareness of:
 - Market conditions and practices to promote a competitive field
 - Design and construction industry standards applicable to the project
 - Applicable industry and building codes, including ADA and PROWAG compliance, for the relevant discipline. See Exhibit A - Scopes of Services for more information
 - Environmental restrictions and concerns
 - Risk allocation and management
 - Innovation as an outcome of effective design-build, and the innovative use of best practices to meet the City's needs
 - Sureties and bonding

Facilitative Skills

- a. Use active listening skills;
- b. Encourage and generate participative discussion in groups;
- c. Stimulate creative thinking through brainstorming/other idea generation process;
- d. Stimulate strategic consideration of alternatives and informed decision-making of appropriate choices;
- e. Manage contrasting perspectives;
- f. Lead/design inclusive group processes that honor different learning styles;
- g. Help shape strategic questions for exploration; and
- h. Team building and alignment of the City's objectives and expectations.

Other Skills and Attributes

- a. Commitment to put the project first;
- b. Objectivity and neutrality;
- c. Integrated project delivery skills, including design-build, construction, estimating, engineering, or other discipline design; and
- d. Familiarity with Charlotte Business Inclusion (CBI) requirements and processes.

1.2.2 Owner's Advisor General Services

The selected Consultant(s) will serve as an extension of the City's staff and help to develop a project scope of services designed specifically to meet the City's needs and equitably manage project risk. The Consultant's services will be tailored to provide only those services that are necessary to supplement City staff. In general, the owner's advisor may be requested to undertake some or all of the various tasks listed in the DBIA publication *Selecting and Using an Owner's Advisor in Design-Build* as follows:

Closing the Knowledge Gap

- a. Development of an "Acquisition Strategy;"
- b. Confirming what is permitted under design-build statutes and policy;
- c. Providing education and orientation for the City organization;
- d. Emphasizing the importance of collaboration, timely decision-making, and the designation of the City's decision-maker;
- e. Explaining project delivery evaluation and selection options/procedures;
- f. Facilitating project risk assessment and management strategy sessions;
- g. Market validation and comment on the proposed delivery method; and
- h. Supporting budget development.

Pre-Award Support

- a. Defining project objectives and priorities;
- b. Developing/confirming project scope of work and other requirements including project quality approach;
- c. Assisting in determining project goals, challenges, and constraints;
- d. Managing expectations;
- e. Developing procurement plan, schedule, and procedures;
- f. Assisting in development of a realistic budget for the proposed scope of work;
- g. Discussing contract forms, terms and conditions, and special provisions;
- h. RFQ development;

- i. Assisting and advising in development of the progressive design-build contract, scope of services, and RFQ as appropriate
- j. Competition process meetings, inquiries, and addenda;
- k. Facilitating interviews;
- l. Establishing qualifications selection criteria and methodology;
- m. Supporting determinations of shortlisting the most highly qualified submissions;
- n. Conducting risk and opportunity assessment;
- o. Providing contract negotiation support; and
- p. Developing an incentive/award fee approach.

Post-Award Support/Administration

- a. Partnering program development and implementation;
- b. Developing and implementing project execution planning;
- c. Monitoring costs and Independent Cost Estimate assistance;
- d. Facilitating project meetings and progress reviews;
- e. Providing project construction quality support;
- f. Minimizing project disputes and providing proactive claims avoidance initiatives;
- g. Supporting project completion/closeout;
- h. Supporting incentive/award fee program;
- i. Acceptance/performance testing;
- j. Training; and
- k. Turnover to the City.

1.2.3 Specific Owner's Advisor Services

The owner's advisor services required for the Project is outlined in Exhibit A - Scope of Services. The specific details of the scope of services will be negotiated after the owner's advisor is selected.

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:	Tuesday, August 13, 2024
Pre-Submittal Meeting (In-Person):	Wednesday, August 28, 2024 at 1 pm (EST) <u>Meeting Location:</u> Charlotte-Mecklenburg Government Center (CMGC) Conference Room # CH-14, Basement Level 600 East 4th Street, Charlotte, NC 28202
Deadline for Questions:	Wednesday, September 4, 2024 at 5 pm (EST)
DUE DATE & TIME FOR SUBMITTALS:	Tuesday, September 17, 2024 at 2 pm (EST)
Evaluation Meeting:	Tuesday, October 8, 2024
Notification of Short-Listed Firm (if applicable):	Wednesday, October 9, 2024
Interviews (if necessary):	Between October 14 and October 18, 2024 (dates & times to be determined)
Selection Announcement (anticipated):	Tuesday, October 22, 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:

- Firm must be properly registered with the Office of the Secretary of State of North Carolina; and
- Firm must be licensed by the NC Board of Examiners for Professional Engineers and Land Surveyors or North Carolina Licensing Board for General Contractors.

Evaluation criteria consist of:

- Qualifications and Relevant Experience as an Owner's Advisor, Consultant, or Contractor on a Progressive Design-Build Project and Key Team Members in Providing Similar Services for Similar Projects (Tab 1 of SOQ);
- Availability of the Firm and Key Team Members for this Project (Tab 2 of SOQ);
- Project Understanding, Methodology and Approach (Tab 3 of SOQ);
- Familiarity with local conditions, codes, and practices, as evidenced on previous projects (Tab 4 of SOQ); and
- Charlotte Business INclusion - Minority, Women, and Small Business (MWSBE) inclusion strategy (Tab 5 of SOQ).

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 above. Evaluations will focus on identifying the relative strengths, weaknesses, deficiencies, and risks associated with each SOQ. Interviews are anticipated but may be waived at the discretion of the evaluation committee. The City reserves the right to obtain clarification or additional information from any firm regarding to its SOQ.

The City reserves the sole right to select the most qualified consultant(s) on the basis of 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 **15** 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. What challenges or impediments could affect the schedule or budget for the project? How do you propose to address and mitigate these? Give examples of similar challenges on your past projects.
- C. State any conflicts of interest your firm or any key team member may have with this Project.
- D. Identify and describe any pending claims, disputes, and/or litigation and any that occurred within the past five (5) years involving your firm or any of your proposed subconsultants. With respect to resolved matters, describe the outcome.
- E. Provide a description of the company that will enter into the contract(s) with the City, including origin, background, current size, financial capacity, available resources, general organization, and company headquarters. Identify the name and title of the person authorized to enter into the contract(s) with the City.
- F. List exceptions to the City's standard contract terms and conditions. A sample contract is incorporated as Exhibit C.

Tab 1: Qualifications and Relevant Experience as an Owner's Advisor, Consultant, or Contractor on a Progressive Design-Build Project and Key Team Members in Providing Similar Services for Similar Projects

- A. List a maximum of **5** relevant, similar projects, either currently in progress or having been completed ***in the past 10 years***, containing work comparable to this specific Project either as an owner's advisor or as a design-build consultant, including any projects with the City, as follows:
 - List **only** projects involving the key team members or subcontractors proposed for this Project.
 - List projects in date order with newest projects listed first and include the following:
 - Brief project description;
 - Owner's representative having knowledge of the firm's work, include the contact name, phone, email, address;

- Contract dollar amount and total time period involved. Demonstrate your firm's previous successes in being able to deliver similar projects on time and at or under budget;
 - Discuss the methods, approach and controls used on the project in order to complete it in an effective, timely, economical and professional manner; and
 - Indicate if best value was used to select the design-build firm.
- B. Provide an organization chart of all key team members who will be directly involved in providing services, including any subcontractors, to be assigned specifically to this project. 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, women or small business firm. Identify any team members who are not in a Charlotte-region office and indicate where they are located.
- 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. Discuss how key personnel will meet City's needs for the skills outlined in section 1.2.1 above.
- E. Provide resumes for each proposed key team member. Resumes will not be counted towards the page limit.

Tab 2: Availability of the Firm and Key Team Members for Each Project

- A. Describe a specific project or example that illustrates your team availability and responsiveness.
- B. Discuss availability of key team members by providing a list of current projects/work for each key team member.

Tab 3: Project Understanding, Methodology and Approach

- A. Discuss how key personnel will provide the services outlined in section 1.2.2 and 1.2.3 above, and in Exhibit A – Scope of Services. Demonstrate the consultant's understanding of General Services' objectives and describe the proposed approach to deliver the Services in an effective, comprehensive, timely and professional manner.
- B. Provide a schedule overview.
- C. What challenges or impediments could affect the schedule or budget for the project? How do you propose to address and mitigate these? Give examples of similar challenges on your past projects.
- D. Include the following:

- A flow-chart illustrating your team's procurement approach to the project;
 - A roles and responsibilities matrix, including key decision points, indicating how the City will interface with the design-build team, and how the design-build team will interface with each other in order make project decisions;
 - Example RFQ/RFP templates that your firm has used for past design-build projects, in electronic format only (these will not count toward the page limit)
- E. Describe any support needed from City staff in order to execute the Services.
- F. Describe the firm's Project Management and Quality Control procedures, processes for performance, and past involvement in projects of similar nature to those anticipated as a result of this solicitation.
- G. Discuss the firm's Management and Quality Control procedures related to subconsultants.
- H. Discuss the firm's processes and procedures for meeting schedules and budgets.

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

- A. Discuss the firm's understanding and experience with local conditions, codes, and practices, as evidenced in previous projects.

Tab 5: 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 B;
- D. Please identify MWSBE firms that will be utilized during the initial planning/pre-construction/construction stage with their corresponding scopes of work
- E. For this RFQ, have you communicated with any local Minority and Small Business Enterprises to discuss participation opportunities? If so, who? For what scopes?
- F. Provide Form - Subcontractor / Supplier Utilization Commitment detailing the MWSBE firms your firm intend to utilize.

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

Tab 6: 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 Engineers

Any firm wishing to be considered for the Services must be properly registered with the Office of the Secretary of State and with either the North Carolina Board of Registration for Professional Engineers and Land Surveyors or 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 NC Board of Registration for Professional Engineers and Land Surveyors as applicable. It will be the responsibility of the prime firm to verify the registration of any corporate subsidiary or subcontractor prior to submitting a SOQ. For detailed licensing requirements, refer to North Carolina General Statutes (<http://www.ncbels.org/rulesandlaws.html>).

2.10 Financial Capacity; Insurance Requirements

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

2.11 Ownership of Work Products

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

2.12 City Rights and Reservations

The City expects to select one or more firms, but reserves the right to request substitutions of any key team member, including staff and subcontractors. The City reserves the right to contact any firm/team for any additional information including but not limited to experience, qualifications, abilities, equipment, facilities, and financial standing. The City reserves the right to modify any part of this RFQ as issued with an addendum. The City, at its sole discretion, reserves the right to reject any or all responses to the RFQ, to cancel the RFQ, to re-advertise for new RFQ responses either with identical or revised specifications, or to accept any RFQ response, in whole or part, deemed to be in the best interest of the City. The City reserves the right to waive technicalities and informalities.

A response to this RFQ shall not be construed as a contract, nor indicate a commitment of any kind. The City reserves the sole right to award a contract or contracts to the most qualified firm(s) on the basis of best overall SOQ that is most advantageous to the City. The City also reserves the right to make multiple awards, based on experience and qualifications if it is deemed in the City’s best interest.

2.13 Contract

The contents of this RFQ and all provisions of the successful SOQ deemed responsive by the City may be incorporated, either in whole or in part, into a contract and become legally binding when approved and executed by both parties. Contents of the contract may contain changes from the City’s perspective as a result of the RFQ process and SOQ(s) received. The final negotiated contract may include the scope of work as outlined in this RFQ along with the successful firm’s submittal and any additions or deletions made at the discretion of the City as a result of the RFQ process.

2.14 Equal Opportunity

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

2.15 E-Verify Certification

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

2.16 Familiarity and Compliance with Laws and Ordinances

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

2.17 Insurance Requirements

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

- **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 MWSBE goal will be negotiated with the selected firm associated with 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 - Subcontractor / Supplier Utilization

Commitment attached herein. Failure to submit this form with the Proposal shall render the Proposal non-responsive.

In addition to the MSBE participation plan, we recommend the firm provide a mentoring plan for the MSBE 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").

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Form – Execution of SOQ

Owner's Advisor Service for Bryant Farms Road Extension Phase II Progressive Design-Build Project

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):

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)*

Company Legal Name: _____

Mailing Address: _____

City/State/Zip: _____

Phone: _____

Email: _____

Printed Name: _____

Title: _____

Signature: _____

Date: _____

Form – 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:	Owner's Advisor Service for Bryant Farms Road Extension Phase II Progressive Design-Build Project		
MWBE Goal:		MBE Goal:	
MSBE Goal:		WBE Goal:	
MWSBE Goal:	Negotiated	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 – Commercial Non-Discrimination Certification

Project Name: Owner's Advisor Service for Bryant Farms Road Extension Phase II
Consultant's Name: _____

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 – 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 – 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 – Key Team Member Matrix

(Attach additional sheets as necessary)

Project : Owner’s Advisor Service for Bryant Farms Road Extension Phase II Progressive Design-Build Project

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

All owner's advisor need to be familiar with the content in the following three publications from the Design- Build Institute of America (DBIA):

- *Progressive Design-Build Done Right™*
- *Design-Build and Progressive Design-Build Key Characteristics: A Deeper Dive*
- *Selecting and Using an Owner's Advisor in Design-Build*

Knowledge of additional discipline-specific DBIA publications may also be necessary.

Duties:

The owner advisor's services, by way of illustration, but not limitation, **may** consist of the duties described below.

General Activities for All Phases

- a. Assist in defining Project objectives and priorities.
- b. Assist in developing/confirming Project scope of work, budget, schedule and Project quality approach.
- c. Assist in determining project challenges and constraints, and address resolution.
- d. Facilitate a Project risk assessment and management strategy session; create Risk Matrix, as appropriate.
- e. Assist in determination of Partnering Program development and implementation.
- f. Assist a procurement plan, schedule and procedures.
- g. Document all Project meetings with meeting notes and share communications with all stakeholders.
- h. Document and coordinate any requests for changes to the Project and all approved and denied requests for changes.
- i. Create documents and forms that can lead to standardization for future Design-Build contracts.
- j. Familiarity with Charlotte Business Inclusion (CBI) requirements and processes.

Project Initiation Phase

- a. Identify stakeholders (including senior leadership and others such as City of Charlotte General Services Department, Engineering, Procurement, Charlotte Department of Transportation and others as appropriate) and their roles and responsibilities.
- b. Discuss available Project information (especially schedule and budget); confirm Project budget and schedule or assess need for further validation. If further validation is needed, assist in that validation.
- c. Discuss Project scope and identify need for further evaluation/validation. If further validation is needed, assist in that validation.
- d. Conduct Kick-off Meeting with City's key personnel. Discuss and identify need for further education; insights to Design-Build (e.g. collaboration, decision making, other key attributes) and City preparedness. If necessary, develop an approach to meet need and implement further education.
- e. Confirm Design-Build authority under NC law and City requirements/policies and address preliminary matters under North Carolina law - criteria for determining use of Design-Build appropriateness for Project; review North Carolina Design-Build legal requirements. Lead in completing any required documents per North Carolina General Statutes regarding Design-Build.

- f. Conduct Project Scope/Technical Requirements/Risk Assessment Meeting. Confirm and/or revise the Project scope. Identify minimum technical and other requirements for the Project. Initiate preliminary identification of Project risks and probability of occurrence.
- g. Plan and conduct public engagement through public meeting.

Negotiations Phase

- a. Assist in Design-Build Agreement negotiations with selected proposer. Provide support to City in contract negotiations and
- b. Assist in preparation or reviewing of City-required documentation for all proper approvals.
- c. Assist in final contract review of Design-Build Agreement with Design-Builder.

Design Phase

- a. Conduct a Project Design Kick-off Meeting with the Design-Builder to establish protocol, procedures, standard forms, communications protocol, schedule, status meetings, budget, design criteria, deliverables, City expectations, etc.
- b. Monitor and oversee the Design Phase activities.
- c. Review Design-Builder detailed program document with preliminary budget and schedule based on meeting kick-off meeting.
- d. Assist the City and Design-Build team in developing the programming requirements.
- e. Monitor the design process, track the incorporation of program requirements, and assist in sharing of information, as needed. Notify the City Project Manager of program deviations.
- f. Review design documents during development for constructability, coordination, completeness and value.
- g. Review the Design-Builder's construction schedule, incorporating pre-construction, construction, and proposed construction activities and coordination with the City's ongoing operations.
- h. Assist, if necessary, in coordination with utility agencies and provide documentation on status.
- i. Review design submissions of the Design-Builder at agreed upon phases of the project. Review and document adherence to minimum technical requirements, design feasibility, functionality, aesthetics, other quality parameters.
- j. Attend all meetings with City and the Design-Builder.
- k. Conduct general phone and email correspondence between the scheduled meetings.
- l. Provide independent estimates to validate and compare Design-Builder estimates at agreed-upon phases of the project and Guaranteed Maximum Price (GMP).
- m. Review and negotiate final schedule and GMP Construction Documents.
- n. Prepare GMP Amendment and formalize the GMP.

Construction Phase

- a. Conduct Construction Kick-off Meeting to establish protocol, procedures, standard forms, communications protocol, schedule, budget, status meetings, deliverables and City expectations.
- b. Attend Monthly Progress Meetings during the construction period and assure proper meeting documentation.
- c. Provide construction observation on a weekly basis to monitor and oversee Design-Builder through the construction activities and report to the City. Reporting will consist of written observation reports, status update and photo documentation with each trip.
- d. Keep the City informed about the progress and quality of the Work completed.

- e. Report to the City defects and deficiencies observed in the Work. Recommend courses of action to City when requirements of the Design-Builder's contract are not being fulfilled.
- f. Assist with oversight and monitoring of schedule, Project costs construction quality and adherence to the Contract Documents.
- g. Identify and report on potential variances between scheduled and probable completion dates.
- h. Assist if necessary, reviewing submittals, RFI's, proposal requests, and other changes from the Design-Builder.
- i. Review Proposal Requests (PR) from the Design-Builder and review with the City Project Manager. Document responses and keep log of status.
- j. Review Change Order Proposals (CP) and subsequent action. Provide advice on change orders. Follow-up with Change Orders, as appropriate. Verify pricing as required. Document responses and keep log of status.
- k. Review all PRs. Requested Change Order Proposals and Change Orders with the City Project Manager and provide documentation as required for denial and/or approval. Document responses and keep log of status.
- l. Review any Design-Builder payment requests and recommend for approval.
- m. Provide Project construction quality support.
- n. Monitor construction material testing results.
- o. Assist in minimizing Project disputes by providing proactive claims avoidance involvement.
- p. Assure proper documentation throughout and assist in the Substantial Completion, Final Completion and Project closeout activities. Consultant will be present on site for Substantial and Final Completion inspections and observation of any acceptance.
- q. Following Certification of Substantial Completion, facilitate and monitor the Design-Builder's completion of and the City's review and approval of all punch-list work.
- r. Verify the Design-Builder has turned over all construction and construction administration documents, operation manuals, as-builts, and record drawings.
- s. Write and issue a Project Evaluation after the project is closed out. This is a comprehensive report to be instructive (with lessons learned) on the future use of progressive Design-Build process.
- t. Oversee Training Program of equipment and systems.
- u. Assist in transition of operations to City and during Warranty Period.

Additional Services

The City may request the Consultant to perform additional services as the Project develops, and as needed. The City and the Consultant will negotiate the scope and fees for such Additional Services, consistent with the general purpose of this Contract.

Exhibit B – Sample MWSBE Outreach Plan

Sample Outreach Plan
Sample MWSBE Outreach Plan Components

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 C – SAMPLE CONTRACT

CONTRACT NUMBER: _____

AWARD DATE: _____

EXPIRATION DATE: _____



*****SAMPLE*****

CONTRACT FOR PROFESSIONAL SERVICES

PROJECT:

Owner's Advisor Services For
Bryant Farms Road Extension Phase II Progressive Design-Build Project

OWNER:

City of Charlotte

CONSULTANT:

This **CONTRACT** made and entered into this _____ day of _____, 2024 (“Effective Date”), by and between the **CITY OF CHARLOTTE**, a North Carolina municipal corporation (“City”), and **NAME OF CONSULTANT**, a professional corporation (“Consultant”).

GENERAL RECITALS

WHEREAS, the City advertised a Request for Qualifications RFQ 269-2024-117 for Owner’s Advisor Service for the Progressive Design-Build Project of Bryant Farms Road Extension Phase II on **August 13, 2024**;

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

WHEREAS, the City desires to engage the Consultant to provide Owner’s Advisor services as outlined hereinafter upon the terms and conditions as set out herein;

WHEREAS, the Consultant desires to provide such Owner’s Advisor services as outlined hereinafter upon the terms and conditions set out herein;

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

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

CONTRACT

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 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.

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

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

CITY refers to the City of Charlotte, North Carolina.

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

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

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

DEPARTMENT refers to a department within the City.

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

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

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

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

3 DESCRIPTION OF SERVICES

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

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

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

4 COMPENSATION

4.1 LUMP SUM FEES

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

4.2 HOURLY AND UNIT PRICE BASIS ALLOWANCE

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

4.3 ALLOWANCE FOR OPTIONAL AND UNSPECIFIED ADDITIONAL SERVICES

Additional services shall be performed by the Consultant only after written instructions to do so are received from the City’s Project Manager. Compensation for additional services performed shall be in accordance with the hourly and unit price rates set forth in this Contract and shall not exceed \$ [REDACTED].

4.4 REIMBURSABLE EXPENSES

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

Travel

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

Communications

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

Permitting Fees

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

Reprographics, Renderings, and Models

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

4.5 *SUMMARY OF FEES AND ALLOWANCES*

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

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

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

4.6 *INVOICES*

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

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

OPTION 1:

The Consultant shall email all invoices to cocap@charlottenc.gov

OR

OPTION 2:

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

Each invoice must contain the following information:

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

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

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

4.7 PRE-CONTRACT COSTS

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

4.8 COST OVERRUNS

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

4.9 ACCOUNTING AND AUDITING

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

For the purpose of such inspections, the City's agent or authorized representative shall have access to said records from the Effective Date of this Contract, for the duration of the Services, and until three (3) years after the date of final payment by the City to the Consultant pursuant to this Contract.

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

4.10 WITHHOLDING OF PAYMENTS

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

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

4.11 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

4.12 PROMPT PAYMENT TO SUBCONSULTANTS

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

4.13 NON-APPROPRIATION OF FUNDS

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

5 CONTRACT PERIOD

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

6 CONSULTANT'S RESPONSIBILITIES

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

- a. Provide for the City professional services in all phases of the Project to which this Contract applies;
- b. Serve as City's professional for the Project as directed by the City's Project Manager;

General Services – Division Name
600 E. 4th Street
Charlotte, NC 28202
[PM phone number]
@charlottenc.gov

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

8.2 *CONSULTANT PROJECT MANAGER*

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

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

The Consultant Project Manager is:

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

8.3 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:

_____ [Division Manager's Name]

_____ [Title]

City of Charlotte

General Services – Division Name

600 E. 4th Street

Charlotte, NC 28202

_____ [Phone]

_____ [Email]

For the Consultant:

_____ [Consultant's Manager's Name]

_____ [Title]

_____ [Name of Firm]

_____ [Street Address]

_____ [City/State/Zip]

_____ [Phone]

_____ [Email]

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

9 REMOVAL, REPLACEMENT AND PROMOTION OF CONSULTANT PERSONNEL

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

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

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

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

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

10 PROGRESS REPORTS

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

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

Reports will be distributed electronically in PDF format.

11 QUALITY CONTROL PROGRAM

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

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

12 ACCEPTANCE OF DELIVERABLES

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

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

13 NON-EXCLUSIVITY

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

14 REPRESENTATIONS AND WARRANTIES OF CONSULTANT

14.1 GENERAL WARRANTIES.

- a. The Services shall satisfy all requirements set forth in the Contract, including but not limited to the attached Exhibits;
- b. The Consultant has taken and will continue to take precautions sufficient to ensure that it will not be prevented from performing all or part of its obligations under the Contract by virtue of interruptions in the computer systems used by the Consultant;
- c. All Services performed by the Consultant and/or its subconsultants pursuant to this Contract shall meet the customary industry standards and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;
- d. Neither the Services, nor any Deliverables provided by the Consultant under this Contract will infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party. The Consultant shall not violate any non-compete agreement or any other agreement with any third party by entering into or performing this Contract;

- e. The Consultant and each employee provided by the Consultant to the City for this Project shall have the qualifications, skills and experience necessary to perform the Services described or referenced in **Exhibit A**;
- f. All information provided by the Consultant about each employee is accurate; and
- g. Each employee is an employee of the Consultant, and the Consultant shall make all payments and withholdings required for by law for the Consultant for such employee.

14.2 ADDITIONAL WARRANTIES

The Consultant further represents and warrants that:

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

15 OTHER OBLIGATIONS OF THE CONSULTANT

15.1 WORK ON CITY PREMISES

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

15.2 RESPECTFUL AND COURTEOUS BEHAVIOR

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

15.3 REGENERATION OF LOST OR DAMAGED DATA

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

15.4 REPAIR OR REPLACEMENT OF DAMAGED EQUIPMENT OR FACILITIES

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

16 REMEDIES

16.1 RIGHT TO COVER

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

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

16.2 RIGHT TO WITHHOLD PAYMENT

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

16.3 SPECIFIC PERFORMANCE AND INJUNCTIVE RELIEF

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

16.4 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.

17 TERMINATION OF CONTRACT

17.1 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 Consultant. In the event the Contract is terminated pursuant to this Section, the Consultant shall continue performing the Services until the termination date designated in the termination notice. As soon as practicable after written notice of termination without cause, Consultant shall submit a statement to the City showing in detail the Services performed under this Contract through the date of termination. In the event of termination without cause pursuant to this Section, the City agrees to: (i) pay the Consultant for Services rendered through the termination date at the rates set forth in **Exhibit C**. The

foregoing payment obligation is contingent upon: (i) the Consultant having fully complied with this Section; and (ii) the Consultant having provided the City with written documentation reasonably adequate to verify the number of hours of Services rendered by each person through the termination date and the percentage of completion of each Deliverable.

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

17.2 *TERMINATION FOR DEFAULT*

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

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

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

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

17.3 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 Consultant shall upon termination immediately discontinue all service in connection with this Contract and promptly cancel all existing orders and subcontracts, which are chargeable to this Contract. As soon as practicable after receipt of notice of termination, the Consultant shall submit a statement to the City showing in detail the Services performed under this Contract to the date of termination.

17.4 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.

17.5 OBLIGATIONS UPON EXPIRATION OR TERMINATION

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

17.6 NO EFFECT ON TAXES, FEES, CHARGES OR REPORTS

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

17.7 TRANSITION SERVICES UPON TERMINATION

Upon termination or expiration of this Contract, the Consultant shall cooperate with the City to assist with the orderly transfer of the Services provided by the Consultant to the City. Prior to termination or expiration of this Contract, the City may require the Consultant to perform and, if so required, the Consultant shall perform certain transition services, necessary to shift the Services of the Consultant to another provider or to the City itself as described below (the "Transition Services"). Transition Services may include but shall not be limited to the following:

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

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.

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

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 Consultant hereby assigns and transfers all rights in the Intellectual Property to the City. The Consultant further agrees to execute and deliver such assignments and other documents as the City may later require to perfect, maintain, and enforce the City's rights as sole owner of the Intellectual Property, including all rights under patent and copyright law. The Consultant hereby appoints the City as attorney-in-fact to execute all such assignments and instruments and agree that its appointment of the City as an attorney in fact is coupled with an interest and is irrevocable.

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

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

The City recognizes that the Intellectual Property may be generated, stored, transmitted or published in various media, including, but not limited to traditional hard-copy (i.e., blue prints), CADD formats, via Internet or Extranet websites or other electronic or other media and such Intellectual Property may be subject to unauthorized tampering, modifications and alterations

(collectively hereinafter referred to as “Unauthorized Use”) by parties over whom the Consultant has no control. The Intellectual Property is also subject to discrepancies as a result of numerous factors, including without limitation, transmission and translation errors resulting from differences in computer software, hardware and equipment-related problems, disk malfunctions, and user error (collectively hereinafter referred to as “Discrepancies”).

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

21 LICENSING

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

22 INDEMNIFICATION

To the fullest extent permitted by law, the Consultant shall indemnify and hold harmless each of the “Indemnitees” (as defined below) from and against any and all “Charges” (as defined below) paid or incurred as a result of any claims, demands, lawsuits, actions, or proceedings: (i) alleging violation, misappropriation or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to the Services or any products or deliverables provided to the City pursuant to this Contract (“Infringement Claims”); (ii) seeking payment for labor or materials purchased or supplied by the Consultant or its subcontractors in connection with this Contract; (iii) arising from the Consultant’s failure to perform its obligations under this Contract, or from any act of negligence or willful misconduct by the Consultant or any of its agents, employees or subcontractors relating to this Contract, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible; or (iv) arising from any claim that the Consultant or an employee or subcontractor of the Consultant is an employee of the City, including but not limited to claims relating to worker’s compensation, failure to withhold taxes and the like. For purposes of this Section: (a) the term “Indemnitees” means the City, any federal agency that funds all or part of this Contract, and each of the City’s and such federal agency’s officers, officials, employees, agents and independent contractors (excluding the Consultant); and (b) the term “Charges” means any and all losses, damages, costs, expenses (including reasonable attorneys’ fees), obligations, duties, fines, penalties, royalties, interest charges and other liabilities (including settlement amounts).

If an Infringement Claim occurs, the Consultant shall either: (i) procure for the City the right to continue using the affected product or service; or (ii) repair or replace the infringing product or

service so that it becomes non-infringing, provided that the performance of the overall product(s) and service(s) provided to the City shall not be adversely affected by such replacement or modification. If the Consultant is unable to comply with the preceding sentence within thirty (30) days after the City is directed to cease use of a product or service, the Consultant shall promptly refund to the City all amounts paid under this Contract.

23 SUBCONTRACTING

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

24 INSURANCE

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

24.1 General Requirements

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

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

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

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

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

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

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

24.2 *Types of Insurance*

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

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

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

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

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

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

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

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

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

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

26 COMMERCIAL NON-DISCRIMINATION

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

- a. The ownership of or ability to direct the voting of, as the case may be, fifty-one percent (51%) or more of the equity interests, value or voting power in the Consultant; or
- b. The power to direct or cause the direction of the management and policies of the Consultant whether through the ownership of voting securities, by contract or otherwise.

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 Consultant, its agents or representatives or any subconsultant for or on account of any stoppages or delay in the performance of any obligations of the City, or any other consequential, indirect or special damages or lost profits related to this Contract.

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 Consultant or its agents or representations may identify or reference this Contract or the City in any manner absent the written consent of the City. Notwithstanding the forgoing, the parties agree that the Consultant may list the City as a reference in responses to requests for proposals, and may identify the City as a customer in presentations to potential customers.

27.8 NO BRIBERY OR LOBBY

The Consultant certifies that to the best of its knowledge, information, and belief, neither it, any of its affiliates or subconsultants, nor any employees of any of the foregoing 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.

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 Consultant"

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

27.13 TAXES

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

filing an appeal of the assessment of the delinquent tax if such appeal is within the time prescribed by law.

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 Consultant for any travel or other expenses incurred in connection with this Contract unless this Contract specifically requires reimbursement. If this Contract requires reimbursement by the City: (a) the City will only pay coach/economy rate airline fares, and (b) the Consultant's invoices shall include sufficient detail of travel expenses to demonstrate that fares were at coach/economy rates. Notwithstanding the forgoing, nothing in this provision shall preclude complimentary upgrades to first class or business class seating, mileage, points, or credits based upgrades, or upgrades paid for by the Consultant so long as the City is not charged for or asked to reimburse the upgrade charge or the value of the miles, points, or credits used.

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 Consultant shall not be liable for any failure or delay in the performance of its obligations pursuant to this Contract and such failure or delay shall not be deemed a default of this Contract or grounds for termination hereunder, except as set forth below, if all of the following conditions are satisfied:

- a. If such failure or delay could not have been prevented by reasonable precautions;
- b. If such failure or delay cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and
- c. If and to the extent such failure or delay is caused by fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, strikes, lockouts or court order (each, a "Force Majeure Event").

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

The Consultant shall promptly notify the City by telephone or other means available (to be confirmed by written notice within five (5) business days of the inception of the failure or delay)

of the occurrence of a Force Majeure Event and describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents the Consultant from performing its obligations for more than thirty (30) days, the City may terminate this Contract.

27.18 ENDORSEMENT OF DOCUMENTS

The Consultant shall sign and seal, or cause to be signed and sealed, with the appropriate North Carolina Professional Seal, all plans, specifications, calculations, reports, plats, and construction documents prepared by the Consultant under this Contract.

27.19 CADD STANDARDS; FINAL PLANS

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

27.20 CORRECTION OF DEFECTS AND FAILURES

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

28 DISPUTE RESOLUTION

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

28.1 Any dispute arising between or among the Parties listed in Section 28.3 of this Article that arises from an agreement to perform services in conjunction with the Project, including without limitation a breach of such agreement, shall be subject to non-binding mediation administered by the American Arbitration Association under the industry appropriate Mediation Rules ("Rules"). To the extent any provision of the Rules is inconsistent with the provisions of this Article, the provisions of this Article shall control. The mediation provided in this Article shall be used pursuant to this Contract and NCGS 143-128(g-h) and is in lieu of any dispute resolution process adopted by any other government entity, which process shall not apply to this Project.

28.2 For purposes of this Article the following definitions shall apply:

- a. Party or Parties refers to the parties listed in Section 28.3 of this Article.
- b. Project means project pursuant to this Contract.

- 28.3 The City and any Party contracting with the City or with any first-tier or lower-tier subconsultant for the performance of the Project agree to participate in good faith in any mediation of a dispute subject to this Article and NCGS 143-128(g-h), including without limitation the following Parties (if any): Consultant, independent contractor(s) of the City, surety(ies), subconsultant(s), and supplier(s).
- 28.4 The Consultant and all other Parties shall include this Article in every agreement to which it (any of them) is a Party in performing the Services of the Project without variation or exception. Failure to do so will constitute a breach of this Contract, and the Contractor or other Party failing to include this Article in any agreement required by this Article shall indemnify and hold harmless the remaining Parties from and against any and all claims, including without limitation reasonable attorney fees and other costs of litigation, arising in any manner from such breach. Notwithstanding the foregoing provisions of this Section, it is expressly understood and agreed that the Parties are intended to be and shall be third-party beneficiaries of the provisions of this Article and can enforce the provisions hereof.
- 28.5 The following disputes are not subject to mediation: (i) a dispute seeking a non-monetary recovery; and (ii) a dispute seeking a monetary recovery of \$15,000 or less.
- 28.6 A dispute seeking the extension of any time limit set forth in an agreement to perform the Services for the Project shall be subject to mediation pursuant to this Article and NCGS 143-128(g-h), but only if the damages which would be suffered by the Party seeking the extension would exceed \$15,000 if the disputed extension is denied. To the extent that liquidated damages are set forth in such agreement as the measurement of damages for failure by such Party to meet such time limit, such liquidated damages shall be the exclusive standard for determining the amount of damages associated with such dispute.
- 28.7 For purposes of this Article, a dispute is limited to the recovery of monetary damages from the same transaction or occurrence against a single Party or two or more Parties alleged to be liable jointly, severally or in the alternative. Two or more disputes may not be consolidated or otherwise combined without the consent of all Parties to such disputes.
- 28.8 In addition to such matters as are required by the Rules, a request for mediation shall include the amount of the monetary relief requested.
- 28.9 Prior to requesting mediation, a Party must form a good faith belief that it is entitled under applicable law to recover the monetary amount to be included in the request from one or more of the remaining Parties. Such belief must be based on a reasonable and prudent investigation into the dispute that is the subject of the request. The request for mediation must be based on such investigation and may not include any amount or the name of any remaining Party, unless supported by such investigation and good faith belief by the Party requesting the mediation.
- 28.10 If a Party breaches any provision of Section 28.9 of this Article, it shall indemnify and hold harmless all other Parties from any costs, including reasonable attorney fees and other costs of litigation, and damages incurred by such other Parties that arise from such breach.

- 28.11 All expenses incurred by a Party to a dispute in preparing and presenting any claim or defense at the mediation shall be paid by the Party. Such expenses include without limitation preparation and production of witnesses and exhibits and attorney fees. All other expenses of the mediation, including filing fees and required traveling and other expenses of the mediator, shall be borne as follows: one half by the Party requesting the mediation, with the remaining parties paying equal shares of the remaining expenses and costs; provided that, if the City is named as a party to the mediation, the City shall pay at least one-third of the mediation expenses and costs divided among the Parties. If more than one Party to a dispute requests a mediation, the mediation expenses and costs to be divided among the Parties shall be borne equally by the Parties to the dispute; provided that, if the City is named as a Party to the mediation, the City shall pay at least one-third of the mediation expenses and costs divided among the Parties.
- 28.12 The mediation shall be held at a location agreeable to the mediator and all of the Parties; provided that, if no agreement can be reached, the mediation will be held at such location in Mecklenburg County as the mediator shall determine.
- 28.13 The provisions of this Article are subject to any other provision of this Contract concerning the submission, documentation and/or proof of any claim or dispute. Such other provisions shall apply in full force and shall be satisfied as a condition precedent to mediation pursuant to this Article.
- 28.14 The Parties understand and agree that mediation in accordance with this Article shall be a condition precedent to institution of any legal or equitable proceeding seeking monetary recovery based on any dispute that is subject to mediation pursuant to this Article.
- 29. NORTH CAROLINA PROHIBITION ON CONTRACTS WITH COMPANIES THAT INVEST IN IRAN OR BOYCOTT ISRAEL**
- Consultant certifies that: (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 147-86.58 (collectively, the "Treasurer's IDA List"); (ii) it has not been designated by the NC State Treasurer pursuant to N.C.G.S. 147-86.81 as a Consultant engaged in the boycott of Israel (such designation being referred to as the "Treasurer's IB List"); and (iii) it will not take any action causing it to appear on the Treasurer's IDA List or the Treasurer's IB List during the term of this Contract. In signing this Contract Consultant further agrees, as an independent obligation, separate and apart from this Contract, to reimburse the City for any and all damages, costs and attorneys' fees incurred by the City in connection with any claim that this Contract or any part thereof is void due to Consultant appearing on the Treasurer's IDA List or the Treasurer's IB List at any time before or during the term of this Contract.
- 30. E-VERIFY**
- The Consultant shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and shall require each of its subcontractors to do so as well.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

THIS CONTRACT, entered into as of the day and year first written above for **Owner's Advisor Services for Brant Farms Road Extension Phase II Progressive Design-Build Project**, Contract Number in an amount not to exceed \$.

 [NAME OF FIRM IN CAPS]

By: _____

Signature

Print Name

Title

Date

CITY OF CHARLOTTE:

By: _____

Signature

Print Name

Title

Date

EXHIBIT A – SCOPE OF WORK

[Insert scope of work]

SAMPLE

EXHIBIT B – PROJECT SCHEDULE

The approximate Project schedule is as follows:

SAMPLE

EXHIBIT C – FEE/COST BREAKDOWN

Hourly and Unit Price Rates for Additional Services

[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.

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

This Project has an aspirational 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, 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

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:			
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

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

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