

NORTH CAROLINA

WAKE COUNTY

CONTRACT FOR SERVICES

THIS CONTRACT is entered into this _____ day of _____, 20____, by and between _____, hereinafter referred to as the “Contractor”, and the City of Raleigh, a North Carolina municipal corporation, hereinafter referred to as the “City”.

WITNESSETH:

WHEREAS, the City desires to procure a contractor to perform services; and

WHEREAS, the City has completed necessary steps for retention of professional and other services under applicable City policies; and

WHEREAS, the City has agreed to engage the Contractor, and the Contractor has agreed to contract with the City, for performance of services as described, and according to the further terms and conditions, set forth herein.

NOW THEREFORE, in consideration of sums to be paid to the Contractor, and other good and valuable consideration, the Contractor and City do contract and agree as follows:

1. Scope of Services

The Contractor shall perform for the City the following described services:

2. Time of Performance

In performing the services described in this Contract, it is mutually agreed that time is of the essence. The Contractor shall begin work _____, and work shall be completed _____.

In the event the services under the Contract are not completed by this date, the Contractor shall be assessed liquidated damages of _____ for each day’s delay beyond the completion date. If liquidated damages are not applicable to this agreement, insert ‘(0) zero’ in the space above.

3. Compensation; Time of Payment

For services to be performed hereunder, the City shall pay the Contractor \$.
Requests for payment(s) and payment(s) shall be made as follows: The
standard City of Raleigh payment term is NET 30 days from the date of invoice.

4. Workmanship and Quality of Services

All work performed under this Contract shall be performed in a workmanlike and professional manner, to the reasonable satisfaction of the City, and shall conform to all prevailing industry and professional standards.

5. Notices

All notices, requests for payment, or other communications arising hereunder shall be sent to the following:

City of Raleigh

The Contractor

Attn:

Telephone:

P.O. Box 590

Raleigh, NC 27602

6. Non-discrimination

In consideration of the signing of this Contract, the parties hereto for themselves, their agents, officials, employees and servants agree not to discriminate in any manner on the basis of race, color, creed, national origin, sex, age, handicap, or sexual orientation with reference to the subject matter of this Contract, no matter how remote. The parties further agree in all respects to conform with the provisions and intent to City of Raleigh Ordinance 1969-889, as amended. This provision is hereby incorporated into this Contract for the benefit of the City of Raleigh and its residents, and may be enforced by action for specific performance, injunctive relief, or other remedy as by law provided. This provision shall be binding on the successors and assigns of the parties with reference to the subject matter of this Contract.

7. Minority or Women Owned Businesses

The City of Raleigh prohibits discrimination in any manner on the basis of race, color, creed, national origin, sex, age or handicap or sexual orientation and will pursue an affirmative policy of fostering, promoting and conducting business with women and minority owned business enterprises. The City of Raleigh has adopted a goal of 15% for participation by minorities or women-owned businesses in order to reach the above stated goal.

The percentage of MWBE business participation engaged in this contract based on total contract amount is proposed to be %. Any variation from this amount is to be immediately conveyed to the City by written notice, Attention: Luther Williams, Business Assistance Coordinator, PO BOX 590 Raleigh, NC 27602, with a copy to the City of Raleigh contact listed in the 'Notices' section of this Contract.

8. Assignment

This Contract may not be assigned without the express written consent of the City.

9. Applicable Law

All matters relating to this Contract shall be governed by the laws of the State of North Carolina, without regard to its choice of law provisions, and venue for any action relating to this Contract shall be Wake County Civil Superior Court or the United States District Court for the Eastern District of North Carolina, Western Division.

10. Insurance

Contractor agrees to purchase at its own expense insurance coverages to satisfy the following minimum requirements. A certificate reflecting the following minimum coverages shall accompany this Contract:

Workers' Compensation Insurance - Limits of no less than \$1,000,000 each accident, each employee and policy limit. Waivers of Indemnity are not recognized by the North Carolina Department of Insurance and will not be accepted by the City of Raleigh.

Commercial General Liability - Combined single limits of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate. This insurance shall include Comprehensive Broad Form Coverage including contractual liability. 'City of Raleigh is named additional insured as their interests may appear' must be endorsed onto policy and listed on Certificate of Insurance.

Commercial Automobile Liability - Limits of no less than \$1,000,000 Combined Single Limit. Evidence of commercial automobile coverage is only necessary if vehicles are used in the provision of services under this Agreement and/or are brought on a City of Raleigh site. 'City of Raleigh is named additional insured as their interests may appear' must be endorsed onto policy and listed on Certificate of Insurance.

Professional Liability – Limits of no less than \$1,000,000 each claim. This coverage is only necessary for professional services such as engineering, architecture, design or when otherwise required by the City.

All insurance companies must be licensed in North Carolina and be acceptable to the City of Raleigh's Risk Manager. Contractor shall be required to provide the City no less than thirty (30) days notice of cancellation, or any material change, to any insurance coverage required by this Contract.

11. Indemnity

Except to the extent caused by the sole negligence or willful misconduct of the City, the Contractor shall indemnify and hold and save the City, its officers, agents and employees, harmless from liability of any kind, including all claims, costs (including defense) and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract, and from any and all claims, costs (including defense) and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Contractor in the performance of this Contract. This representation and warranty shall survive the termination or expiration of this Contract.

The Contractor shall indemnify and hold and save the City, its officers, agents and employees, harmless from liability of any kind, including claims, costs (including defense) and expenses, on account of any copyrighted material, patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this Contract.

12. Intellectual Property

Any information, data, instruments, documents, studies, reports or deliverables given to, exposed to, or prepared or assembled by the Contractor under this agreement shall be kept as confidential proprietary information of the City and not divulged or made available to any individual or organization without the prior written approval of the City. Such information, data, instruments, documents, studies, reports or deliverables will be the sole property of the City and not the Contractor.

All intellectual property, including, but not limited to, patentable inventions, patentable plans, copyrightable works, mask works, trademarks, service marks and trade secrets invented, developed, created or discovered in performance of this Contract shall be the property of the City.

Copyright in and to any copyrightable work, including, but not limited to, copy, art, negatives, photographs, designs, text, software, or documentation created as part of the Contractor's performance of this project shall vest in the City. Works

of authorship and contributions to works of authorship created by the Contractor's performance of this project are hereby agreed to be 'works made for hire' within the meaning of 17 U.S.C. 201.

13. Force Majeure

Except as otherwise provided in any environmental laws, rules, regulations or ordinances applicable to the parties and the services performed under this Contract, neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by an act of war, hostile foreign actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God. Either party to the Contract must take reasonable measures and implement reasonable protections when a weather event otherwise defined as a force majeure event is forecast to be eligible to be excused from the performance otherwise required under this Contract by this provision.

14. Advertising

The Contractor shall not use the existence of this Contract, or the name of the City of Raleigh, as part of any advertising.

15. Cancellation

The City may terminate this Contract at any time by providing thirty (30) days written notice to the Contractor. In addition, if Contractor shall fail to fulfill in timely and proper manner the obligations under this Contract for any reason, including the voluntary or involuntary declaration of bankruptcy, the City shall have the right to terminate this Contract by giving written notice to the Contractor and termination will be effective upon receipt. Contractor shall cease performance immediately upon receipt of such notice.

In the event of early termination, Contractor shall be entitled to receive just and equitable compensation for costs incurred prior to receipt of notice of termination and for the satisfactory work completed as of the date of termination and delivered to the City. Notwithstanding the foregoing, in no event will the total amount due to Contractor under this section exceed the total amount due Contractor under this Contract. The Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Contract, and the City may withhold any payment due to the Contractor for the purpose of setoff until such time as the City can determine the exact amount of damages due the City because of the breach.

Payment of compensation specified in this Contract, its continuation or any renewal thereof, is dependent upon and subject to the allocation or appropriation of funds to the City for the purpose set forth in this Contract.

16. Laws/Safety Standards

The Contractor shall comply with all laws, ordinances, codes, rules, regulations, safety standards and licensing requirements that are applicable to the conduct of its business, including those of Federal, State, and local agencies having jurisdiction and/or authority.

All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization, such as the American Society of Mechanical Electrical Engineers for pressure vessels; the Underwriters' Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type(s) of devices offered and furnished. Further, all items furnished by the Contractor shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution.

Contractor must comply with *North Carolina Occupational Safety and Health Standards for General Industry, 29CFR 1910*. In addition, Contractor shall comply with all applicable occupational health and safety and environmental rules and regulations.

Contractor shall effectively manage their safety and health responsibilities including:

A. **Accident Prevention**

Prevent injuries and illnesses to their employees and others on or near their job site. Contractor managers and supervisors shall ensure employer's personnel safety by strict adherence to established safety rules and procedures.

B. **Environmental Protection**

Protect the environment on, near, and around their work site by compliance with all applicable environmental regulations.

C. **Employee Education and Training**

Provide education and training to all contractors employees before they are exposed to potential workplace or other hazards as required by specific OSHA Standards.

17. Applicability of North Carolina Public Records Law

Notwithstanding any other provisions of this Contract, this Contract and all materials submitted to the City by the Contractor are subject to the public records laws of the State of North Carolina and it is the responsibility of the Contractor to properly designate materials that may be protected from disclosure as trade secrets under North Carolina law as such and in the form required by law prior to the submission of such materials to the City. Contractor understands and agrees that the City may take any and all actions necessary to comply with federal, state, and local laws and/or judicial orders and such actions will not constitute a breach of the terms of this Contract. To the extent that any other provisions of this Contract conflict with this paragraph, the provisions of this section shall control.

18. Miscellaneous

The Contractor shall be responsible for the proper custody and care of any property furnished or purchased by the City for use in connection with the performance of this Contract, and will reimburse the City for its loss or damage.

The Contractor shall be considered to be an Independent Contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. Nothing herein is intended or will be construed to establish any agency, partnership, or joint venture. Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such employees shall not be employees of or have any individual contractual relationship with the City.

This Contract may be amended only by written agreement of the parties executed by their authorized representatives.

The City of Raleigh Internal Audit Office may conduct an audit of Contractor's financial, performance and compliance records maintained in connection with the operations and services performed under this Contract. In the event of such an audit, Contractor agrees to provide the Internal Audit Office with reasonable access to Contractor's employees and make all such financial, performance and compliance records available to the Internal Audit Office. The Internal Audit Office agrees to provide the Contractor with an opportunity to discuss and respond to any findings before a final audit report is issued. Records shall be made available for three (3) years after the final payment.

19. Incorporation of Documents/Complete Agreement

This Contract, and any documents incorporated below, represent the entire Contract between the parties and suspend all prior oral or written statements, agreements or Contracts.

Specifically incorporated into this Contract are the following attachments, or if not physically attached, are incorporated fully herein by reference:

In cases of conflict between this Contract and any of the above incorporated attachments or references, the terms of this Contract shall prevail.

IN WITNESS WHEREOF, the Contractor has executed the foregoing with the signature(s) of its duly authorized officer(s), under seal, and the City has executed with the signature of its City Manager, attested by its (Assistant/Deputy) Clerk-Treasurer, with the official seal affixed, the day and year first above written.

THE CONTRACTOR:

THE CITY OF RALEIGH

(Name)

By:

By:

City Manager

Printed Name/Title

(If corporate)

ATTEST:

ATTEST:

By:_____

By:_____

(Deputy) Clerk-Treasurer

Printed Name/Title

(Affix Seal)

(Affix Seal)

THIS INSTRUMENT APPROVED
AS TO FORM:

City Attorney