

Public Records Request #2855

The following materials have been gathered in response to public records request #2855. These materials include:

- Contract #2018000681 – Master Agreement for Professional Services: Mechanical Engineering Design Services

This information was provided as a response to a public records request on 10/22/19 and is current to that date. There is a possibility of more current information and/or documents related to the stated subject matter.

Further Information

For further information about this request or the Citywide Records Program, please contact:

Cheyenne Flotree
Citywide Records Program Manager
City of Charlotte/City Clerk's Office
600 East 4th Street, 7th Floor
Charlotte, NC 28202
Cheyenne.Flotree@charlottenc.gov

Amelia Knight
Public Records Specialist
City of Charlotte/City Clerk's Office
600 East 4th Street, 7th Floor
Charlotte, NC 28202
Amelia.Knight@charlottenc.gov

CONTRACT NUMBER: 2018000681

AWARD DATE: January 22, 2018

EXPIRATION DATE: 01/31/2021



CHARLOTTE

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

SERVICES:

Mechanical Engineering Design Services

OWNER:

City of Charlotte

CONSULTANT:

Little Diversified Architectural Consulting, Inc.

This **MASTER AGREEMENT**, made and entered into this 22 day of January 2018 ("Effective Date"), by and between the CITY OF CHARLOTTE, a North Carolina municipal corporation, hereinafter referred to as the "City," and LITTLE DIVERSIFIED ARCHITECTURAL CONSULTING, INC., hereinafter referred to as the "CONSULTANT."

GENERAL RECITALS

WHEREAS, the City advertised Request for Qualifications RFQ 2017-307 for Mechanical Engineering Design Services, dated August 16, 2017;

WHEREAS, the Consultant submitted a proposal in response to the Request for Qualification;

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

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

WHEREAS, the City is authorized by the City Council to enter into an Agreement 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:

AGREEMENT

1 INCORPORATION OF EXHIBITS

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

EXHIBIT A:	Scope of Work
EXHIBIT B:	Project Schedule
EXHIBIT C:	Unit Costs
EXHIBIT D:	Key Personnel
EXHIBIT E:	Charlotte Business INclusion Program
EXHIBIT F:	Commercial Non-Discrimination Certification
EXHIBIT G:	Certificate of Insurance
EXHIBIT H:	Task Order

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 Agreement.

AGREEMENT 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 Agreement for completion of the Services, including authorized amendments or modifications thereto; also referred to as Time of Completion.

CITY refers to the City of Charlotte, North Carolina.

CITY PROJECT MANAGER refers to the specified City employee representing the best interests of the City for the Services.

CONSULTANT PROJECT MANAGER refers to the specified Consultant employee representing the best interests of the Consultant for the Services.

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 Task Orders issued under this Agreement.

DEPARTMENT refers to a department within the City of Charlotte.

DOCUMENTATION refers to all written, electronic, or recorded works, that describe the use, functions, features, or purpose of the Deliverables or Services or any component thereof, and which are published or provided to the City by the Consultant or its subcontractors, 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 Agreement.

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 Agreement, (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 Agreement, and all partial, intermediate or preliminary versions of any of the foregoing.

3 DESCRIPTION OF SERVICES

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

The Consultant shall perform the services detailed in the Task Order and generally described in **Exhibit A** attached to this Agreement and incorporated herein by reference (the "Services"). Unless otherwise provided in the Task Order, 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 each Task Order issued during the Agreement Period. All references to days in this Agreement (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 FEES AND CHARGES

The City agrees to pay the Consultant for actual Services performed, and to reimburse reasonable expenses incurred, in accordance with Task Orders issued under this Agreement. Fees provided in Task Orders shall be calculated using the hourly and unit rates set forth in **Exhibit C**.

The Consultant may request adjustments of hourly rates and unit prices at annual intervals. The City reserves the sole right to approve or reject requests for adjustments. Any rate adjustment(s) will be issued by the City in writing.

4.2 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:

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.

4.3 *INVOICES*

Each month after Services have been performed, the Consultant shall submit an invoice to the City stating the nature and quantity of Services performed and accompanied by proper supporting documentation as the City may require, including a monthly project status report. Hourly rates, unit prices, and reimbursable expenses, as applicable, shall be itemized on each invoice. The Consultant shall charge the City at 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: Engineering & Property Management
P.O. Box 37979
Charlotte, NC 28237-7979

Each invoice must contain the following information:

Purchase Order Number: Individually assigned
Agreement Number: 2018000681

City Contact Name: James Church
City Contact Department: Engineering & Property Management

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 sixty (60) days after such Services were rendered.

4.4 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 Agreement.

4.5 COST OVERRUNS

If it appears during the course of performance of the Services that any of the estimated fees and allowances in a Task Order 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 the Task Order. Any work performed without prior written approval shall be at the Consultant's expense.

4.6 ACCOUNTING AND AUDITING

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

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

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

have charged the City for amounts that are not allocable or verifiable, the Consultant shall promptly reimburse the City for said amount.

4.7 WITHHOLDING OF PAYMENTS

The parties agree that the City shall be entitled to withhold payments, including final payment, due to the Consultant under this Agreement 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.

4.8 PAYMENT AFFIDAVITS

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

Failure to provide a properly completed version of each Payment Affidavit required by this Section shall constitute a default under this Agreement, and shall entitle the City to: (a) withhold payment of any amounts due the Consultant (whether under this Agreement or otherwise), or (b) exercise any other remedies legally available for breach of this Agreement, or (c) impose any other sanctions permitted under the City's Charlotte Business INclusion Program. In order to have a properly completed Payment Affidavit, each subcontractor identified must be registered in the City's Vendor Registration System. The City may request on a case-by-case basis that the Consultant require certain suppliers to be registered in the City's Vendor Registration System, and may withhold payment of any amounts due the Consultant in the event the Consultant fails to comply with such request.

4.9 PROMPT PAYMENT TO SUBCONTRACTORS

The Consultant shall pay subcontractors 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 subcontractor's work, the Consultant is required to pay the retainage so withheld within seven (7) days after such subcontractor completes his work satisfactorily.

4.10 NON-APPROPRIATION OF FUNDS

If the Charlotte City Council does not appropriate the funding needed by the City to make payments under this Agreement 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 Agreement

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 Agreement.

4.11 PRE-AUDIT CERTIFICATE

No pre-audit certificate is required under NCGS 159-28(a) because this Agreement is for an indefinite quantity with no minimum purchase requirement. Notwithstanding anything contained herein to the contrary, this Agreement does not require the City to purchase a single product or service, and a decision by the City to not make any purchase hereunder will violate neither this Agreement nor any implied duty of good faith and fair dealing. The City has no financial obligation under this Agreement absent the City's execution of a valid and binding purchase order containing a pre-audit certificate.

5 CONTRACT PERIOD

This Agreement shall commence on the Effective Date and shall continue in full force until **January 31, 2021**. Any unexpended funds remaining in Task Orders at the end of the Contract term shall be liquidated.

6 CONSULTANT'S RESPONSIBILITIES

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

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

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

The Consultant shall identify and request in writing from the City in a timely manner: (i) all information reasonably required by the Consultant to perform the Services, (ii) a list of the City's personnel whose presence or assistance reasonably may be required by the Consultant to perform the Services, and (iii) any other equipment, facility or resource reasonably required by the Consultant to perform the Services. Notwithstanding the foregoing, the Consultant shall not be entitled to request that the City provide information, personnel or facilities other than those which **Exhibit A** specifically requires the City to provide. The Consultant shall not be relieved of any failure to perform under this Agreement by virtue of the City's failure to provide any information, personnel, equipment, facilities or resources: (i) that the Consultant failed to identify and request in writing from the City pursuant to this Section; or (ii) which the City is not required to provide pursuant to this Agreement. In the event the City fails to provide any

information, personnel, facility or resource that it is required to provide under this Section, the Consultant shall notify the City in writing immediately in accordance with the notice provision of this Agreement. Failure to do so shall constitute a waiver by Consultant of any claim or defense it may otherwise have based on the City's failure to provide such information, personnel, facility or resource.

8 POINTS OF CONTACT; NOTIFICATIONS

8.1 CITY PROJECT MANAGER

The duties of the City Project Manager include:

- a. Examining the documents submitted by the Consultant and expediting decisions concerning the documents in order to avoid unreasonable delay in the progress of the Consultant's Services;
- b. Ensuring that the Consultant delivers all requirements and specifications outlined in this Agreement, including all Task Orders issued under this Agreement;
- c. Coordinating the City's resource assignment as required to fulfill the City's obligations pursuant to this Agreement;
- d. Promptly responding to the Consultant's Project Manager when consulted in writing or by email with respect to Project issues; and
- e. Acting as the City's point of contact for all aspects of the Project including contract administration and coordination of communication with the City's staff.

The City Project Manager is:

James Church
HVAC/Plumbing Supervisor
City of Charlotte
E&PM/Building Services Division
531 Spratt Street
Charlotte, NC 28206
704-336-2994
jchurch@ci.charlotte.nc.us

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 Agreement (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:

Ken Shappley
Mechanical Engineering Principal/Project Manager
Little Diversified Architectural Consulting, Inc.
5815 Westpark Drive
Charlotte, NC 28217
704-561-3454
ken.shappley@littleonline.com

8.3 *NOTICES AND PRINCIPAL CONTACTS*

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

For the City:

William Haas, PE
Building Services Division Manager
City of Charlotte
E&PM/Special Projects Division
600 E. 4th Street
Charlotte, NC 28202
704-336-4625
704-336-4554 Fax
whaas@charlottenc.gov

For the Consultant:

Jeff Roman
National Director of Engineering
Little Diversified Architectural Consulting, Inc.
5815 Westpark Drive
Charlotte, NC 28217
704-561-3454/ 239.707.2430
704.561.8700 Fax
Jeff.roman@littleonline.com

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 subcontractors 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 Agreement, the term "Key Personnel" shall mean any personnel of the Consultant or its subcontractors who are identified as Key Personnel in **Exhibit D** to the Agreement, 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 subcontractors 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 subcontractors 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 (30) 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 Agreement, the Consultant will devote all personnel assigned to the Project to working on the Project on a first priority basis. As used in this Agreement, the term "personnel" includes all staff provided by the Consultant or its subcontractors, including but not limited to Key Personnel.

10 PROGRESS REPORTS

The Consultant shall prepare and submit to the City, at such times as may be agreed under a specific Task Order, written progress reports, which accomplish each of the following:

- a. Update the project schedule, 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.

11 QUALITY CONTROL PROGRAM

The Consultant shall establish and follow a quality control program throughout duration of the Agreement. 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 Agreement. 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 Agreement 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 require correction. 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 Agreement 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 Agreement 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 Agreement and the Task Orders, 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 Agreement by virtue of interruptions in the computer systems used by the Consultant;
- c. All Services performed by the Consultant and/or its subcontractors pursuant to this Agreement 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 Agreement 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 Agreement;
- 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 Agreement;
- c. The execution, delivery, and performance of this Agreement 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 Agreement;

- e. In connection with its obligations under this Agreement, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses; and
- f. The performance of this Agreement 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 a Task Order under this Agreement (including the Exhibits), the City may take any of the following actions with or without terminating this Agreement, 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 Agreement; 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 Agreement, the City shall have a right to withhold all payments due to the Consultant until such breach has been fully cured.

16.3 OTHER REMEDIES

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

17 TERMINATION OF CONTRACT

17.1 TERMINATION FOR CONVENIENCE

The City may terminate this Agreement 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 Agreement is terminated pursuant to this Section, the Consultant shall continue performing the Services under authorized Task Orders 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 authorized Services performed under this Agreement 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 authorized 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 Agreement 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 a Task Order;
- b. The Consultant makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Agreement, or any covenant, agreement, obligation, term or condition contained in this Agreement or any Task Orders under this Agreement; or
- c. The Consultant takes or fails to take any action which constitutes grounds for immediate termination under the terms of the Agreement, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by the Agreement, or failure to provide the proof of insurance as required by the Agreement.
- d. The Consultant violates or fails to perform any covenant, provision, obligation, term or condition contained in the Agreement, provided that, unless otherwise stated in the Agreement, 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 Agreement 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 Agreement 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 Agreement and shall state the City's intent to terminate the Agreement if the default is not cured within the specified period.

Notwithstanding anything contained herein to the contrary, upon termination of this Agreement by the City for default, the Consultant shall continue to perform the Services required by this Agreement: (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 Agreement 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 Agreement and promptly cancel all existing orders and subcontracts, which are chargeable to this Agreement. As soon as practicable after receipt of notice of termination, the Consultant shall submit a statement to the City showing in detail the authorized Services performed under this Agreement to the date of termination.

17.4 AUTHORITY TO TERMINATE

The following persons are authorized to terminate this Agreement 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 Agreement.

17.5 OBLIGATIONS UPON EXPIRATION OR TERMINATION

Upon expiration or termination of this Agreement, 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 Agreement 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 Agreement, 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 Agreement, 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 subcontractors 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 in writing which expressly references and is attached to this Agreement (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 receiving party does not accept the Amendment in writing within ten (10) days, the receiving party shall be deemed to have rejected the Amendment. If the parties cannot reach agreement on a proposed Change, the Consultant shall nevertheless continue to render performance under this Agreement in accordance with its (unchanged) terms and conditions.

19 RELATIONSHIP OF THE PARTIES

The relationship of the parties established by this Agreement is solely that of independent contractors. Nothing contained in this Agreement 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 Agreement, 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 agrees 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 Agreement. 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 subcontractors.

The City recognizes that the Intellectual Property may be generated, stored, transmitted or published in various media, including, but not limited to traditional hard-copy (i.e., blue prints), CADD formats, via Internet or Extranet websites or other electronic or other media and such Intellectual Property may be subject to unauthorized tampering, modifications and alterations (collectively hereinafter referred to as "Unauthorized Use") by parties over whom the 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 Agreement. 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 Agreement 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, defend and hold harmless each of the "Indemnitees" (as defined below) from and against any and all "Charges" (as defined below) paid or incurred by any of them as a result of any claims, demands, lawsuits, actions, or proceedings: (i) alleging violation, misappropriation or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to the Services or any products or deliverables provided to the City pursuant to this Agreement ("Infringement Claims"); (ii) seeking payment for labor or materials purchased or supplied by the Consultant or its subcontractors in connection with this Agreement; (iii) arising from the Consultant's failure to perform its obligations under this Agreement, or from any act of negligence or willful misconduct by the Consultant or any of its agents, employees or subcontractors relating to this Agreement, 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 and each of the City'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 Agreement. This Section 22 shall remain in force despite termination of this Agreement (whether by expiration of the term or otherwise).

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 Agreement. Any subcontract entered into by Consultant shall name the City as a third party beneficiary.

24 INSURANCE

Throughout the term of this Agreement, 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 Agreement, 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 Agreement immediately upon written notice to the Consultant.

24.1 *General Requirements*

The Consultant shall not commence any work in connection with this Agreement 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 subcontractor to commence work on its subcontract until all insurance required of the subcontractor 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 subcontractors shall and does waive all rights of subrogation against the City and each of the Indemnitees (as defined in **Section 22**).

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

Prior to execution of this Agreement, 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 Agreement, 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 Agreement.

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

24.2 *Types of Insurance*

Consultant shall obtain and maintain during the life of this Agreement, with an insurance company authorized to do business in the State of North Carolina and 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 subcontractor performing work under this Agreement, from claims of bodily injury or property damage which arise from operation of this Agreement, whether such operations are performed by the Consultant, any subcontractor, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate, or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, operations, personal injury liability and contractual liability, assumed under the indemnity provision of this Agreement. 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 Agreement, the Consultant is required to conduct a background check on each Consultant employee assigned to work under the Agreement, and shall require its subcontractors (if any) to perform a background check on each of their employees assigned to work under the Agreement (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 Agreement, the Consultant is required to perform a Background Check for each new Consultant employee assigned to work under the Agreement, and shall require its subcontractors (if any) to do the same for each of their new employees. If the Consultant undertakes a new project under the Agreement, 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 subcontractors (if any) to do the same for each of their employees.

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

- a. If the job duties require driving: A motor vehicle records check.
- b. If the job duties include responsibility for initiating or affecting financial transactions: A credit history check.

- c. If job duties include entering a private household or interaction with children: A sexual offender registry check.

The 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 subcontractors 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 POLICY

As a condition of entering into this Contract, the Consultant represents and warrants that it will fully comply with the City's Commercial Non-Discrimination Policy, as described in Section 2, Article V of the Charlotte City Code, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the Consultant shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, age or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors or suppliers in connection with a City contract or contract solicitation process, nor shall the Consultant retaliate against any person or entity for reporting instances of such discrimination. The Consultant shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on City contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace. The Consultant understands and agrees that a violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of the Consultant from participating in City contracts, or other sanctions.

As a condition of entering into this Contract, the Consultant agrees to: (a) promptly provide to the City in a format specified by the City all information and documentation that may be requested by the City from time to time regarding the solicitation, selection, treatment and payment of subcontractors in connection with this Contract; and (b) if requested, provide to the City within sixty days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Consultant has used on City contracts in the past five years, including the total dollar amount paid by Consultant on each subcontract or supply contract. The Consultant further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Non-Discrimination Policy, to provide any documents relevant to such investigation that are requested by the City, and to be bound by the award of any arbitration conducted under such Policy.

The Consultant agrees to provide to the City from time to time on the City's request, payment affidavits detailing the amounts paid by Consultant to subcontractors and suppliers in connection with this Contract within a certain period of time. Such affidavits shall be in the format specified by the City from time to time

The Consultant understands and agrees that violation of this Commercial Non-Discrimination provision shall be considered a material breach of this Contract and may result in contract termination, disqualification of the Consultant from participating in City contracts and other sanctions.

27 MISCELLANEOUS

27.1 ENTIRE AGREEMENT

This Agreement is the entire agreement between the parties with respect to its subject matter, and there are no other representations, understandings, or agreements between the parties with respect to such subject matter. This Agreement 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 Agreement 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 Agreement, the term "Control" shall mean the possession, direct or indirect, of either:

- a. The ownership of or ability to direct the voting of, as the case may be, fifty-one percent (51%) or more of the equity interests, value or voting power in the 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 Agreement and any other matters relating to this Agreement (all without regard to North Carolina conflicts of law principles). Any and all legal actions or proceedings relating to this Agreement shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By the execution of this Agreement, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections that they may have with respect to venue in any 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 Agreement shall bind the parties and their successors and permitted assigns. Neither party may assign this Agreement without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void.

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 subcontractor for or on account of any stoppages or delay in the performance of any obligations of the City, or any other consequential, indirect or special damages or lost profits related to this Agreement.

27.6 SEVERABILITY

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

27.7 NO PUBLICITY

No advertising, sales promotion or other materials of the Consultant or its agents or representations may identify or reference this Agreement 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, nor any of its affiliates or subcontractors, or any employees of any of the forgoing has bribed or lobbied, or attempted to bribe or lobby, an officer or employee of the City in connection with this Agreement.

27.9 APPROVALS

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

27.10 WAIVER

No waiver of any provision of this Agreement 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 Agreement 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 Agreement 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 Agreement which by their nature and effect are required to be observed, kept or performed after termination of this Agreement shall survive the termination of this Agreement and remain binding thereafter, including but not limited to the following:

Section "Representations and Warranties of Consultant"

Section "Termination of Agreement"

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 Agreement 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 Agreement, 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 Agreement 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 Agreement 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 Agreement unless this Agreement specifically requires reimbursement. If this Agreement 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 Agreement and such failure or delay shall not be deemed a default of this Agreement 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 Agreement 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 Agreement.

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 Agreement.

27.19 CADD STANDARDS; FINAL PLANS

The Consultant shall perform all Services in accordance with the current version of the City's CADD standards.

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 Agreement 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 Agreement.

28 DISPUTE RESOLUTION

It is understood and agreed that projects subject to NCGS 143-128(g-h) require that disputes arising under an Agreement 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 Agreement 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 Agreement.
- 28.3 The City and any Party contracting with the City or with any first-tier or lower-tier subcontractor for the performance of the Project agree to participate in good faith in any mediation of a dispute subject to this Article and NCGS 143-128(g-h), including without limitation the following Parties (if any): Consultant, independent contractor(s) of the City, surety(ies), subcontractor(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 Agreement, 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 Agreement 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. IRAN DIVESTMENT ACT

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; (ii) it will not take any action causing it to appear on any such list during the term of this Agreement; and (iii) it will not utilize any subcontractor that is identified on any such list to provide goods or services hereunder.

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 AGREEMENT, entered into as of the day and year first written above for **Mechanical Engineering Design Services**, Agreement Number **2018000681**.

LITTLE DIVERSIFIED ARCHITECTURAL CONSULTING, INC.

By:



Signature

JEFFREY M. ROMAN

Print Name

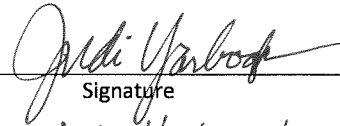
NATIONAL DIRECTOR OF ENGINEERING

Title

01/08/2018

Date

ATTEST



Signature

Judi Yarborough

Print Name

01/08/2018

Date

CITY OF CHARLOTTE

By:



Signature

MARIA N. MILES

Print Name

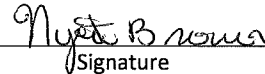
Contracts Manager

Title

February 2, 2018

Date

ATTEST



Signature

Nyota Brown

Print Name

2/2/18

Date

EXHIBIT A – SCOPE OF WORK

The Building Services Division of the Engineering & Property Management Department is responsible for the operations and maintenance of 200+ municipal facilities, structures, and assets, with a range of uses including office, warehouse, storage, parking, vehicle maintenance, communication towers, and public safety. As-needed mechanical engineering design services for maintenance or minor renovation projects span the entire facility portfolio.

Typical mechanical engineering design requests may include, but are not limited to, the design/installation of new or replacement HVAC equipment associated with air or water cooled chillers; split, unitary, and rooftop systems; heat pumps and geothermal systems. Plumbing expertise, including distribution of hot water and chilled water, is essential for some systems across the facility portfolio. Some design needs may include smaller renovation projects such as sink and water fountain additions.

Additionally, investigation and scoping studies related to mechanical systems may be requested, including the need to address comfort and/or operations. Energy efficient design is directed by the City Sustainable Facilities Policy; it is common to request alternate solutions with an emphasis on energy efficiency. Some projects may require like for like equipment change outs but others may require load calculations be run on facilities. Additionally we may require energy studies be performed at some facilities. The Consultant may be required to provide emergency services on short notice and within a tight time schedule.

Specific tasks may include:

- Meet with City representatives and/or other team members as needed to discuss the design concepts and coordinate Firm's work.
- Review existing plans and documentation to become familiar with original design capabilities and configurations of various systems.
- Perform field investigations of the areas involved to gain a better understanding of existing conditions.
- Provide feasibility analyses or studies.
- Provide constructions documents, including drawings and specifications, suitable for review, permit and bid.
- Assist with construction cost estimates.
- Provide assistance during bidding and permitting to answer questions and provide plan revisions as required.

o The City will be responsible for the constructions contract and bid process.

o The Consultant will be responsible for all permit and inspection fees.

- Provide shop drawing review and responses to RFIs.
- Provide close-out phase services, including, but not limited to, submission of drawings, asbuilt drawings, and other project-related documents.

No representation or guarantee is made regarding the quantity of work to be awarded under any as-needed service contract.

EXHIBIT B – PROJECT SCHEDULE

Task Orders Schedules

For Services required by a Task Order issued by the City, the Consultant shall complete the Services described in the Task Order by the milestone date identified therein.

EXHIBIT C – FEE/COST BREAKDOWN

Hourly and Unit Price Rates

Prime Consultant		
<i>Job Classification</i>	<i>Employee Name</i>	<i>Hourly Rate</i>
National Studio Principal (101)	Jeff Roman	\$240
Studio Principal (215)	Ken Shappley	\$235
Studio Principal (215)	Dan Gill	\$235
Engineer 5 (310)	Tra Phan	\$165
Engineer 4 (308)	Carlos Nieves	\$155
Engineer 4 (308)	Jim Milligan	\$155
Engineering Design Specialist 4 (308)	Tim Waz	\$155
Engineering Design Specialist 4 (308)	Eddie Voyzey	\$155
Engineering Design Specialist 3 (306)	Alex Lowrie	\$135
Engineer Intern 2 (305)	Kristen Smith	\$125
Subconsultant 1 – Building EnergetiCx		
<i>Job Classification</i>	<i>Employee Name</i>	<i>Hourly Rate</i>
Principal Commissioning Agent	Shane Nault	\$140
Commissioning Technician I	Rebekah Nault	\$60
Subconsultant 2		
<i>Job Classification</i>	<i>Employee Name</i>	<i>Hourly Rate</i>

EXHIBIT D – KEY PERSONNEL



EXHIBIT E – CHARLOTTE BUSINESS INCLUSION PROGRAM

CBI Policy adopted April 8, 2013

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

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

1. APPLICATION:

The City’s Charlotte Business INclusion (CBI) Policy is incorporated into and made a part of this solicitation and the resulting contract (the “Agreement”). Copies of the CBI Policy may be obtained by:

Internet: www.charlottebusinessinclusion.com

Mail: Charlotte Business INclusion Office
600 East Trade Street, Suite 300
Charlotte, North Carolina 28202

Capitalized terms used in this document shall have the meanings set forth in Part A, Appendix 1 of the CBI Policy. 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. THE COMMITTED M/W/SBE GOAL FOR THIS AGREEMENT IS AS FOLLOWS:

MBE GOAL:	0.00%
WBE GOAL:	0.00%
SBE GOAL:	10.00%
Aggregate M/W/SBE GOAL	0.00%

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

Consultant must state the projected dollar amount for each SBE listed on their CBI Form 3 and indicate the total dollar value of M/W/SBE participation for the contract. In the event Consultant has no M/W/SBE 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.

SBEs listed on CBI Form 3 must be actively certified with the City of Charlotte as of bid date and must be performing a Commercially Useful Function as defined in Part A of the CBI Policy. M/WBEs listed on CBI Form 3 must be actively certified as a Historically Underutilized Business by the State of North Carolina with the business headquarters in the Charlotte Combined Statistical Area.

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

3. CBI POLICY PROVISIONS APPLICABLE AFTER CONTRACT AWARD

If you are awarded an Agreement with the City, note in particular the following Sections of the CBI Policy regarding post contract award requirements and activity:

- I. Compliance with committed M/W/SBE subcontracting goal throughout the Agreement (Part D, Section 2)

- II. Performance of a commercially useful function and affiliate status (Part D, Section 2)
- III. Terminating or Replacing an M/W/SBE on a contract (Part D, Section 5)
- IV. New Subcontractor Opportunities (Part D, Section 6)
- V. Renewals (Part D, Section 7)
- VI. Payments to M/W/SBEs (Part D, Section 8)
- VII. Utilization Reports and Documentation of Payments (Part D, Section 9)
- VIII. Remedies and Liquidated Damages (Part D, Section 14)

4. CBI CONTRACT PROVISIONS

The following provisions are incorporated into the contract.

Charlotte Business INclusion. The City has adopted a Charlotte Business INclusion Policy ("CBI Policy"), which is posted on the City's website and available in hard copy form upon request to the City.

The parties agree that:

- I. The terms of the CBI Policy, as revised from time to time, together with all rules and guidelines established, are incorporated into this Agreement by reference; and
- II. A violation of the CBI Policy shall constitute a material breach of this Agreement, and shall entitle the City to exercise any of the remedies set forth in Part D of the CBI Policy, including but not limited to liquidated damages; and
- III. Without limiting any of the other remedies the City has under the CBI Policy, the City shall be entitled to withhold periodic payments and final payment due to the Contractor under this Agreement until the City has received in a form satisfactory to the City all claim releases and other documentation required by the City's CBI Policy, and in the event payments are withheld under this provision, the Contractor waives any right to interest that might otherwise be warranted on such withheld amount under G.S. 143-134.1; and
- IV. The remedies set forth in Part D Section 14 of the CBI Policy shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy; and
- V. The City will incur costs if the Contractor violates the CBI Policy, and such costs are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the Contractor agrees to pay the City liquidated damages at the rates set forth in Part D of the CBI Policy.
- VI. The Contractor 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 Policy.
- VII. Nothing in this Section shall be construed to relieve a Contractor from any obligation it may have under N.C. Gen. Stat. 143-134.1 regarding the payment of subcontractors.

Remedies for Violation of CBI Policy. A violation of the CBI Policy by a Contractor shall constitute a material breach of the Agreement, and shall entitle the City or private owner to:

- I. Exercise all rights and remedies that it may have at law or at equity for violation of the CBI Policy;
- II. Terminate the Agreement for default;
- III. Suspend the Agreement for default;
- IV. Withhold all payments due to the Contractor under the Agreement until such violation has been fully cured or the City and the Contractor have reached a mutually agreeable resolution;

- V. Assess liquidated damages as provided in Part D Section 14.2; and/or
- VI. Offset any liquidated damages and/or any amounts necessary to cure any violation of the CBI Policy from any retainage being held by the City on the Agreement, or from any other amounts due to the Contractor under the Agreement.

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 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 the SBE Goal.** If the City determines upon completion or termination of an Agreement that the Consultant did not meet the Committed M/W/SBE Goal and that such failure is not otherwise excused under Part D of the CBI Policy, the City may assess the lesser of: (a) \$200,000 or (b) the dollar difference between the Committed M/W/SBE Goal that was missed and the Consultant's actual M/W/SBE utilization toward that Goal. Such amount may be assessed when it becomes apparent that it will not be possible for the Consultant to achieve the Committed M/W/SBE Goal.
- II. **Using SBE as a Conduit.** If the Consultant lists an M/W/SBE to receive credit toward a Committed M/W/SBE Goal with knowledge that the M/W/SBE will be acting as a Conduit or will not be performing a Commercially Useful Function reasonably commensurate with the payment amount for which the Consultant will be seeking credit, the City may assess the lesser of: (a) \$100,000 per incident or (b) the dollar amount the Consultant indicated that it would pay such M/W/SBE in the M/W/SBE's contract (or if no contract has been signed, the M/W/SBE's Letter of Intent).
- III. **Wrongful Termination or Replacement of M/W/SBE Services.** If the Consultant terminates or replaces an M/W/SBE in violation of the CBI Policy, the City may assess the lesser of: (a) \$50,000 per incident or (b) the dollar amount of the work remaining to be performed by the terminated M/W/SBE at the time it was terminated (or if the M/W/SBE was not terminated because it was never retained, then, the dollar amount that the Consultant indicated it would pay the M/W/SBE in the M/W/SBE's letter of intent).
- IV. **Failure to Comply with CBI Policy upon Termination or Withdrawal by M/W/SBE.** If the Consultant fails to comply with the Modified Good Faith Efforts requirements (Part D, Section 5 of the CBI Policy) in replacing an M/W/SBE that is terminated or withdraws from work on a project, the City may assess the lesser of: (a) \$50,000 per incident or (b) the dollar amount of the work remaining to be performed by the M/W/SBE that withdrew or was terminated at the time of the termination or withdrawal.
- V. **Failure to Comply with CBI Policy to Add New Subcontractors.** If the Consultant fails to comply with the Modified Good Faith Efforts requirements (Part D, Section 5 of the CBI Policy) in adding new subcontractors to an Agreement, or when the scope of work of the Agreement changes so as to

create a new M/W/SBE subcontracting opportunity, the City may assess the lesser of: (a) \$50,000 per incident or (b) the dollar amount of the new or additional work.

- VI. **False Statements and Misrepresentations.** If the Consultant makes a false statement or material misrepresentation or material misleading omission regarding any matter relevant to the CBI Policy (including but not limited to information relating to good faith efforts, M/W/SBE utilization, M/W/SBE certification or payments to M/W/SBEs), the City may assess the lesser of: (a) \$50,000 per incident or (b) if the misrepresentation relates to payment, the dollar difference between what the Consultant represented and the truth;
- VII. **Failure to Respond to Request for Information.** If the Consultant fails to provide any report, documentation, affidavit, certification or written submission required under the CBI Policy within the time period set forth therein, the City may assess \$40 per day for each day that such report, documentation or written submission is overdue.
- VIII. **Seeking Credit for Use of an Affiliate to Meet the Committed M/W/SBE Goal.** If the City finds a violation of Part D, Section 3 of the CBI Policy due to a Consultant seeking credit for utilizing an M/W/SBE that the City determines to be an Affiliate, the City may assess the lesser of: (a) \$75,000 per incident or (b) the dollar amount the Consultant counted towards its Committed M/W/SBE Goal for that M/W/SBE.

5. CBI FORMS

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

CBI Form	Submission Requirements
<p><u>CBI Form 3: Subcontractor/Supplier Utilization Commitment.</u></p> <p>Identifies all M/W/SBE and non-SBE subcontractors and suppliers to be utilized on the contract and dollar amounts committed to M/W/SBEs.</p>	<p>Must be submitted within three (3) Business Days after requested by the City.</p>
<p><u>CBI Form 4: Letter of Intent.</u></p> <p>Consultant must submit a separate Letter of Intent executed by each M/W/SBE listed on CBI Form that Consultant commit to utilize on the Agreement.</p>	<p>Must be submitted within three (3) Business Days after requested by the City.</p>
<p><u>CBI Form 6: Payment Affidavit.</u></p> <p>Consultant shall provide with each pay request to the City a payment affidavit showing payments made to all subcontractors, suppliers, manufacturers, brokers, and / or members of a joint venture in connection with the contract.</p>	<p>Upon award of contract, CBI Form 6 must be submitted to the City with each pay request, for duration of Project.</p> <p>For Final Payment period, check the box indicating "Final Payment"</p>

All CBI Forms and a full list of M/W/SBE vendors are available on-line at www.charlottebusinessinclusion.com

CBI FORM 3 - Subcontractor / Supplier Utilization Commitment (page 1 of 2)

Project Name:	Mechanical Engineering Design Services
Consultant Name:	Little Diversified Architectural Consulting, Inc.

List below all **M/W/SBEs** that you intend to use on this Agreement.

Subcontractor Name	Description of Work / Materials	Indicate either "M", "S", and/or "W"	VMS (Vendor) #	Total Projected Utilization (\$)
Building EnergetiCx, PLLC	Commissioning: Peer Review of Mechanical Eng Design	S	150066	\$TBD

Total MBE Utilization	0.00%	\$0
Total WBE Utilization	0.00%	\$0
Total SBE Utilization	10.00%	\$TBD
Aggregate M/W/SBE Utilization	0.00%	\$0
Total Agreement Amount		TBD

Continue on next page

CBI FORM 3 - Subcontractor / Supplier Utilization Commitment (page 2 of 2)

List below all **non-M/W/SBEs** that you intend to use on this contract

Subcontractor Name	Description of Work / Materials	NIGP Commodity Code	VMS (Vendor) #	Projected Utilization (if known) (\$)
None				

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 Part D of the CBI Policy, you must comply with the following:

You must maintain the level of M/W/SBE participation proposed on this CBI Form 3 throughout the duration of the Agreement, except as specifically allowed in Part D.

If you need to terminate or replace an M/W/SBE, you must comply with Part D, Section 5.

If the scope of work on the Agreement increases, or if you elect to subcontract any portion of work not identified on this form as being subcontracted, then you must comply with Part D, Section 6.

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-M/W/SBE and M/W/SBEs) that you use on this contract must be registered in the City's vendor database. You will need to provide the vendor number for each subcontractor or supplier used on this contract as a condition for receiving final payment on this Agreement.

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
- (b) Failure to properly document such compliance in the manner and within the time periods established by the CBI Policy shall constitute a breach of contract.


JEFFREY ROMAN
NATIONAL DIR.
01/08/2018
 Signature of Authorized Official Printed Name Title **ENGINEERING** Submittal Date

CBI FORM 4 - Letter of Intent

Project Name:	Mechanical Engineering Design Services
----------------------	--

To be completed by PRIME (Consultant)	
Name of PRIME:	Little Diversified Architectural Consulting, Inc. Vendor #: 38222
Address:	5815 Westpark Drive, Charlotte, NC 28217
Contact Person:	Jeff Roman Email: Jeff.roman@littleonline.com
Telephone:	704-561-3454 Fax: 704-561-8700


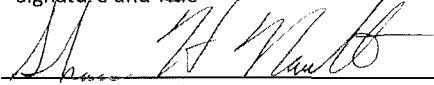
I, the Prime, by checking "YES", will provide a Quick Pay Commitment to this M/W/SBE for the work identified below. I have submitted, either previously or with this Form 4, a copy of said Agreement. YES

Identify in complete details the scope of work to be performed or item(s) to be supplied by the M/W/SBE.

Cost of work to be performed by M/W/SBE: \$TBD

To be completed by M/W/SBE	
Name of M/W/SBE:	Building EnergetiCx, PLLC Vendor #: 150066
Address:	13016 Eastfield Road, Suite 208, Huntersville, NC 28078
Contact Person:	Shane Nault Email: s.nault@buildingenergeticx.com
Telephone:	704-608-4617 Fax:

Upon execution of an Agreement with the City for the above referenced project, the Prime (Consultant) certifies that it intends to utilize the M/W/SBE listed above, and that the description, cost of work to be performed by the M/W/SBE as described above is accurate. The M/W/SBE Firm certifies that it has agreed to provide such work/supplies for the amount stated above.

PRIME:	 Signature and Title	NATIONAL DIRECTOR of ENGINEERING	Date: <u>01/08/2018</u>
M/W/SBE:	 Signature and Title	President	Date: <u>January 8, 2018</u>

CBI FORM 6 - Payment Affidavit - Subconsultant / Supplier Utilization

To be submitted with each request for payment from the City of Charlotte. Copy this form as needed.

Project Name: Mechanical Engineering Design Services

Consultant Name: Little Diversified Architectural Consulting, Inc. Payment / Invoice # _____

Agreement Number: 2018000681 Invoice Amount: \$ _____

Payment Period: From _____ To _____ City Department E&PM

FINAL PAYMENT Check this box only when submitting Final Pay request.

Section 1: Payments to SUBCONTRACTORS (M/W/SBEs and Non-M/W/SBEs)

Complete the chart below for all subcontractors used on the Project/Agreement regardless of dollar amount. All subcontractors must be registered in the City's Vendor Management System. The "Cumulative Payments" column shall include all payments made to the subcontractor including the "Payments this Period" amount.

Vendor #	Subcontractor's Name	NIGP Code	Description of Work Performed	Payments this Period	Cumulative Payments

Section 2: Payments to SUPPLIERS

All suppliers providing goods under City contracts must be listed on the Sales Tax Statement submitted with each pay request. The City may request on a case-by-case basis that the Contractor require certain suppliers to be registered in the City's Vendor Management System and may withhold payment of any amounts due the Contractor in the event the Contractor fails to comply with such request.

The undersigned Company certifies the preceding chart is a true and accurate statement of all payments that have been or will be made to subcontractors on this Project/Agreement, and that all Suppliers providing goods under this contract have been listed in the Sales Tax Statements submitted to the City in connection with this Payment Affidavit. If no subcontractors or suppliers are listed on the preceding chart or Sales Tax Statements, the Company certifies that no subcontractors or suppliers were used in performing the Project/Agreement for the payment period indicated. Failure to provide accurate and truthful information is a violation of the Charlotte Business INclusion Program and may result in the sanctions prescribed therein.

This _____ day of _____ 20 _____

Signature

Print Name and Title

EXHIBIT F – COMMERCIAL NON-DISCRIMINATION CERTIFICATION

Project: Mechanical Engineering Design Services
Name of Company Little Diversified Architectural Consulting, Inc.

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

1. In preparing the proposal, the Consultant has considered all proposals submitted from qualified, potential subcontractors and suppliers and has not engaged in discrimination as defined in Section 2.
2. For purposes of this certification *discrimination* means discrimination in the solicitation, selection, or treatment of any subcontractor, vendor or supplier on the basis of race, ethnicity, gender, age, or disability or any otherwise unlawful form of discrimination. Without limiting the foregoing, *discrimination* also includes retaliating against any person or other entity for reporting any incident of discrimination.
3. Without limiting any other remedies that the City may have for a false certification, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the City to reject the 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: _____

NATIONAL DIRECTOR of ENGINEERING

Date: _____

01/08/2018

EXHIBIT G – CERTIFICATE OF INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER BB&T Insurance Services, Inc. 5925 Carnegie Blvd Suite 400 Charlotte, NC 28209 704 954-3000	CONTACT NAME: Charlotte Certificate Team															
	PHONE (A/C, No, Ext):	FAX (A/C, No): 888-751-3197														
E-MAIL ADDRESS: CCertteam@bbandt.com																
INSURED Little Diversified Architectural Consulting Inc 5815 Westpark Drive Charlotte, NC 28217-3562		<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Hartford Underwriters Ins Co</td> <td>30104</td> </tr> <tr> <td>INSURER B : Hartford Casualty Insurance Com</td> <td>29424</td> </tr> <tr> <td>INSURER C : Hiscox Insurance Company</td> <td>10200</td> </tr> <tr> <td>INSURER D : Trumbull Insurance Company</td> <td>27120</td> </tr> <tr> <td>INSURER E : XL Specialty Insurance Company</td> <td>37885</td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Hartford Underwriters Ins Co	30104	INSURER B : Hartford Casualty Insurance Com	29424	INSURER C : Hiscox Insurance Company	10200	INSURER D : Trumbull Insurance Company	27120	INSURER E : XL Specialty Insurance Company	37885	INSURER F :	
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COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

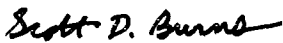
INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER:	X		22UUNNL1610	07/02/2017	07/02/2018	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
D	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS			22UUNNL1610	07/02/2017	07/02/2018	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$10000	X		22RHUNL1456	07/02/2017	07/02/2018	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	22WBK1662	07/02/2017	07/02/2018	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	Professional Liab			MPL167569317	07/01/2017	07/01/2018	Per Claim: \$1,000,000 Retention: \$10,000
E	Professional Liab			DPR9915415	07/02/2017	07/02/2018	\$5 Mill/ Ret: \$200K

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**** Workers Comp Information ****

Workers Compensation coverage applies for this certificate as the policy states for section 3A and 3C but regardless does not apply for any of the following monopolistic states: ND, WY, OH, WA

Little Project Name: City of Charlotte Mechanical Engineering Services
(See Attached Descriptions)

CERTIFICATE HOLDER City of Charlotte 600 E. 4th Street Charlotte, NC 28202	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

DESCRIPTIONS (Continued from Page 1)

Contract Number 2018000681

Project: City of Charlotte Mechanical Engineering Design Services

City of Charlotte, Building Services, their directors, officers, employees, agents, subsidiaries and affiliates, their successors and/or assigns are additional insured under General Liability as per written agreement with the Insured.

EXHIBIT H – TASK ORDER TEMPLATE

TASK ORDER FOR CONTRACT 2018000681

Pursuant to the Contract for *Mechanical Engineering Design Services*] (“Master Agreement”), Contract Number 2018000681 this Task Order (“Task Order”) is made by and between the City of Charlotte (“City”) and Little Diversified Architectural Consulting, Inc. (“Company”).

1. PURPOSE

This Task Order specifies the services to be provided by the Company, the schedule, cost, invoicing requirements, and other matters.

2. TECHNICAL COORDINATORS

For the Company:

Ken Shappley
Mechanical Engineering Principal/Project
Manager
Little Diversified Architectural Consulting,
Inc.
5815 Westpark Drive
Charlotte, NC 28217
704-561-3454
Ken.shappley@littleonline.com

For the City:

James Church
HVAC/Plumbing Supervisor
City of Charlotte
E&PM Special Projects Division
531 Spratt Street
Charlotte, NC 28206
704-336-2994

3. SERVICES TO BE PERFORMED

[Insert description of service/scope of work]

4. PLACE OF PERFORMANCE

[Insert description or address where work will be performed]

5. TIMEFRAME

[Insert schedule. Include beginning/ending dates or number of days or hours. Include working days and hours, i.e., Monday-Friday, 8-5]

6. PERSONNEL ASSIGNED TO PERFORM THE SERVICES

[Insert name(s) of staff]

7. ALLOCATED FUNDING

[Insert fee schedule, hourly billing rate(s), limitations on the number of hours per week, state whether or not overtime applies, list total maximum dollar amount for task order – should match the amount in the PO.]

8. INVOICING

Each invoice must contain the following information accompanied by appropriate supporting documentation:

- Invoice Amount
- Cumulative Amount Billed
- Purchase Order Number

Submit invoices for this Task Order using **one** of the following options:

Option 1 – E-mail invoices to cocap@ci.charlotte.nc.us

Option 2 – Mail invoices to our P.O. Box

City of Charlotte – Accounts Payable
 Attn: _____ [*insert name of person administering this Task Order*]
 Engineering & Property Management
 P.O. Box 37979
 Charlotte, NC 28237-7979

9. TERMINATION BY THE CITY.

The City may terminate this Task Order at any time without cause by giving written notice to the Company. If the City terminates a Task Order without cause, the City shall pay the Company for Work rendered under that Task Order through the date of termination.

The Company acknowledges and agrees to be bound by the terms and conditions stated in the Master Agreement and this Task Order.

_____ [*insert Company name*]

By: _____

Title: _____

Date: _____

The City shall signify acceptance of the terms and conditions stated herein through the issuance of a Purchase Order that incorporates this Task Order.

[List any attachments to the Task Order. Attach the entire Task Order as an "Attachment" to the PO in Munis]