

Public Records Request #6434

The following materials have been gathered in response to public records request #6434. These materials include:

- Contract #1300254: Agreement to Provide Blue Line Extension Insurance Broker Services
- Contract #1300254: Agreement to Provide Blue Line Extension Insurance Broker Services – First Amendment
- Contract #1300254: Agreement to Provide Blue Line Extension Insurance Broker Services – Second Amendment
- Contract #1300254: Agreement to Provide Blue Line Extension Insurance Broker Services – Third Amendment
- Contract #1300254: Agreement to Provide Blue Line Extension Insurance Broker Services – Fourth Amendment
- Contract #1300254: Agreement to Provide Blue Line Extension Insurance Broker Services – Fifth Amendment
- Contract #1300254: Agreement to Provide Blue Line Extension Insurance Broker Services – Sixth Amendment
- Contract #1300254: Agreement to Provide Blue Line Extension Insurance Broker Services – Seventh Amendment

This information was provided as a response to a public records request on 11/10/21 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:

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STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

AGREEMENT TO PROVIDE BLUE LINE
EXTENSION INSURANCE BROKER SERVICES

THIS PROFESSIONAL SERVICES CONTRACT (the "Contract") is made and entered into as of this 24th day of October, 2012 (the "Effective Date"), by and between McGriff, Seibels and Williams, Inc., an Alabama corporation doing business in North Carolina (the "Company"), and the City of Charlotte, a North Carolina municipal corporation (the "City").

RECITALS

WHEREAS, the City issued a Request For Proposals (RFP # 269-2012-106) for BLE Insurance Broker Services dated July 9, 2012. This Request for Proposals together with all attachments and addenda, is referred to herein as the "RFP"; and

WHEREAS, the City desires that the Company provide certain BLE Insurance Broker Services, and the Company desires to provide such services; and

WHEREAS, the City and the Company have negotiated and agreed regarding the above-referenced services and desire to reduce the terms and conditions of their agreement to this written form.

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

CONTRACT

1. **INCORPORATION OF EXHIBITS.** The following Exhibits are attached to this Contract and are incorporated into and made a part of this Contract by reference:

Exhibit A: Scope of Work

Exhibit B: Pricing Worksheet

Exhibit C: Federal Contracting Requirements

Exhibit D: Supplementary Conditions Disadvantaged Business Enterprise

Each reference to this Contract shall be deemed to include all Exhibits. Any conflict between language in an Exhibit or Appendix and language in the main body of this Contract shall be resolved in favor of the main body of this Contract. Each reference to **McGriff, Seibels and Williams** in the Exhibits and Appendices shall be deemed to mean the Company.

2. **DEFINITIONS.**

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

2.2. **AFFILIATES** – Refers to all departments or units of the City and all other governmental units, towns, boards, committees or municipalities for which the City processes data or performs services that involve the Deliverables or Services.

2.3. **BLE** – Refers to the construction of the Blue Line Extension of the CATS Light Rail. Parameters for the project can be found at <http://charmeck.org/city/charlotte/cats/planning/BLE/overview/Pages/default.aspx>.

2.4. **CATS** – Refers to the Charlotte Area Transit Service.

2.5. **CONTRACT** - Refers to this written agreement executed by the City and Company for the Services as outlined herein.

2.6. **CITY** - Refers to the City of Charlotte, North Carolina.

2.7. **COMPANY** - Refers to McGriff, Seibels and Williams, Inc.

- 2.8. *CITY PROJECT MANAGER* - Refers to a specified City employee representing the best interests of the City for this Project.
 - 2.9. *COMPANY PROJECT MANAGER* - Refers to a specified Company employee representing the best interests of the Company for this Project.
 - 2.10. *DEDICATED RISK CONTROL SPECIALIST* – Refers to an individual designated by the Company that will be responsible for providing safety and risk control services for the BLE.
 - 2.11. *DELIVERABLES* - Refers to all tasks, reports, information, designs, plans and other items, which the Company is required to complete and deliver to the City in connection with this Contract.
 - 2.12. *DEPARTMENT* – Refers to a department within the City of Charlotte.
 - 2.13. *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 Company 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.
 - 2.14. *EFFECTIVE DATE* – Refers to the date this Contract is fully executed by all parties to the Contract.
 - 2.15. *OCIP* – Refers to an Owner-Controlled Insurance Program.
 - 2.16. *OCIP FEASIBILITY PLAN* – Refers to the plan developed during the pre-construction phase of the Services as described in Exhibit A.
 - 2.17. *OCIP FEASIBILITY PLAN AND CONSULTING PHASE* – Refers to the first phase of the project, estimated to be one (1) year, in which the Company will assess the BLE project and which coverages should be included in the final OCIP.
 - 2.18. *OCIP CONSULTING* – Refers to the tasks and responsibilities as described in Exhibit A to be performed before BLE construction.
 - 2.19. *PROJECT* – Refers to the Services described in Exhibit A.
 - 2.20. *RETENTION* – Refers to Self-Insured Retentions (SIR). The amount to be paid by the insured before insurance coverage is triggered.
 - 2.21. *RMD* – Refers to the City's Risk Management Division.
 - 2.22. *SERVICES* – Refers to all services that the Company provides or is required to provide under this Contract.
 - 2.23. *SPECIFICATIONS AND REQUIREMENTS* – Refers to all definitions, descriptions, requirements, criteria, warranties and performance standards relating to the Deliverables and Services which are set forth or referenced in: (i) this Contract; (ii) the Documentation; and (iii) any functional and/or technical specifications which are published or provided by the Company or its licensors or suppliers from time to time with respect to all or any part of the Deliverables or Services.
 - 2.24. *UNDERWRITERS* – Refers to various insurance company representatives that evaluate and price various risks to be insured under a policy of insurance.
 - 2.25. *WORK PRODUCT* – Refers to the Deliverables and all other programs, algorithms, reports, information, designs, plans and other items developed by the Company in connection with this Contract, and all partial, intermediate or preliminary versions of any of the foregoing.
- 3. DESCRIPTION OF SERVICES.**
- 3.1. The Company shall be responsible for providing the Services described in Exhibit A attached to this Contract and incorporated herein by reference. Without limiting the foregoing, the Company will perform the Services and meet the requirements as set forth in Exhibit A. However, the Company shall not be responsible for tasks specifically assigned to the City in this Contract or in Exhibit A.
 - 3.2. The Company shall perform the Services on site at their own facilities, except as mutually agreed upon in writing in specific instances by the City.

4. COMPENSATION.

4.1. TOTAL FEES AND CHARGES.

4.1.1. OCIP Feasibility Study and Consulting.

The City agrees to pay the total fees outlined in Exhibit B as full and complete consideration for the satisfactory performance of the Services provided by the Company during the OCIP Feasibility Study and Consulting period as defined in Exhibit A.

4.1.2. Insurance Broker Services.

Following the OCIP Feasibility Study and Consulting period, the City shall, in its sole discretion, determine whether the Company shall provide the Insurance Broker Services during construction years one through four and an optional construction year five, as detailed in Section 19 and Exhibits A and B. If the City elects to have the Company provide the Insurance Broker Services, the City shall pay the fixed annual fees stated in Exhibit B as full and complete consideration for the satisfactory performance of these Services by the Company. The Company shall invoice the City for the annual Services fee in four (4) equal quarterly installments, which shall be paid in arrears per Section 4.5.

4.1.3. Post Construction Services.

The Company shall provide consulting as needed by the City during the statute of repose period of six (6) years following substantial completion of BLE construction. Such Services shall be provided by the Company at no additional charge to the City, per Exhibit B.

4.2. NO EXPENSES CHARGEABLE.

The Company shall not be entitled to charge the City for any travel, mileage, meals, materials or other costs or expenses associated with this Contract.

4.3. EMPLOYMENT TAXES AND EMPLOYEE BENEFITS.

The Company represents and warrants that the employees provided by the Company to perform the Services ("Consultants") are actual employees of the Company, and that the Company shall be responsible for providing all salary and other applicable benefits to each Consultant. The Company further represents, warrants and covenants that it will pay all withholding tax, social security, Medicare, unemployment tax, worker's compensation and other payments and deductions which are required by law for each Consultant. The Company agrees that the Consultants are not employees of the City.

4.4. INVOICES.

4.4.1. Each invoice sent by the Company shall detail all Services performed and delivered which are necessary to entitle the Company to the requested payment under the terms of this Contract.

4.4.2. The Company shall mail all invoices to:

City of Charlotte, Risk Management Division
Attn: Chrislee Gibson
301 South McDowell Street, Suite 1100
Charlotte, NC 28204-2640

4.5. DUE DATE OF INVOICES.

Invoices will be submitted on a quarterly basis starting three (3) months after the Effective Date of this Contract. Payment of invoices shall be due within thirty (30) days after receipt of an accurate, undisputed properly submitted invoice by the City.

4.6. PRE-CONTRACT COSTS.

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

4.7. AUDIT.

During the term of this Contract and for a period of one (1) year after termination of this Contract, the City shall have the right to audit, either itself or through an independent auditor, all books and records and facilities of the Company necessary to evaluate Company's compliance with the terms and conditions of this Contract or the City's payment obligations. The City shall pay its own

expenses relating to such audits, but shall not have to pay any expenses or additional costs of the Company. However, if non-compliance is found that would have cost the City in excess of \$10,000 but for the audit, then the Company shall be required to reimburse the City for the cost of the audit.

4.8. PROMPT PAYMENT TO SUBCONTRACTORS.

It is the policy of the City that prompt payment for all purchases and services satisfactorily rendered are to be made to all subcontractors. In accordance with N.C. Gen. Stat. Chapter §22C, the Company is required to pay subcontractors for satisfactory performance of their contracts within seven (7) days after the City has paid the Company for such Services. Additionally, the Company shall pay the subcontractor within one hundred twenty (120) days of the date of the subcontractor's invoice the undisputed portions of subcontractor's invoices due for payment, independent of any payment by the City to the Company. If the Company withholds any retainage pending final completion of any subcontractor's work, the Company is required to pay the retainage so withheld within seven (7) days after such subcontractor completes his work satisfactorily, regardless of any payment of retainage by the City to the Company. Upon proper proof of the payment of amounts so withheld, the City will release to the Company an equivalent amount of the sums it withholds for payment under Article 4.8 of these General Conditions. The Company's failure to pay subcontractors as provided herein shall be a material breach for which the City may cancel the Contract.

5. TIME IS OF THE ESSENCE.

Time is of the essence in having the Company perform all Services and deliver all Deliverables within the time frames provided by this Contract and Exhibit A, including all completion dates, response times and resolution times (the "Completion Dates"). Except as specifically stated in this Contract, there shall be no extensions of the Completion Dates. All references to days in this Contract (including the Exhibits) shall refer to calendar days rather than business days, unless this Contract provides otherwise for a specific situation.

6. NON-APPROPRIATION OF FUNDS.

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

7. COMPANY PROJECT MANAGER.

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

- 7.1. Coordination of Project schedules and the Company's resource assignment based upon the City's requirements and schedule constraints;
- 7.2. Management of the overall Project by monitoring and reporting on the status of the Project and actual versus projected progress, and by consulting with the City's Project Manager when deviations occur and by documenting all such deviations in accordance with agreed upon change control procedures;
- 7.3. Provision of 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 Company's specialist resources that may be needed to supplement the Company's normal implementation staff;
- 7.4. Acting as the Company's point of contact for all aspects of contract administration, including invoicing for Services, and status reporting;
- 7.5. Facilitation of review meetings and conferences between the City and the Company's executives when scheduled or requested by the City;
- 7.6. Communication among and between the City and the Company's staff;
- 7.7. Promptly responding to the City Project Manager when consulted in writing or by E-mail with respect to Project deviations and necessary documentation;

- 7.8. Identifying and providing the City with timely written notice of all issues that may threaten the Company's Services in the manner contemplated by the Contract (with "timely" meaning immediately after the Company becomes aware of them);
- 7.9. Ensuring that adequate quality assurance procedures are in place through the Project; and
- 7.10. Meeting with other service providers working on City projects that relate to this effort as necessary to resolve problems and coordinate the Services.

8. CITY PROJECT MANAGER.

The duties of the City Project Manager are to (1) ensure that the Company delivers all requirements and specifications in the Contract; (2) coordinate the City's resource assignment as required to fulfill the City's obligations pursuant to the Contract; (3) promptly respond to the Company Project Manager when consulted in writing or by E-mail with respect to project issues; and (4) act 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 shall be allowed to change staffing for the City Project Manager position on one (1) business days' notice to the Company.

9. PROGRESS REPORTS.

The Company shall prepare and submit to the City monthly, quarterly and yearly reports for duration of the Contract:

- 9.1. Update the OCIP Feasibility Plan submitted during the OCIP Feasibility Plan and Consultation period, indicating progress for each task.
- 9.2. Identify all information, personnel, equipment, facilities and resources of the City that will be required for the Company to perform the Services for the subsequent period.
- 9.3. Identify and report the status of all tasks from the OCIP Feasibility Plan that have fallen behind schedule.
- 9.4. Identify and summarize all risks and problems identified by the Company, which may affect the performance of the Services.
- 9.5. For each risk and problem, identify the action and person(s) responsible for mitigating the risk and resolving the problem.
- 9.6. For each risk and problem identified, state the impact on the project schedule.
- 9.7. After the completion of BLE construction, the Company will provide quarterly (or more often depending on circumstances and needs) reports to the City outlining any real or potential issues, concerns, or claims.

10. DUTY OF COMPANY TO IDENTIFY AND REQUEST INFORMATION, PERSONNEL AND FACILITIES.

The Company shall identify and request in writing from the City in a timely manner: (i) all information reasonably required by the Company to perform each task comprising the Services, (ii) the City's personnel whose presence or assistance reasonably may be required by the Company to perform each task comprising the Services, and (iii) any other equipment, facility or resource reasonably required by the Company to perform the Services. Notwithstanding the foregoing, the Company 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, unless the City can do so at no significant cost. The Company shall not be relieved of any failure to perform under this Contract by virtue of the City's failure to provide any information, personnel, equipment, facilities or resources: (i) that the Company failed to identify and request in writing from the City pursuant to this Section; or (ii) which the City is not required to provide pursuant to this Contract. In the event the City fails to provide any information, personnel, facility or resource that it is required to provide under this Section, the Company shall notify the City in writing immediately in accordance with the notice provision of this Contract. Failure to do so shall constitute a waiver by Company of any claim or defense it may otherwise have based on the City's failure to provide such information, personnel, facility or resource.

11. COMPANY PERSONNEL REMOVAL, REPLACEMENT, PROMOTION, ETC.

- 11.1. The City will have the right to require the removal and replacement of any personnel of the Company or the Company's subcontractors who are assigned to provide Services to the City based on experience, qualifications, performance, conduct, compatibility, and violation of City policy or any other reasonable grounds. The addition or promotion of any personnel to key positions within the Project must be approved by the City in writing. The Company will replace any personnel that leave the Project, including but not limited to Key Personnel, with persons having at least equivalent qualifications who are approved by the City in writing.
- 11.2. Unless approved by the City in writing, the Company's personnel set forth in Exhibit A (the "Key Personnel") shall stay on the Project until termination without any material reduction of such Key Personnel's duties, time on the Project or level of involvement. In the event of a breach or potential breach of the foregoing sentence, the Company will use its best efforts to maintain such Key Personnel on the Project (if necessary, in a subcontracting role).
- 11.3. As used in this Contract, the "personnel" includes all staff provided by the Company or its subcontractors, including but not limited to Key Personnel.

12. BACKGROUND CHECKS.

Prior to starting work under this Contract, the Company is required to conduct a background check on each Company employee assigned to work under this Contract, and shall require its subcontractors (if any) to perform a background check on each of their employees assigned to work under this Contract (collectively, the "Background Checks"). Each Background Check must include: (a) the person's criminal conviction record from the states and counties where the person lives or has lived in the past seven (7) years; and (b) a reference check.

After starting work under this Contract, the Company is required to, on an annual basis, perform a Background Check for each Company employee assigned to work under this Contract during that year, and shall require its subcontractors (if any) to do the same for each of their employees. If the Company undertakes a new project under this Contract, then prior to commencing performance of the project the Company shall perform a Background Check for each Company 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 this Contract fall within the categories described below, the Background Checks that the Company will be required to perform (and to have its subcontractors perform) shall also include the following additional investigation:

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

The Company 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 Company 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 Company 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.

13. ACCEPTANCE OF TASKS AND DELIVERABLES.

Once a Deliverable has been completed (or such specific time as may be set forth in Exhibit A), the Company shall submit a written notice to the City Project Manager stating the Deliverable(s) that have been met. This notice shall include a signature page for sign-off by the City Project Manager indicating acceptance of such Deliverable(s).

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 Company by the City Project Manager that specifies the nature and scope of the deficiencies that the City wants corrected. Upon receipt of a Rejection Notice, the Company 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 Company fails to correct all deficiencies identified in the Rejection Notice and provide a Certification within thirty (30) days after receipt of the Rejection Notice, the City shall be entitled to terminate this Contract for default without further obligation to the Company 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 Company to recommence curative action with respect to any deficiency previously identified in a Rejection Notice, or more than once for any given Deliverable (and shall be entitled to terminate this Contract for default if the Company does not meet this time frame).

14. NON-EXCLUSIVITY.

The Company 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 Company for any particular project.

15. EACH PARTY TO BEAR ITS OWN NEGOTIATION COSTS.

Each party shall bear its own cost of negotiating this Contract and developing the exhibits. The City shall not be charged for any Services or other work performed by the Company prior to the Effective Date.

16. REPRESENTATIONS AND WARRANTIES OF COMPANY.

16.1. GENERAL WARRANTIES.

- 16.1.1. The Services shall satisfy all requirements set forth in the Contract, including but not limited to the attached Exhibits;
- 16.1.2. The Services provided by the Company under the Contract will not infringe or misappropriate any patent, copyright, trademark, or trade secret rights of any third party;
- 16.1.3. The Company has taken and will continue to take sufficient precautions to ensure that it will not be prevented from performing all or part of its obligations under the Contract by virtue of interruptions in the computer systems used by the Company;
- 16.1.4. All Services performed by the Company and/or its subcontractors pursuant to this Contract shall meet the highest industry standards and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;
- 16.1.5. Neither the Services, nor any Deliverables provided by the Company under this Contract will infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party;
- 16.1.6. The Company and each Consultant provided by the Company to the City shall have the qualifications, skills and experience necessary to perform the Services described or referenced in Exhibit A;
- 16.1.7. All information provided by the Company about each Consultant is accurate; and
- 16.1.8. Each Consultant is an employee of the Company, and the Company shall make all payments and withholdings required for by law for the Company for such Consultant.

16.2. ADDITIONAL WARRANTIES.

The Company further represents and warrants that:

- 16.2.1. 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;
- 16.2.2. It has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Contract;
- 16.2.3. The execution, delivery, and performance of this Contract have been duly authorized by the Company;

- 16.2.4. No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Contract;
- 16.2.5. In connection with its obligations under this Contract, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses; and
- 16.2.6. The performance of this Contract by the Company and each Consultant provided by the Company 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).

17. OTHER OBLIGATIONS OF THE COMPANY.

17.1. WORK ON CITY'S PREMISES.

The Company and all Consultants will, whenever on the City's premises, obey all instructions and City policies, which are provided to them with respect to performing Services on the City's premises.

17.2. RESPECTFUL AND COURTEOUS BEHAVIOR.

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

17.3. REPAIR OR REPLACEMENT OF DAMAGE EQUIPMENT OR FACILITIES.

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

17.4. REGENERATION OF LOST OR DAMAGED DATA.

With respect to any data which the Company or any Consultants have negligently lost or negligently damaged, the Company shall, at its own expense, promptly replace or regenerate such data from the City's machine-readable supporting material, or obtain, at the Company's own expense, a new machine-readable copy of lost or damaged data from the City's data sources.

18. REMEDIES.

18.1. RIGHT TO COVER.

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

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

18.2. RIGHT TO WITHHOLD PAYMENT.

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

18.3. SPECIFIC PERFORMANCE AND INJUNCTIVE RELIEF.

The Company agrees that monetary damages are not an adequate remedy for the Company's failure to provide the Services or Deliverables as required by this Contract, nor could monetary damages be the equivalent of the performance of such obligation. Accordingly, the Company hereby consents to an order granting specific performance of such obligations of the Company in a court of competent jurisdiction within the State of North Carolina. The Company further consents to

the City obtaining injunctive relief (including a temporary restraining order) to assure performance in the event the Company breaches the Contract.

18.4. SETOFF.

Each party shall be entitled to setoff and deduct from any amounts owed to the other party pursuant to this Contract all damages and expenses incurred or reasonably anticipated as a result of the other party's breach of this Contract.

18.5. OTHER REMEDIES.

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

19. TERM AND TERMINATION OF CONTRACT.

19.1. TERM.

This Contract shall commence on the Effective Date and shall continue in effect for approximately one (1) year during which the Company shall complete the OCIP Feasibility Study described in Exhibit A.

At the end of the OCIP Feasibility Study and Consulting phase, the City shall have the option to either (1) not renew the Contract, with no additional liability to the City, or (2) renew the Contract for an initial four (4) years of OCIP Services during BLE Construction at either the Liability Only or Liability plus Workers' Compensation option, as detailed in Exhibit B, Section 2, and subject to the pricing detailed in Exhibit B. The City shall have the unilateral right to renew for up to one (1) additional year of OCIP Services, subject to the pricing detailed in Exhibit B, if the City determines that construction of the BLE is not substantially complete at the end of the initial four (4) years of OCIP Services.

At the conclusion of the OCIP Services term and once the City has determined BLE Construction to be substantially complete, the term of this Contract shall extend for an additional six (6) year mandatory statute of repose term, during which time the Company shall provide consulting services as required at no additional cost to the City for the duration of the statute of repose period. This Contract will remain in full force and effect throughout the entire six (6) year statute of repose period.

19.2. TERMINATION BY THE CITY.

The City may terminate the Contract at any time without cause by giving thirty (30) days' prior written notice to the Company. As soon as practicable after receipt of a written notice of termination without cause, Company shall submit a statement to the City showing in detail the Services performed under this Contract through the date of termination. The foregoing payment obligation is contingent upon: (i) the Company having fully complied with Section 19.8 and (ii) the Company having provided the City with written documentation reasonably adequate to verify the number of hours of Services rendered by each Consultant through the termination date and the percentage of completion of each task.

19.3. TERMINATION FOR DEFAULT BY EITHER PARTY.

By giving written notice to the other party, either party may terminate the Contract upon the occurrence of one or more of the following events:

- a. The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in the Contract, provided that, unless otherwise stated in the Contract, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party; or
- b. The other party attempts to assign, terminate or cancel the Contract contrary to the terms hereof; or
- c. The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in

bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under the Contract shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.

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

Notwithstanding anything contained herein to the contrary, upon termination of this Contract by the Company for default, the Company shall continue to perform the Services required by this Contract for the lesser of: (i) six (6) months after the date the City receives the Company's written termination notice; or (ii) the date on which the City completes its transition to a new Company.

19.4. **ADDITIONAL GROUNDS FOR DEFAULT TERMINATION BY THE CITY.**

By giving written notice to the Company, the City may also terminate the Contract upon the occurrence of one or more of the following events (which shall each constitute separate grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):

- a. Failure of the Company to complete a particular task by the completion date set forth in this Contract;
- b. The Company makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Contract, or any covenant, agreement, obligation, term or condition contained in this Contract; or
- c. The Company takes or fails to take any action which constitutes grounds for immediate termination under the terms of the Contract, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by the Contract, or failure to provide the proof of insurance as required by the Contract.

19.5. **NO SUSPENSION.**

In the event that the City disputes in good faith an allegation of default by the Company, notwithstanding anything to the contrary in the Contract, the Company agrees that it will not terminate the Contract or suspend or limit the Services or any warranties or repossess, disable or render unusable any software supplied by the Company, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.

19.6. **CANCELLATION OF ORDERS AND SUBCONTRACTS.**

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

19.7. **AUTHORITY TO TERMINATE.**

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

19.8. **OBLIGATIONS UPON EXPIRATION OR TERMINATION.**

Upon expiration or termination of this Contract, the Company 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. The expiration or termination of this Contract shall not relieve either party of its obligations regarding "Confidential Information", as defined in this Contract.

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

Any termination of this Contract shall not relieve the Company of the obligation to pay any fees, taxes or other charges then due to the City, nor relieve the Company of the obligation to file any

daily, monthly, quarterly or annual reports covering the period to termination nor relieve the Company from any claim for damages previously accrued or then accruing against the Company.

19.10. OTHER REMEDIES.

The remedies set forth in this Section and Section 18 shall be deemed cumulative and not exclusive, and may be exercised successively or concurrently, in addition to any other remedies available under this Contract or at law or in equity.

20. TRANSITION SERVICES UPON TERMINATION.

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

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

21. CHANGES.

In the event changes to the Services (collectively "Changes"), become necessary or desirable to the parties, the parties shall follow the procedures set forth in this Section. A Change shall be effective only when documented by a written, dated agreement executed by both parties which expressly references and is attached to this Contract (a "Change Statement"). The Change Statement 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 Change Statement. If the receiving party does not accept the Change Statement in writing within ten (10) days, the receiving party shall be deemed to have rejected the Change Statement. If the parties cannot reach agreement on a proposed Change, the Company shall nevertheless continue to render performance under this Contract in accordance with its (unchanged) terms and conditions.

Changes that involve or increase in the amounts payable by the City may require execution by the City Manager or a designee depending on the amount. Some increases may also require approval by Charlotte City Council.

22. CITY OWNERSHIP OF WORK PRODUCT.

22.1. The parties agree that the City shall have exclusive ownership of all reports, documents, designs, ideas, materials, reports, concepts, plans, creative works, and other work product developed for or provided to the City in connection with this Contract, and all patent rights, copyrights, trade secret rights and other intellectual property rights relating thereto (collectively "the Intellectual Property"). The Company hereby assigns and transfers all rights in the Intellectual Property to the City. The Company 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 Company hereby appoints the City as attorney in fact to execute all such assignments and instruments and agree that its appointment of the City as an attorney in fact is coupled with an interest and is irrevocable.

22.2. The City grants the Company a royalty-free, non-exclusive license to use and copy the Intellectual Property to the extent necessary to perform this Contract. The Company shall not be entitled to use

the Intellectual Property for other purposes without the City's prior written consent, and shall treat the Intellectual Property as "Confidential Information" pursuant to Section 27 of the Contract.

- 22.3. City data processed by the Company shall remain the exclusive property of the City. The Company will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the City in any manner except that contemplated by the Contract.

23. LICENSING.

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

Failure to obtain a valid Charlotte Business License within thirty (30) days of receiving contract award notification will result in garnishment by the Tax Office from any payments made to the Company.

24. RELATIONSHIP OF THE PARTIES.

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

25. INDEMNIFICATION.

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

This Section 25 shall remain in force despite termination of this Contract (whether by expiration of the term or otherwise).

26. SUBCONTRACTING.

Should the Company choose to subcontract, the Company shall be the prime contractor and shall remain

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

27. CONFIDENTIAL INFORMATION.

27.1. CONFIDENTIAL INFORMATION.

Confidential Information includes any information, not generally known in the relevant trade or industry, obtained from the City or its vendors or licensors or which falls within any of the following general categories:

- 27.1.1. *Trade secrets.* For purposes of this Contract, trade secrets consist of *information* of the City or any of its suppliers, contractors or licensors: (a) that derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.
- 27.1.2. *Information of the City or its suppliers, contractors or licensors marked "Confidential" or "Proprietary."*
- 27.1.3. *Information relating to criminal investigations conducted by the City, and records of criminal intelligence information compiled by the City.*
- 27.1.4. *Information contained in the City's personnel files, as defined by N.C. Gen. Stat. 153A-98.* This consists of all information gathered and/or maintained by the City about employees, except for that information which is a matter of public record under North Carolina law.
- 27.1.5. *Citizen or employee social security numbers collected by the City.*
- 27.1.6. *Computer security information of the City, including all security features of electronic data processing, or information technology systems, telecommunications networks and electronic security systems.* This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software and codes.
- 27.1.7. *Local tax records of the City that contains information about a taxpayer's income or receipts.*
- 27.1.8. *Any attorney / City privileged information disclosed by either party.*
- 27.1.9. *Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.*
- 27.1.10. *The name or address of individual homeowners who, based on their income, have received a rehabilitation grant to repair their home.*
- 27.1.11. *Building plans of city-owned buildings or structures, as well as any detailed security plans.*
- 27.1.12. *Billing information of customers compiled and maintained in connection with the City providing utility services.*
- 27.1.13. *Other information that is exempt from disclosure under the North Carolina public records laws.*

Categories 27.1.3 through 27.1.13 above constitute "Highly Restricted Information," as well as Confidential Information. The Company acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Contract, and agrees that (a) all provisions in this Contract applicable to Confidential Information shall apply to Highly Restricted Information; and (b) the Company will also comply with any more restrictive instructions or written policies that may be provided by the City from time to time to protect the confidentiality of Highly Restricted Information.

The parties acknowledge that in addition to information disclosed or revealed after the date of this Contract, the Confidential Information shall include information disclosed or revealed within one year prior to the date of this Contract.

27.2. RESTRICTIONS.

The Company shall keep the Confidential Information in the strictest confidence, in the manner set forth below:

- 27.2.1. It shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information.
- 27.2.2. It shall not, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information of the other to any third party or to any individual employed by the Company, other than an employee, agent, subcontractor or vendor of the City or Company who: (i) has a need to know such Confidential Information, and (ii) has executed a confidentiality agreement incorporating substantially the form of this Section of the Contract and containing all protections set forth herein.
- 27.2.3. It shall not use any Confidential Information of the City for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written agreements between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.
- 27.2.4. It shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information of the other.
- 27.2.5. The Company shall use its best efforts to enforce the proprietary rights of the City and the City's vendors, licensors and suppliers (including but not limited to seeking injunctive relief where reasonably necessary) against any person who has possession of or discloses Confidential Information in a manner not permitted by this Contract.
- 27.2.6. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, the Company shall assert this Contract as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.
- 27.2.7. All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to the City or destroyed upon satisfaction of the purpose of the disclosure of such information.

27.3. EXCEPTIONS.

The parties agree that the Company shall have no obligation with respect to any Confidential Information which the Company can establish:

- 27.3.1. Was already known to the Company prior to being disclosed by the disclosing party;
- 27.3.2. Was or becomes publicly known through no wrongful act of the Company;
- 27.3.3. Was rightfully obtained by the Company from a third party without similar restriction and without breach hereof;
- 27.3.4. Was used or disclosed by the Company with the prior written authorization of the City;
- 27.3.5. Was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, the Company shall first give to the City notice of such requirement or request;
- 27.3.6. Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the Company shall take use its best efforts to obtain an agreement or protective order providing that, to the greatest possible extent possible, this Contract will be applicable to all disclosures under the court order or subpoena.

27.4. UNINTENTIONAL DISCLOSURE.

Notwithstanding anything contained herein in to the contrary, in the event that the Company is unintentionally exposed to any Confidential Information of the City, the Company agrees that it shall not, directly or indirectly, disclose, divulge, reveal, report or transfer such Confidential Information to any person or entity or use such Confidential Information for any purpose whatsoever.

27.5. REMEDIES.

The Company acknowledges that the unauthorized disclosure of the Confidential Information of the City will diminish the value of the proprietary interests therein. Accordingly, it is agreed that if the Company breaches its obligations hereunder, the City shall be entitled to equitable relief to protect its interests, including but not limited to injunctive relief, as well as monetary damages.

28. INSURANCE.**28.1. TYPES OF INSURANCE.**

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

28.1.1. Automobile Liability. Insurance with a limit of not less than \$1,000,000 per occurrence combined single limit each occurrence for bodily injury and property damage liability covering all owned, non-owned, and hired vehicles.

28.1.2. Commercial General Liability. Insurance with a limit not less than \$2,000,000 per occurrence/aggregate including coverage for bodily injury, property damage, products and completed operations, personal/advertising injury liability and contractual liability.

28.1.3. Workers' Compensation. Insurance meeting the statutory requirements of the State of North Carolina and any applicable Federal laws; and, Employers' Liability - \$500,000 per accident limit, \$500,000 disease per policy limit, \$500,000 disease each employee limit.

28.1.4. Professional Errors & Omissions. Insurance with a limit of not less than \$10,000,000 per claim occurrence as shall protect the contractor and the contractor's employees for negligent acts, errors or omissions in performing the professional services under this contract.

28.1.5. Fidelity Bond. Employee dishonesty coverage on all contractors' employees at a limit of not less than \$1,000,000 each claim, with the addition of Loss Payable endorsement (CR 20 14 08 07), the City of Charlotte named as loss payee.

The Company shall not commence any Services in connection with this Contract until it has obtained all of the foregoing types of insurance and such insurance has been approved by the City. The Company shall not allow any subcontractor to commence Services on its subcontract until all similar insurance required of the subcontractor has been obtained and approved.

28.2. OTHER INSURANCE REQUIREMENTS.

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

28.2.2. City of Charlotte shall be named as an additional insured for operations or services rendered under the automobile and general liability coverage. The Company'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 Company's operations under this agreement.

28.2.3. Certificates of such insurance will be furnished to the City and shall contain the provision that the City be given thirty (30) days' written notice of any intent to amend coverage reductions or material changes or terminate by either the insured or the insuring Company.

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

28.2.5. If any part of the Services under this Contract is sublet, the subcontractor shall be required to meet all insurance requirements as listed above. However, this will in no way relieve the Company from meeting all insurance requirements or otherwise being responsible for the subcontractor.

29. COMMERCIAL NON-DISCRIMINATION.

The City has adopted a Commercial Non-Discrimination Ordinance that is set forth in Section 2, Article V of

the Charlotte City Code, and is available for review on the City's website (the "Non-Discrimination Policy"). As a condition of entering into this Contract the Company agrees to comply with the Non-Discrimination Policy, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the Company shall not discriminate on the basis of race, gender, religion, national origin, sexual orientation, ethnicity, age, disability, or political affiliation in the solicitation, selection, hiring, or treatment of subcontractors, vendors, suppliers, or commercial customers in connection with a City contract or contract solicitation process, nor shall the Company retaliate against any person or entity for reporting instances of such discrimination. The Company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on City contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace.

As a condition of entering into this Contract, the Company agrees to: (a) promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation, selection, treatment and payment of subcontractors in connection with this Contract; and (b) if requested, provide to the City within sixty (60) days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Company has used on City contracts in the past five (5) years, including the total dollar amount paid by Company on each subcontract or supply contract. The Company further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's 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 Company agrees to provide to the City from time to time on the City's request, payment affidavits detailing the amounts paid by Company 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 Company 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 or disqualification of the Company from participating in City contracts and other sanctions.

30. DRUG-FREE WORKPLACE.

The Company shall provide a drug-free workplace during the performance of this Contract. This obligation is met by:

- 30.1. Notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the Company's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- 30.2. Establishing a drug-free awareness program to inform employees about (i) the dangers of drug abuse in the workplace, (ii) the Company's policy of maintaining a drug-free workplace, (iii) any available drug counseling, rehabilitation, and employee assistance programs, and (iv) the penalties that may be imposed upon employees for drug abuse violations;
- 30.3. Notifying each employee that as a condition of employment, the employee will (i) abide by the terms of the prohibition outlined in (a) Section 30.1, and (ii) notify the Company of any criminal drug statute conviction for a violation occurring in the workplace not later than five (5) days after such conviction;
- 30.4. Notifying the City within ten days after receiving from an employee a notice of a criminal drug statute conviction or after otherwise receiving actual notice of such conviction;
- 30.5. Imposing a sanction on, or requiring the satisfactory participation in a drug counseling, rehabilitation or abuse program by, an employee convicted of drug crime;
- 30.6. Making a good faith effort to continue to maintain a drug-free workplace for employees; and
- 30.7. Requiring any party to which it subcontracts any portion of the Services under the Contract to comply with the provisions of 30.1 through 30.6.

Failure to comply with the above drug-free workplace requirements during the performance of the Contract shall be grounds for suspension, termination or debarment.

31. NOTICES AND PRINCIPAL CONTACTS.

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

For the Company:

R. Scott Mercer
MCGRIFF SEIBELS & WILLIAMS, INC
401 N. TRYON ST.
10TH FLOOR
CHARLOTTE, NC 28202
PHONE: 704-954-1031
FAX: _____
E-MAIL: SMERCER@MCGRIFF.COM

For the City:

Kay Elmore
City of Charlotte/Mecklenburg County
Procurement Management Division
600 East Fourth Street, CMGC 9th Floor
Charlotte, NC 28202-2850
PHONE: 704-336-2524
FAX: 704-336-2258
kelmor@ci.charlotte.nc.us

With Copy To (Company):

Jordan Kurtz
MCGRIFF SEIBELS & WILLIAMS, INC
401 N. TRYON ST.
10 FLOOR
CHARLOTTE, NC 28202
PHONE: 704-754-1032
EMAIL: JKURTZ@MCGRIFF.COM

With Copy To (City):

Cindy White
City of Charlotte
City Attorney's Office
600 East Fourth Street
CMGC 15th Floor
Charlotte, NC 28202
PHONE: (704)336-3012
cwhite@ci.charlotte.nc.us

Notice shall be effective upon the date of receipt by the intended recipient; provided that any notice, which 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.

32. MISCELLANEOUS.

32.1. ENTIRE AGREEMENT.

This Contract is the entire agreement between the parties with respect to its subject matter, and there are no other representations, understandings, or agreements between the parties with respect to such subject matter. This Contract supersedes all prior agreements, negotiations, representations and proposals, written or oral.

32.2. AMENDMENT.

No amendment or change to this Contract shall be valid unless in writing and signed by both parties to this Contract.

32.3. GOVERNING LAW AND JURISDICTION.

The parties acknowledge that this Contract is made and entered into in Charlotte, North Carolina, and will be performed in Charlotte, North Carolina. The parties further acknowledge and agree that North Carolina law shall govern all the rights, obligations, duties and liabilities of the parties under this Contract, and that North Carolina law shall govern interpretation and enforcement of this Contract and any other matters relating to this Contract (all without regard to North Carolina conflicts of law principles). The parties further agree that any and all legal actions or proceedings relating to this Contract shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By the execution of this Contract, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections, which they may have with respect to venue in any court sitting in Mecklenburg County, North Carolina.

32.4. BINDING NATURE AND ASSIGNMENT.

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

32.5. CITY NOT LIABLE FOR DELAYS.

It is agreed that the City shall not be liable to the Company, 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 party hereunder caused by injunction or other legal or equitable proceedings or

on account of any other delay for any cause beyond the City's reasonable control. The City shall not be liable under any circumstances for lost profits or any other consequential, special or indirect damages.

32.6. FORCE MAJEURE.

32.6.1. The Company shall be not liable for any failure or delay in the performance of its obligations pursuant to this Contract (and such failure or delay shall not be deemed a default of this Contract or grounds for termination hereunder if all of the following conditions are satisfied: (i) if such failure or delay: (a) could not have been prevented by reasonable precaution, and (b) cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and (ii) if and to the extent such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, or court order.

32.6.2. Upon the occurrence of an event which satisfies all of the conditions set forth above (a "Force Majeure Event") the Company shall be excused from any further performance of those of its obligations pursuant to this Contract affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) the Company continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

32.6.3. Upon the occurrence of a Force Majeure Event, the Company shall immediately notify the City by telephone (to be confirmed by written notice within two (2) days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents the Company from performing its obligations for more than five (5) days, the City may terminate this Contract.

32.6.4. Strikes, slow-downs, walkouts, lockouts, and individual disputes are not excused under this provision.

32.7. SEVERABILITY.

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

32.8. NO PUBLICITY.

No advertising, sales promotion or other materials of the Company or its agents or representations may identify or reference this Contract or the City in any manner absent the written consent of the City.

32.9. APPROVALS.

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

32.10. WAIVER.

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

32.11. SURVIVAL OF PROVISIONS.

The following sections of this Contract shall survive the termination hereof:

Section 4.3 "Employment Taxes and Employee Benefits"

Section 16 "Representations and Warranties of Company"

Section 19 "Term and Termination of Contract"

Section 22 "City Ownership of Work Product"
Section 25 "Indemnification"
Section 27 "Confidential Information"
Section 28 "Insurance"
Section 31 "Notices and Principal Contacts"
Section 32 "Miscellaneous"

32.12. CHANGE IN CONTROL.

In the event of a change in "Control" of the Company (as defined below), the City shall have the option of terminating this Contract by written notice to the Company. The Company shall notify the City within ten (10) days of the occurrence of a change in control. As used in this Contract, the term "Control" shall mean the possession, direct or indirect, of either (i) 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 Company or (ii) the power to direct or cause the direction of the management and policies of the Company whether through the ownership of voting securities, by contract or otherwise.

32.13. DRAFTER'S PROTECTION.

Each of the parties has agreed to the use of the particular language of the provisions of this Contract and any questions of doubtful interpretation shall not be resolved by any rule or interpretation against the drafters, but rather in accordance with the fair meaning thereof, having due regard to the benefits and rights intended to be conferred upon the parties hereto and the limitations and restrictions upon such rights and benefits intended to be provided.

32.14. FAMILIARITY AND COMPLIANCE WITH LAWS AND ORDINANCES.

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

32.15. CONFLICT OF INTEREST.

The Company covenants that its officers, employees and shareholders have no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Services required to be performed under the Contract.

32.16. NO BRIBERY.

The Company certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the forgoing has bribed or attempted to bribe an officer or employee of the City in connection with the Contract.

32.17. HARASSMENT.

The Company agrees to make itself aware of and comply with the City's Harassment Policy. The City will not tolerate or condone acts of harassment based upon race, sex, religion, national origin, color, age, or disability. Violators of this policy will be subject to termination.

32.18. TRAVEL UPGRADES.

The City has no obligation to reimburse the Company for any travel or other expenses incurred in connection with this Contract.

32.19. TAXES.

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

33. DISPUTE RESOLUTION.

33.1. FIRST MEETING IN GOOD FAITH.

For all disputes, the parties shall first meet in good faith to resolve the matters. If the parties are unsuccessful in settling the dispute, such meeting shall be followed by non-binding mediation conducted pursuant to the conditions set forth in this Article. Full compliance with this Article is a precondition to any party to a dispute initiating litigation of any type concerning the dispute.

33.2. PARTIES IN INTEREST.

Any party to this Project that is a party to an issue or claim in which the amount in controversy is at least fifteen thousand dollars (\$15,000.00) may require other parties that are party to the issue or claim and this Project to participate in the dispute resolution process as set forth in this Article. Unless otherwise agreed by the parties, both parties shall continue performance under this Contract while matters in dispute are being resolved. The process set forth by this Article may be foregone upon the mutual written agreement of all parties in interest to the individual matters. Otherwise, full compliance with this Article is a precondition for any party to initiating any form of litigation concerning the dispute.

33.3. SUBCONTRACT INCLUSION.

The Company shall and hereby agrees to include this Article in every subcontract or any other agreement it enters into with any party that will be involved in this Project.

33.4. PARTIES AT ISSUE & REQUIRED NOTICE.

If the City is not a party to the issue or claim, the party requesting dispute resolution must notify the City, in writing, of the requested dispute resolution and must include a brief summary of the issue including the alleged monetary value of the issue. The written notice must be sent to the City prior to the service of the request for dispute resolution upon the parties to the issue.

- A. If the party requesting dispute resolution is a subcontractor, it must first submit its claim to the Company. If the matter is not resolved through the Company's informal involvement, then the matter becomes ripe for the dispute resolution process under this Article, and the party may submit its written notice of dispute resolution to the City.
- B. The City is under no obligation to secure or enforce compliance with this Article for matters in which the City is not a party. The City is entitled to notice of the matter as required by this Article, but has no obligation to administer, mediate, negotiate, or defray any costs of matters in which the City is not a party, but for the selection of a mediator as set forth below.
- C. If the City is a party to the issue, the party requesting dispute resolution must submit a written request to the City for such dispute resolution.
- D. Upon receipt of a written request for dispute resolution that fully complies with the requirements of this Article, the parties to the matter shall follow the process as set forth in this Article in good-faith. The costs of the process shall be divided equally among the parties.

33.5. GOOD FAITH MEETING.

As required by Article 33.1, representatives of each party shall meet as soon as reasonable to attempt in good-faith to resolve the matter. If the City is a party to the matter, all other parties must be represented by a person with the authority to settle the matter on behalf of their respective parties. The parties may by agreement and in good-faith conduct further meetings as necessary to resolve the matter. If resolution is not achieved, the parties shall initiate mediation as set forth below.

A. Mediation

The parties to a matter that is ripe for mediation under this Article shall proceed in the following manner:

i. Selection of Mediator

The parties shall in good-faith select a mediator certified in accordance with the rules of mediator certification in Superior Court in North Carolina. If the parties desire a mediator

not so certified, the City's consent to such a mediator must first be obtained in writing. If the parties cannot agree to a mediator within a reasonable time, the City shall have the right to unilaterally select a certified mediator if the City is a party to the matter, or if the City is not a party to the matter, but is requested to do so by a party to the matter.

ii. Mediation Agreement

Upon selection of a mediator, the parties to the matter shall in good-faith enter into a mediation agreement that shall include terms governing the time, place, scope, and procedural rules of the mediation including those set forth in Article 33.5.A.iii below. The agreement shall also include terms governing the compensation, disqualification, and removal of the mediator. All terms of the mediation agreement must be consistent with the terms of this Article and Contract, as well as all applicable laws. If the parties fail to agree to the procedural rules to be used, then the American Arbitration Association Construction Industry Mediation Rules shall be used to the extent such rules are consistent with this Contract and applicable law.

iii. Stalemate

If after all reasonable good-faith attempts to resolve the matter have been made, it appears to the mediator that the parties are at a stalemate with no significant likelihood of reaching resolution, the mediator shall so inform the parties and shall issue a written notice of stalemate, which shall conclude the matter resolution process, unless the parties agree otherwise.

IN WITNESS WHEREOF, and in acknowledgment that the parties hereto have read and understood each and every provision hereof, the parties have caused this Contract to be executed on the date first written above.

MCGRIFF, SEIBELS AND WILLIAMS, INC.:

ATTESTED:

BY: [Signature]

BY: _____

TITLE: SENIOR VICE PRESIDENT

TITLE: _____

DATE: 10/8/2012

DATE: _____

CITY OF CHARLOTTE:
CITY MANAGER'S OFFICE

CITY OF CHARLOTTE:
RISK MANAGEMENT DEPARTMENT

BY: [Signature]

BY: [Signature]

TITLE: Deputy City Mgr.

TITLE: Insurance Manager

DATE: 10-10-12

DATE: 10/9/12

CITY OF CHARLOTTE:
CITY CLERK'S OFFICE

BY: [Signature]

TITLE: Deputy city clerk

DATE: 10/10/12

This instrument has been pre-audited in the manner required by the Local Government and Fiscal Control Act.

[Signature]
Deputy Finance Officer

10-23-12
Date

[Signature]

EXHIBIT A SCOPE OF WORK

This Scope of Work is an Exhibit to and is incorporated into the Services Contract between the City of Charlotte and McGriff, Seibels and Williams, Inc. (the "Contract"). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract.

1. General Scope.

Through an inter-local agreement, the City's RMD provides property and casualty risk management services to: the City of Charlotte, Mecklenburg County, the Charlotte-Mecklenburg Board of Education and three (3) other quasi-governmental agencies. RMD is a Division of the City's Finance Department.

The Company shall perform certain work and services on assignments related to supporting the Charlotte Area Transit System ("CATS") in evaluating and recommending insurance needs, specifications, and strategies for placement and procurement for the construction of the BLE, which is the planned light rail line from central Charlotte to the University area of Charlotte. Construction is scheduled to begin in late 2013.

While the City is flexible with respect to certain elements of its proposed relationship with the Company, the City does have certain preferences for that relationship and has developed the following model for that relationship.

2. Service Categories.

The Company shall serve as insurance consultant and advisor for all aspects of construction-related insurance coverages and will also place those coverages as directed by the City.

The Company shall consult with and comprehensively manage the tasks associated with conducting an OCIP from inception of construction to final closeout of all issues through the running of the North Carolina statute of repose applicable to construction projects for six (6) years following completion of construction, or longer should issues remain open.

The City will assess whether to move forward with an OCIP program including liability only or to also include workers' compensation based on the recommendations made by the Company in the OCIP Feasibility Plan.

In addition to coverages typically included in OCIPs, the Company shall also advise the City on other tangential coverages, which include, but are not limited to: pollution liability, builders' risk, professional liability, and other coverages as may be needed.

3. Services and Responsibilities.

Due to the complexity of the BLE, brokerage services must be comprehensive and provide adequate support to the City, and particularly to CATS. At a minimum, the Company shall provide the following services:

3.1. OCIP Feasibility Study.

Working closely with the City and particularly with CATS, the Company shall conduct an OCIP feasibility study in order to provide projections for potential costs and cost savings in order to justify using OCIP methods or other methods to finance risks that are inherent to the BLE project.

3.2. OCIP Consulting.

The Company shall provide support to RMD in development and maintenance of risk financing plans that enable success in general financial planning and budgeting of the BLE project. The Company shall provide comprehensive information on market conditions and trends; support innovative design of and alternatives for the most cost effective risk financing methods; and design risk financing programs that provide adequate policy limits, lowest feasible retentions and costs with appropriate segregation of risks. This consulting will be part of the pre-construction responsibilities.

3.3. OCIP Administration.

At the conclusion of the prior to construction phase of the BLE, the City shall in its sole discretion decide whether to proceed with an OCIP. In the event that a final decision is made to use an OCIP to provide various coverages, the Company shall provide all administration and management of the OCIP. Those services include, but are not limited to: contractor enrollment; claims administration;

claim reporting; claim investigation; accounting for insurance premium, administration and loss costs; risk control; and monthly, quarterly and annual status reporting.

3.4. Insurance Applications, Policy Review and Policy Delivery.

The Company shall assist the City in obtaining and completing an Underwriter's application for all necessary coverages. Upon renewal or placement of new policies, the Company shall review all policies and endorsements to ensure and confirm accuracy of policy terms and conditions prior to delivery of policies for review and acceptance by RMD. RMD requires new or renewal policy delivery within ninety (90) days of placement, renewal or policy anniversary dates.

3.5. Marketing.

The Company shall provide marketing at the direction of the RMD when the City determines it to be in the best interest of the City to approach markets regarding pricing and/or coverage. When requested by RMD, the Company shall organize, develop, and present to Underwriters all necessary data for the marketing of risk financing plans; review the marketing plan documents with RMD for approval to proceed prior to going to the market; facilitate, as directed, meetings and discussions between Underwriters and RMD; and negotiate and present to RMD the best risk financing and insurance policy terms, conditions and premium rates.

The Company shall evaluate the Underwriter(s) and their respective companies, and report to RMD on financial stability and service commitment to clients and review and counsel RMD on policy language for proper application to risk. For each policy renewal process (if applicable), the Company shall meet with RMD to set a pre-determined renewal timeline showing key deadline dates and present marketing results no later than thirty (30) days prior to renewal of coverage. The marketing report for each renewal will include summaries of the following:

- Current program versus renewal options including all terms, conditions, premium rates, market quotes and/or the names of those carriers declining to quote and the reasons therefor; and
- Underwriter(s) ratings and broker's recommendations.

The Company shall be responsible for verification of policy terms, conditions, language, form, and compliance with regulatory requirements and consistency with expiring policy prior to delivery of said policies.

3.6. Claims and Loss Support.

The Company shall support claim submittals from RMD in such a manner as to ensure proper Company personnel are assigned to receive and process claims for the OCIP or other method of risk financing. The Company shall direct and assist an Underwriter's claims administration personnel, representing at all times the best interest of the City.

3.7. Risk Control.

The Company shall provide resources to assist in development and maintenance of a comprehensive risk control program for the BLE project. In the event that the City deems it feasible to include workers' compensation coverage as part of the OCIP, it is anticipated that the Company will provide personnel up to a Dedicated Risk Control Specialist that will be dedicated to the City's Services. The City, at its option, may forego the use of the Company's personnel in lieu of using City employees for that purpose.

3.8. Availability.

The Company Project Manager and his or her team shall be available on a normal daily basis to address daily activities associated with this account, including face-to-face and telephonic consultation on an as-needed basis and sometimes at a moment's notice. Such availability will be required during the OCIP Feasibility Plan and Consulting Phase, BLE construction, and for a period of up to six (6) years after construction is complete until the end of the statute of repose period.

3.9. Dedicated Risk Control Specialist.

Depending on the outcome of the OCIP Feasibility Study, the City and Company may determine that workers' compensation should be included in the resultant OCIP. This decision would necessitate a Company provided Dedicated Risk Control Specialist to help mitigate loss costs.

**EXHIBIT B
PRICING SCHEDULE**

This Pricing Schedule is an Exhibit to and is incorporated into the Services Contract between the City of Charlotte and McGriff, Seibels and Williams, Inc. (the "Contract"). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract.

1. Prior to Construction.

This pricing includes the OCIP Feasibility Study and Consulting described in Exhibit A. The term of this phase is estimated to be one (1) year.

2. Construction Years 1 through 5.

The following are options dependent upon the recommendations created during the OCIP Feasibility Study and Consulting phase. Which option will be used will be determined at the end of this phase.

2.1. Liability Only Administration

This pricing will apply for an OCIP for each year of construction as well as an optional fifth year if, during the OCIP Feasibility Study and Consulting phase, a liability-only OCIP is determined to best meet the City's needs.

2.2. Liability and Workers' Compensation Administration

This pricing will apply for an OCIP for each year of construction as well as an optional fifth year if, during the OCIP Feasibility Study and Consulting phase, an OCIP including both liability and workers' compensation coverages is determined to best meet the City's needs. This pricing includes utilizing a Dedicated Risk Control Specialist.

3. Statute of Repose.

For six (6) years, beginning at substantial completion of the BLE as determined and communicated by the City, the Company shall provide general consulting services at no charge.

	Prior to Construction	Construction Year 1	Construction Year 2	Construction Year 3	Construction Year 4	Optional Construction Year 5
OCIP Feasibility Study and Consulting	\$ 25,000					
Liability Only Administration		\$ 85,000	\$ 85,000	\$ 85,000	\$ 85,000	\$ 85,000
Liability and Workers' Compensation Administration		\$ 215,000	\$ 215,000	\$ 215,000	\$ 215,000	\$ 215,000

	Statute of Repose Year 1	Statute of Repose Year 2	Statute of Repose Year 3	Statute of Repose Year 4	Statute of Repose Year 5	Statute of Repose Year 6
Total Cost	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0

**EXHIBIT C
FEDERAL CONTRACTING REQUIREMENTS**

These Federal Contracting Requirements are an Exhibit to and incorporated into the Services Contract between the City of Charlotte and McGriff, Seibels and Williams, Inc. (the "Contract"). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract.

1. Federal Applicability.

The Services to be performed under this Contract will be financed in whole or in part with Federal funding. As such, Federal laws, regulations, policies, and related administrative practices apply to this Contract. The most recent of such Federal requirements, including any amendments made after the execution of this Contract, shall govern this Contract, unless the Federal Government determines otherwise. This Section identifies the Federal requirements that are applicable to this Contract. The Company is responsible for complying with all applicable provisions.

To the extent applicable, the Federal requirements contained in the most recent version of the FTA Master Contract, including any certifications and contractual provisions required by any Federal statutes or regulations referenced therein to be included in this Contract, are deemed incorporated into this Contract by reference and shall be incorporated into any subcontract or subcontract executed by the Company pursuant to its obligations under this Contract. The Company and its subcontractors, if any, hereby represent and covenant that they have complied and shall comply in the future with the applicable provisions of the Master Contract then in effect and with all applicable Federal, State and local laws, regulations, and rules and local policies and procedures, as amended from time to time, relating to the Services to be performed under this Contract. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Company shall not perform any act, fail to perform any act, or refuse to comply with any City requests, which would cause the City to be in violation of the FTA terms and conditions.

2. Reserved.

3. Reserved.

4. Reserved.

5. Reserved.

6. Reserved.

7. Energy Conservation.

The Company agrees to comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321, et seq.

This requirement extends to all third party contractors and their contracts at every tier and this clause shall be included in all such subcontracts.

8. Clean Water.

The Company agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§1251, et seq. The Company agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Company also agrees to include these requirements in each subcontract exceeding one hundred thousand dollars (\$100,000.00) financed in whole or in part with Federal assistance provided by FTA.

9. Reserved.

10. Reserved.

11. Lobbying.

The Company agrees to comply with the provisions of Title 31, U.S.C. 1352, the Byrd Anti-Lobbying Amendment, as in force or as it may hereafter be amended. The Company and all subcontractor tiers shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection

with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant, or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the City. The Company shall make such disclosure on the disclosure form included in the Project Manual. See Exhibit – 1 for certification.

The Company further agrees to secure like undertakings from all subcontractor tiers whose subcontracts are expected to be of a value of one hundred thousand dollars (\$100,000.00) or more.

12. Access to Records & Reports.

The City is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Company agrees to provide the City, the FTA Administrator, the Comptroller General of the U.S. or any of their authorized representatives access to any books, documents, papers and records of the Company which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Company also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Company access to Company's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)(1), which is receiving Federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

Where any City which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Company shall make available records related to the Contract to the City, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

The Company agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Company agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Company agrees to maintain same until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

The Company agrees to include the above clause(s) in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

13. Federal Changes.

The Company shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the City and FTA, as they may be amended or promulgated from time to time during the term of this Contract. The Company's failure to so comply shall constitute a material breach of this Contract.

This requirement extends to all third party contractors and their contracts at every tier and this clause shall be included in all such subcontracts.

14. Reserved.

15. Clean Air.

The Company agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401, et seq. The Company agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Company also agrees to include these requirements in each subcontract exceeding one hundred thousand dollars (\$100,000.00) financed in whole or in part with Federal assistance provided by FTA.

16. Recycled Products

The Company agrees to comply with all the requirements of the Resource Conservation and Recovery

Act (RCRA) §6002, as amended and now cited as 42 U.S.C. 6962, including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

This requirement extends to all third party contractors and their contracts at every tier.

17. Reserved.

18. Contract Services Hours and Safety Standards Act.

Overtime requirements - No contractor or subcontractor contracting for any part of the Contract Services which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph above of this section the Company and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the U.S. for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in the paragraph above of this section, in the sum of ten dollars (\$10.00) for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in the paragraph above of this section.

Withholding for unpaid wages and liquidated damages - The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of Services performed by the Company or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Services Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in the paragraph above of this section.

Subcontracts - The Company or subcontractor shall insert in any subcontracts the clauses set forth in the paragraphs above of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Company shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in the paragraphs above of this section.

19. No Government Obligation to Third Parties

The City and the Company acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the City, the Company, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract.

The Company agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractors who will be subject to its provisions.

20. Program Fraud & False or Fraudulent Statements & Related Acts.

The Company acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§3801, et seq. and US-DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Contract, the Company certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA-assisted project for which this Contract Services is being performed. In addition to other penalties that may be applicable, the Company further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to

impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Company to the extent the Federal Government deems appropriate.

The Company also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. §5307, the Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n)(1) on the Company, to the extent the Federal Government deems appropriate.

The Company agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

21. Reserved.

22. Government-Wide Debarment & Suspension.

This Contract is a covered transaction for purposes of 2 CFR Part 1200.220, and 2 CFR Part 180.200, which replaces the requirements and guidelines of the previously controlling 49 CFR Part 29. As such, the Company is required to verify that neither it, nor its principals (as defined at 2 CFR 180.995) or affiliates (as defined at 2 CFR 180.905) is excluded (as defined at 2 CFR 180.940) or disqualified (as defined at 2 CFR 180.935). The Company, pursuant to 2 CFR 180.330(a) – (b), must also include a term or condition in lower-tier transactions requiring lower-tier participants to comply with requirement in subpart C in 2 CFR 180, and require lower-tier participants to pass the requirement to comply with 2 CFR subpart C to each person with whom the lower-tier participant enters into a covered transaction at the next lower tier. Subpart C of 2 CFR 180 requirements (Company and lower-tier participants must comply):

Verification

The Company and all lower-tier participants must verify that the person with whom the Company or lower-tier participant intends to do business with is not excluded, pursuant to the definition set out in 2 CFR 180.940, or disqualified, pursuant to the definition in 2 CFR 180.935. The Company and all lower-tier participants may do this by either: (a) checking the Excluded Parties List System (EPLS), found at <http://epis.arnet.gov> or <http://www.epis.gov>, (b) collecting the certification form from the lower-tier participant, or (c) adding a clause or condition to the covered transaction with that lower-tier participant. See Exhibit – 1 for Company certification form and Lower-tier participant certification form.

Disclosing Information

The Company and all lower-tier participants, before entering into a covered transaction, must notify the higher-tiered participant if they are presently excluded or disqualified, or any of their principals are excluded or disqualified, pursuant to 2 CFR 180.355.

23. Reserved.

24. Civil Rights Requirements.

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000d, §303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, §202 of the Americans with Disabilities Act of 1990, 42 U.S.C. §12132, and Federal transit law at 49 U.S.C. §5332, the Company agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Company agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

Equal Employment Opportunity: The following equal employment opportunity requirements apply to this Contract:

Race, Color, Creed, National Origin, Sex

In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, and Federal transit laws at 49 U.S.C. §5332, the Company agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as

amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. §2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Company agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Company agrees to comply with any implementing requirements FTA may issue.

Age

In accordance with §4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §623 and Federal transit law at 49 U.S.C. §5332, the Company agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Company agrees to comply with any implementing requirements FTA may issue.

Disabilities

In accordance with §102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, the Company agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Company agrees to comply with any implementing requirements FTA may issue.

The Company also agrees to include the requirements of this Article in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

- 25. **Reserved.**
- 26. **Reserved.**
- 27. **Reserved.**
- 28. **Disadvantaged Business Enterprises (DBE).**
See Exhibit D.

29. **Incorporation of FTA Terms.**

The provisions of this Contract include, in part, certain standard terms and conditions required by the US-DOT, whether or not expressly set forth in the Contract provisions. All applicable contractual provisions required by US-DOT, as set forth in FTA Circular 4220.1F or Federal law, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Company shall not perform any act, fail to perform any act, or refuse to comply with any City requests, which would cause the City to be in violation of the FTA terms and conditions.

The Company also agrees to include the requirements of this Article in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

30. **Reserved.**

31. **F.A.R. Compliance.**

Any adjustment to the Company's compensation under the Contract shall include only costs and other compensation that are allowable, allocable and reasonable as provided elsewhere herein, or otherwise by law, and that are allowable, allocable and reasonable under the Contract Cost Principles of the Federal Acquisition Regulations (F.A.R.) System, 48 C.F.R., Ch.1, Pt.31, and any implementing guidelines or regulations issued by the said Administration.

**EXHIBIT D
SUPPLEMENTARY CONDITIONS
DISADVANTAGED BUSINESS ENTERPRISE**

These Supplementary Conditions Disadvantaged Business Enterprise are an Exhibit to and incorporated into the Services Contract between the City of Charlotte and McGriff, Seibels and Williams, Inc. (the "Contract"). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract.

This Contract is subject to the requirements of 49 C.F.R., Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The goal for participation of Disadvantaged Business Enterprises (DBE) is 0%.

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

The Company is required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 C.F.R. 26.55. Award of this Contract is conditioned upon the submission of the following, concurrent with and accompanying an initial proposal prior to award: (i) the names and addresses of DBE firms that will participate in this Contract; (ii) a description of the work each DBE will perform; (iii) the dollar amount of the participation of each DBE firm participating; (iv) written documentation of the Company's commitment to the DBE subcontractors whose participation it submits to meet the Contract goal; (v) written confirmation from the DBE that it is participating in the Contract as provided in the Company's commitment; and (vi) if the Contract goal is not met, evidence of good faith efforts to do so must be provided; Company shall have present the information required above as a matter of responsiveness (see 49 C.F.R. 26.53 (3)).

The Company is required to pay its subcontractors performing work related to this Contract for satisfactory performance of that work no later than seven (7) days after the Company's receipt of payment for that work from the City. In addition, the Company is required to return any retainage payments to those subcontractors within thirty (30) days after incremental acceptance of the subcontractors work by the City.

The Company must promptly notify the City whenever a DBE subcontractors performing work related to this Contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Company may not terminate any DBE subcontractors and perform that work through its own forces or those of an affiliate without prior written consent of the City.

**Disadvantaged Business Enterprise
Provisions and Requirements for Contracts, Forms and Certifications**

Pursuant to *Title VI of the Civil Rights Act of 1964, Equal Employment Opportunity, Executive 11246* as implemented in the Charlotte area by the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), *Executive Order 11625* concerning the utilization of Disadvantaged Business Enterprises, the Department of Transportation *Circular 4716.1A, 49 CFR Part 26*, the Company is required to take certain actions designed to assure equitable participation and maximum feasible opportunities for the participation of DBEs.

PART I - EQUAL EMPLOYMENT OPPORTUNITY (EEO)

- A.** Federal Nondiscrimination Provisions Pursuant to 41 CFR 60-1.4(b) Federally Assisted Contracts. Each Contract must incorporate the following equal opportunity clause (contracts less than \$10,000.00 are exempt, see §60-1.5 of regulation):

During the performance of this contract, the Company agrees as follows:

1. The Company shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Company shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to the following; employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Company agrees to post in conspicuous places, available to employees, and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 2. The Company shall, in all solicitations or advertisements for employees placed by or on behalf of the Company state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.
 3. The Company shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Company's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 4. The Company shall comply with all provisions of *Executive Order* 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
 5. The Company shall furnish all information and reports required by *Executive Order* 11246 of September 24, 1965, and by rules regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Administering Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
 6. In the event of the Company's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Company may be declared ineligible for further Government Contracts or Federally assisted construction contracts in accordance with procedures authorized in *Executive Order* 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in *Executive Order* 11246 of September 24, 1965, or by rule, regulation, or order, of the Secretary of Labor, or as otherwise provided by law.
 7. The Company shall include the portion of the sentence immediately preceding paragraph (A.1) and the provisions of paragraphs (A.1) through (A.7), in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of *Executive Order* 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Company will take such action with respect to any subcontractor or purchase order as the Administering Agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a Company becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Administering Agency, the Company may request the United States to enter into such litigation to protect the interests of the United States.
- B.** Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity Pursuant to 41 CFR 60-4.2 and *Executive Order* 11246 shall be a part of, all solicitations for offers and Proposals on all Federal and Federally assisted construction contracts or subcontracts in excess of \$10,000.00 in Charlotte's geographical area.
1. The Company's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" (Part I. C a-p) set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Company's aggregate work force in each trade on all construction work in the Charlotte area, are as follows:

The following goals and timetable for female employment apply nationwide.

Timetable	Table	Goal
From April 1, 1980 Until further notice by OFCCP	All Combined	6.9%

The following goals and timetables for minority employment apply to the Charlotte, North Carolina, Standard Metropolitan Statistical Area (SMSA) which includes Gastonia, Mecklenburg, and Union Counties.

Timetable	Trade	Goal
Until further notice by OFCCP	Each Trade	18.5%

These goals are applicable to all the Company's construction work (whether or not it is Federal or Federally-assisted) performed in the Charlotte covered area. If the Company performs construction work in a geographical area located outside of the Charlotte SMSA, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Company also is subject to the goals for both its federally involved and non-federally involved construction.

The Company's compliance with *Executive Order* 11246, the regulations in 41 CFR Part 60-4, shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specification set forth in **41 CFR 60-4.3(a) section C** below, and its efforts to meet the goals established for the Charlotte geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Company shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Company to Company or from project to project for the sole purpose of meeting the Company's goals shall be a violation of the contract, *Executive Order* 11246, the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. Subject to the requirements provided in the appropriate General and Supplementary Conditions, the Company shall provide written notification to the City's Office of Civil Rights and the Director of the Office of Federal Contract Compliance Programs within ten (10) working days of award of any subcontract in excess of \$10,000.00 at any tier for work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

- C. Equal Employment Opportunity Clause Pursuant to 41 CFR 60-4.3(a) is required to be included in, and part of, all nonexempt Federal contracts and subcontracts, including construction contracts and subcontracts.

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246).

1. As used in the following specifications:
 - a. "Covered area" means the Charlotte, North Carolina, Standard Metropolitan Statistical Area, which includes: Gastonia, Mecklenburg, and Union counties.
 - b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP) United States Department of Labor, or any person to whom the Director delegates authority.
 - c. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish or Portuguese Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Company, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the foregoing Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. Each Company or Subcontractor is individually required to comply with its obligations under these EEO provisions, and to make a good faith effort to achieve each goal in the Charlotte area in each trade in which it has employees. The overall good faith performance by other Companies or Subcontractors toward a goal in the Charlotte area does not excuse any covered Company's or Subcontractor's failure to take good faith efforts to achieve the covered area's goals and timetables.
4. The Company shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization. The Company should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction Companies performing construction work in geographical areas where they do not have a Federal or Federally-assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Company is expected to make substantially uniform progress toward its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Company has a collective bargaining agreement to refer either minorities or women, shall excuse the Company's obligations under these specifications, *Executive Order 11246*.
6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Company during the training period,

and the Company must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Company shall take specific affirmative action to ensure equal employment opportunity. The evaluation of the Company's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. ***The Company shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:***
- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Company's employees are assigned to work. The Company shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Company's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Company or its unions have employment opportunities available, and maintain a record of the organization's responses.
 - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Company by the union or, if referred, not employed by the Company, this shall be documented in the file with the reason therefore, along with whatever additional actions the Company may have taken.
 - d. Provide immediate written notification to the City's Civil Rights Officer and OFCCP's Director when the union or unions with which the Company has a collective bargaining agreement has not referred to the Company a minority person or woman sent by the Company, or when the Company has other information that the union referral process has impeded the Company's efforts to meet its obligations.
 - e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Company's employment needs, especially those programs funded or approved by the Department of Labor. The Company shall provide notice of these programs to the sources compiled under 7b above.
 - f. Disseminate the Company's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Company in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc., by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
 - g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

- h. Disseminate the Company's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Companies and Subcontractors with which the Company does or anticipates doing business.
 - i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations to schools with minority and female students and to minority and female recruitment and training organizations serving the Company's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Company shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
 - j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of the Company's work force.
 - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Company's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Company's EEO policies and affirmative action obligations.
8. Companies are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a Company association, joint contractor-union, contractor-community, or other similar group of which the Company is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the Company actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Company's minority and female work force, participation, makes good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Company. The obligation to comply, however, is the Company's and failure of such a group to fulfill an obligation shall not be a defense for the Company's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Company, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Company may be in violation of *Executive Order 11246* if a particular group is

employed in a substantially disparate manner (for example, even though the Company has achieved its goals for women generally, the Company may be in violation of *Executive Order 11246* if a specific minority group of women is underutilized).

10. The Company shall not use the goals and timetables of affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
 11. The Company shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to *Executive Order 11246*.
 12. The Company shall carry out such sanctions and penalties for violation of these Specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to *Executive Order 11246*, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Company who fails to carry out such sanctions and penalties shall be in violation of these specifications and *Executive Order 11246*, as amended.
 13. The Company, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Company fails to comply with the requirements of *Executive Order 11246*, the implementing regulations, or these Specifications, the Director will proceed in accordance with 41 CFR 60-4.8.
 14. The Company shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as required by the City in paragraph 16 below and as may be required by the Government, and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in any easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Companies shall not be required to maintain separate records.
 15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Servicers Employment Act of 1977 and the Community Development Block Grant Program). Similarly, nothing herein shall be interpreted to diminish the responsibilities of the City of Charlotte nor the obligations of Companies or Subcontractors pursuant to *Executive Order 11246*.
- D.** Nondiscrimination in Federally-Assisted Programs of the DOT-Effectuation of Title VI of the Civil Rights Act of 1964 Pursuant to 49 CFR Part 21.

During the performance of this Contract, the Company agrees as follows:

1. The Company shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (DOT) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
2. The Company, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection or retention of subcontractors, including procurement of materials and leases of equipment. The Company shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the

Regulations.

3. In all solicitations either by competitive proposal or negotiations made by the Company for work to be performed under a subcontract, including procurements to materials and leases of equipment, each potential subcontractor or supplier shall be notified by the Company of the Company's obligations under this Contract and the Regulations relative to nondiscrimination on the ground of race, color, or national origin.
4. The Company shall provide all information and reports required by the Regulations and directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the City or the FTA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Company is in the exclusive possession of another who fails or refuses to furnish this information, the Company shall so certify to the City, or the FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. In the event of the Company's noncompliance with the nondiscrimination provisions of this Contract, the City shall impose such contract sanctions as it or the Federal Transit Administration may determine to be appropriate, including but not limited to:
 - a. Withholding of payments to the Company under the Contract until the Company complies, and/or
 - b. Cancellation, termination or suspension of the Contract in whole or in part.

PART II - DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM REQUIREMENTS

Disadvantaged Business Enterprise (DBE) Participation Contract Provisions and Specifications Pursuant to Executive Order 11625 and 49 CFR Part 26.

Goal through Race-Neutral Means

The City has established an annual overall DBE Program Goal of 11.8% for the participation of disadvantaged business in all contracts for federal fiscal year 2011-2013. Subcontracts awarded by the Company to firms owned by disadvantaged persons and to joint ventures of which such firms are a part are essential to the achievement of the City's DBE goal. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award.

Contract Specific Goal

Where there is a contract specific goal, failure to carry out the pre-award requirements of this part of the DBE Provisions will be sufficient ground to reject the Bid. By submitting his/her Proposal, each Bidder gives assurances that he/she will meet the City's percentage goal set forth in this Part for participation by disadvantaged business enterprises in the performance of any contract resulting from this solicitation or, as an alternative, that he/she has made or will make good faith efforts toward meeting the DBE Program goal, and will demonstrate to the City's satisfaction that he/she has made such efforts as required under Part II of this Provision.

A contract specific goal of 0% has been established for this project.

Bidders are informed that price alone does not constitute an acceptable basis for rejecting DBE Proposals unless the Bidder can demonstrate that no reasonable price can be obtained from a DBE. A Bidder's failure to meet the DBE goal or to show reasonable efforts to that end will, in the City's discretion, constitute sufficient ground for Proposal rejection. Such reasonable efforts are discussed in Section II.

Pursuant to Federal Regulations 49 CFR Part 26, the following pages will provide Bidders with information about the City's DBE Program requirements, which is administered by the City's Office of Civil Rights. Clarification of the DBE specifications along with assistance in completing the forms or certification can be obtained by calling

(704) 432-2566. Bidders will also have an opportunity to ask questions regarding the directives contained in the DBE Provisions at the pre-Proposal/pre-proposal conference(s).

I. CONTRACT ASSURANCE CLAUSE

It is the policy of the City that DBE as defined in the U.S. Department of Transportation Regulation 49 CFR Part 26 shall have the opportunity to compete for and participate in the performance of contracts financed in whole or in part with Federal funds. Each contract signed between the City, contractor and subcontractor must include the following assurance as required in [see 49 CFR Part 26.13(b)]:

"The contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Company shall carry out applicable requirements of 49 CFR Part 26 in the award and administration Department of Transportation (DOT)-assisted contracts. Failure by the Company to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate."

This language is included to comply with relevant Federal law and to ensure that all persons who enter into any direct or indirect form of contractual agreement with the City are aware of their responsibilities and the commitment of the City to see that the City's DBE Policy is carried out in all instances.

II. DOCUMENTATION OF GOOD FAITH EFFORTS

In order to monitor DBE participation on Federally-assisted contracts (primes and subcontractors) **Bidders are required to submit with their Proposals/proposal a completed form entitled "Schedule of DBE Participation", indicating the names, respective scope of services to be performed, and the dollar values of each DBE subcontractor that the Bidder proposes for participation in the contract work.** If the information so submitted indicates that the City's goal will not be met, the Bidder shall also submit evidence sufficient to show to the City satisfaction that the Bidder has in good faith made every reasonable effort, in the City's judgment, to meet such goals prior to contract award.

A Proposal will not be considered responsive unless the Company complies with Title 49 Code of the Federal Regulations, Part 26, and the City of Charlotte's Disadvantaged Business Enterprise Program. Bidders are **required** to submit the following documentation with their Proposal/proposal submittal:

DBE Form: Schedule of DBE Participation

The following is a list of actions which you should consider as part of the Good Faith Efforts to obtain DBE participation. It is not intended to be exclusive or exhaustive:

- A. Soliciting through all reasonable and available means (e.g. attendance at pre-Proposal meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The Company must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The Company must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- D. (1) Negotiating in good faith with interested DBEs. It is the Company's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of

DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work. (2) A Company using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a Company's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the Company of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

- E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Company's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of Proposals in the Company's efforts to meet the project goal.
- F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Company.
- G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

III. DBE PROGRAM DEFINITIONS, AS USED IN CONTRACT

"Disadvantaged Business Enterprise" or "DBE" means a small business concern:

Which is at least fifty one percent (51%) owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least fifty one percent (51%) of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individual owners?

A DBE shall not include a small business concern where that concern or a group of concerns controlled by the same socially and economically disadvantaged individual or individuals has annual average gross receipts in excess of \$20,410,000.00 over the previous three fiscal years or is not otherwise eligible as a small business as defined by the Small Business Administration in 13 CFR Part 121.

"Socially and Economically Disadvantaged Individuals" mean those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are:

- 1) Any individual, whom a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
- 2) Any individual in the following groups, members of which are refutably presumed to be socially and economically disadvantaged:
 - a. **"Black Americans"**, which includes persons having origins in any of the Black racial groups of Africa;

- b. **"Hispanic Americans"**, which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- c. **"Native Americans"**, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- d. **"Asian-Pacific Americans"**, which includes persons whose origins are from Japan, China, Taiwan, Burma (Myanmar), Korea, Vietnam, Laos-Cambodia, the Philippines (Kampuchea), Thailand, Malaysia, Indonesia, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic and Palau) and the commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Mauro, Federated States of Micronesia or Hong Kong;
- e. **"Subcontinent Asian Americans"**, which includes persons, whose origins are from India, Pakistan, and Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- f. **"Women"**, regardless of race, ethnicity, or origin;
- g. Or any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act. The City shall make a rebuttal presumption that individuals in the above groups are socially and economically disadvantaged. Such presumption may be challenged by a third party in accordance with the procedures in 49 CFR Section 26.69; and
- h. **"Tribally-Owned"** concern means any concern at least 51 percent owned by an Indian tribe as a defined in this section.

IV. THE ELEMENTS OF THE SOCIALLY AND ECONOMICALLY DISADVANTAGED

A. Socially Disadvantaged:

Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American Society because of their identities as members of groups and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control. Evidence of individual social disadvantage must include the following elements:

- (1) At least one objective distinguishing feature that has contributed to social disadvantaged, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;
- (2) Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and
- (3) Negative impact on entry into or advancement in the business world because of the disadvantage. All relevant evidence in assessing this element will be considered. In every case, however, recipients will consider education, employment and business/history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

B. Economic Disadvantaged:

- (1) Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.
- (2) When an individual's Personal Net Worth exceeds the \$750,000.00 threshold, the presumption of economic disadvantage is conclusively rebutted and the individual is no longer eligible to participate in the DBE program.

- (3) People who are not presumed socially and economically disadvantaged can still apply for DBE certification. To do so, they must demonstrate that they are disadvantaged as individuals.

C. DBE Utilization

The Bidder may rely on written representation by subcontractors regarding their status as disadvantaged business enterprises in lieu of an independent investigation, however;

- (1) Prior to award of this Contract, as requested by the City, Bidders shall cause disadvantaged business enterprises and joint ventures involving disadvantaged businesses to submit, through the Bidder, appropriate certification documentation to the City as required by the NCDOT DBE Certification Application. On the basis of this disclosure and any other relevant information, should the City determine any firm to not be a legitimate DBE, Bidders shall be permitted to substitute bona fide DBEs for the City's consideration.
- (2) After Proposal opening and during contract performance, Bidders and the Company, as the case may be, are required to make every reasonable effort to replace a DBE subcontractor that is unable to perform successfully, with another DBE, prior to substituting a DBE which is not performing satisfactorily, the Company shall seek approval from the City's Office of Civil Rights. The City's Office of Civil Rights shall approve all prior substitutions in writing in order to ensure that the substitutions of firms are bona fide DBEs. The Prime Company may not terminate any DBE subcontractors and perform that work through its own forces or those of an affiliate without prior written consent of the City.
- (3) In the event of the Company's non-compliance with the disadvantaged business requirements of this Contract, the City shall impose such contract sanctions as it or the Federal Transit Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding of payments to the Company until the Company complies, and/or
 - b. Cancellation, termination or suspension of the Contract, in whole or in part.
- (4) For information to Bidders, attached at the end of these provisions are entitled "**Counting DBE Participation Toward DBE Goals With Only Firms Certified Under NCDOT Unified Certification Program**" outlines the Department of Transportation's rules, guidelines and criteria for (a) making determinations as to the legitimacy of DBEs (b) ensuring that contracts are awarded to Bidders that meet DBE goals, and (c) counting DBE participation toward DBE goals. Special attention should be given to the **30 Percent Rule** for DBE Primes and the **60 Percent Rule** for DBE Suppliers.
- (5) The Company shall cooperate with the City's Civil Rights Officer or a designee in any review of the Company's procedures and practices with respect to disadvantaged business enterprises which the Civil Rights Officer may from time to time conduct.

V. DBE REPORTING REQUIREMENTS

The Company shall submit the **Monthly Report on DBE Participation** not later than the tenth (10th) day of each month of the contract period. The Company and subcontractors shall permit access to their books, records, and accounts by the Office of Civil Rights of the FTA and the City's Office of Civil Rights or a designated representative for purpose of investigation to ascertain compliance with these specified requirements. Such records shall be maintained by the Company in a fashion, which is readily accessible to the City for a minimum of three (3) years following completion of this Contract.

To ensure that all obligations under any contract awarded as a result of this Proposal solicitation are met, the City will conduct periodic reviews of the Company's DBE involvement efforts during contract performance. The Company shall bring to the attention of the City's Civil Rights Officer any situation in which regularly scheduled progress payments are not made to DBE subcontractors.

The City will track and report the extent of the Company's race-neutral business assistance efforts. For reporting purposes, race-neutral DBE participation includes, but is not limited to, the following:

- (1) DBE participation through a prime contract, a DBE obtains through customary competitive procurement procedures;
- (2) DBE participation through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal; and
- (3) DBE participation through a subcontract from a prime contract that did not consider a firm's DBE status in making the award.

VI. PROMPT & RETAINAGE PAYMENT

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the prime contractor receives from the City. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. The City will hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within seven (7) days after City's payment to the prime contractor.

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

The Company's failure to pay subcontractors as provided shall be a material breach for which the City may cancel the Contract.

The prime contractor agrees to return retainage payments to each subcontractor within seven (7) days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

VIII. REPORTING & RECORDKEEPING REQUIREMENTS.

1. The Company shall submit periodic reports of contracting with disadvantaged business enterprises in such form and manner and at such time as prescribed by the City, the **Monthly Report on Disadvantaged Business Enterprise Participation Form** (attached to this document) is currently required to be submitted within ten (10) calendar days following the end of month.
2. The Company and subcontractors shall permit access to their books, records, and accounts by the Office of Civil Rights of the FTA and the City's Civil Rights Officer or a designated representative for purpose of investigation to ascertain compliance with these specified requirements. Such records shall be maintained by the Company in a fashion, which is readily accessible to the City for a minimum of three (3) years following completion of this Contract.
3. To ensure that all obligations under any contract awarded as a result of this Proposal solicitation are met, the City will conduct periodic reviews of the Company's DBE involvement efforts during contract performance. The Company shall bring to the attention of the City's Office of Civil Rights any situation in which regularly scheduled progress payments are not made to DBE subcontractors.

IX. MISCELLANEOUS REQUIREMENTS

1. There should be no restrictions through, for example, by law provisions, partnership agreements, or charter requirements for cumulative voting rights or otherwise that prevent the minority or women owners, without the cooperation or vote of any owner who is not a minority or woman, from making a business decision of

the firm in accordance with 49CFR26.71(c).

2. The Company shall take affirmative steps in establishing local banking requirements for funds received from this project. Failure to investigate the opportunities to use banking institutions owned and controlled by minorities and women in good faith may cause a contractor to be in non-compliance with 49CFR26.27. The Federal requirement states that deposits in banking institutions are not considered toward fulfillment of the DBE goals.

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

**FIRST AMENDMENT TO THE AGREEMENT TO PROVIDE
BLUE LINE EXTENSION INSURANCE BROKER SERVICES**

THIS FIRST AMENDMENT TO THE AGREEMENT TO PROVIDE BLUE LINE EXTENSION INSURANCE BROKER SERVICES (the "Agreement") is made and entered into this 24th of October 2013, by and between McGriff, Seibels and Williams, Inc., a Alabama Corporation doing business in North Carolina, (the "Company") and the City of Charlotte, a North Carolina municipal corporation (the "City").

Statement of Background and Intent

- A. The City of Charlotte and the Company entered into an Agreement for blue Line Extension Insurance Broker Services dated October 24, 2012 (the "Agreement") pursuant to which the Company agreed to provide insurance brokering for the City of Charlotte.
- B. The parties now desire to amend the Agreement to extend for the first optional four (4) year extension period.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby agree to the following:

A G R E E M E N T

- 1. Defined terms used in this Amendment shall have the same meaning as are assigned to such terms in the Agreement.
- 2. Changes to Original Agreement. In order to effectuate the intent of the parties, the Original Agreement is hereby amended as follows:
- 3. This First Amendment extends the Term of the Agreement by four (4) years to expire on October 23, 2017.
- 4. Except to the extent specifically provided above, this amendment shall not be interpreted or construed as waiving any rights, obligations, remedies or claims the parties may otherwise have under the Agreement.
- 5. In all other respects and except as modified herein, the terms of the Agreement shall remain in force and effect.

CC#: 1300254
Amendment#: 1
Vendor#: 25747
GEAC#: 130423

IN WITNESS WHEREOF, and in acknowledgement that the parties hereto have read and understood each and every provision hereof, the parties have caused this Amendment to be executed as of the date first written above.

MCGRIFF, SEIBELS AND WILLIAMS, INC.:

BY: [Signature]
TITLE: SENIOR VICE PRESIDENT
DATE: 8/8/2013

CITY OF CHARLOTTE:
CITY MANAGER'S OFFICE

BY: [Signature]
(signature)
TITLE: ASSISTANT CITY MANAGER
DATE: 8/19/2013

ATTESTED:
CITY OF CHARLOTTE
CITY CLERK'S OFFICE

BY: [Signature]
(signature)
PRINT NAME: EMILY A KUNZE
TITLE: DEPUTY CITY CLERK
DATE: 08-21-13

CITY OF CHARLOTTE:
INSURANCE AND RISK MANAGEMENT

BY: [Signature]
(signature)
TITLE: Insurance Manager
DATE: 8/15/13

This instrument has been pre-audited in the manner required by Local Government Budget and Fiscal Control Act.

CITY OF CHARLOTTE
FINANCE DEPARTMENT:

BY: _____
(signature)
PRINT NAME: _____
TITLE: _____
DATE: _____

New Contract#: 2018000139
Original Contract#: 1300254
Amendment#: 2
Vendor#: 25747

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

**SECOND AMENDMENT TO THE AGREEMENT TO PROVIDE
BLUE LINE EXTENSION INSURANCE BROKER SERVICES**

THIS SECOND AMENDMENT TO THE AGREEMENT TO PROVIDE BLUE LINE EXTENSION INSURANCE BROKER SERVICES (this "Second Amendment") is made and entered into this 21st of July 2017, by and between McGriff, Seibels and Williams, Inc., a Alabama Corporation doing business in North Carolina (the "Company"), and the City of Charlotte, a North Carolina municipal corporation (the "City").

Statement of Background and Intent

- A. The City of Charlotte and the Company entered into an Agreement for Blue Line Extension Insurance Broker Services dated October 24, 2012 (the "Contract") pursuant to which the Company agreed to provide insurance brokering services for the City of Charlotte.
- B. The parties amended the Contract to extend the term by the first optional four (4) year renewal term, through October 23, 2017, and to make certain other changes; and
- C. The parties now desire to amend the Contract to extend the Term of the Contract by the last available (1) one-year renewal term, and to incorporate certain other changes.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby agree to the following:

AGREEMENT

1. The terms of the Contract are restated by and incorporated into this Second Amendment by reference.
2. Defined terms used in this Second Amendment shall have the same meaning as are assigned to such terms in the Contract.
3. This Second Amendment extends the Term of the Contract by the last available one (1) year renewal term to expire on October 23, 2018.
4. Section 17 of the Contract ("Other Obligations of the Company") is hereby appended as follows:

17.5. E-VERIFY.

Company 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.

17.6. IRAN DIVESTMENT ACT.

Company 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 Contract; and (iii) it will not utilize any subcontractor that is identified on any such list to provide goods or services hereunder.

[This Space Intentionally Left Blank]

New Contract#: 2018000139
Original Contract#: 1300254
Amendment#: 2
Vendor#: 25747

5. This Second Amendment hereby replaces the Principal Contacts for the Company in Section 31 of the Contract ("Notices and Principal Contacts") with the following:

For the Company:

Melanie Allen
McGriff, Seibels & Williams, Inc.
2211 7th Avenue South
Birmingham, AL 35233
Phone: 205-581-9239
Email: mall@mcgriff.com

With Copy To (Company):

Clint Provost
McGriff, Seibels & Williams, Inc.
2211 7th Avenue South
Birmingham, AL 35233
Phone: 205-583-9514
Email: cprovost@mcgriff.com

6. Except to the extent specifically provided above, this amendment shall not be interpreted or construed as waiving any rights, obligations, remedies, or claims the parties may otherwise have under the Contract.
7. In all other respects and except as modified herein, the terms of the Contract shall remain in force and effect.

[Signature Page Follows]

New Contract#: 2018000139
Original Contract#: 1300254
Amendment#: 2
Vendor#: 25747

IN WITNESS WHEREOF, and in acknowledgement that the parties hereto have read and understood each and every provision hereof, the parties have caused this Second Amendment to be executed as of the date first written above.

MCGRIFF, SEIBELS AND WILLIAMS, INC.

CITY OF CHARLOTTE:
CITY MANAGER'S OFFICE

BY: 
(signature)

BY: 
(signature)

PRINT NAME: Clint Provost

PRINT NAME: Debra D. Campbell

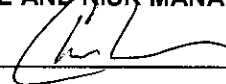
TITLE: Vice President

TITLE: Assistant City Manager

DATE: 7/14/17

DATE: 7/21/2017

CITY OF CHARLOTTE:
INSURANCE AND RISK MANAGEMENT

BY: 
(signature)

PRINT NAME: Christee Gibson

TITLE: Asst Mgr

DATE: 7/21/17

This instrument has been pre-audited in the manner required by Local Government Budget and Fiscal Control Act.

BY: _____
(signature)

DATE: _____

**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG**

**THIRD AMENDMENT TO THE AGREEMENT TO PROVIDE
BLUE LINE EXTENSION INSURANCE BROKER SERVICES**

THIS THIRD AMENDMENT TO THE AGREEMENT TO PROVIDE BLUE LINE EXTENSION INSURANCE BROKER SERVICES (this "Third Amendment") is made and entered into this 24th of October 2018, by and between McGriff, Seibels and Williams a Alabama corporation doing business in North Carolina (the "Company"), and the City of Charlotte, a North Carolina municipal corporation (the "City").

Statement of Background and Intent

- A. The City of Charlotte and the Company entered into an Agreement for Blue Line Extension Insurance Broker Services dated October 24, 2012 (the "Contract") pursuant to which the Company agreed to provide insurance brokering services for the City of Charlotte.
- B. The parties amended the Contract to extend the term by the first optional four (4) year renewal term, through October 23, 2017, and to make certain other changes.
- C. The parties amended the Contract to extend the term by the final one-year renewal term, and to incorporate certain other changes.
- D. The parties now desire to amend the Contract to extend the Term of the Contract for three (3) months.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby agree to the following:

AGREEMENT

1. The terms of the Contract are restated by and incorporated into this Third Amendment by reference.
2. Defined terms used in this Third Amendment shall have the same meaning as are assigned to such terms in the Contract.
3. This Third Amendment extends the Term of the Contract by three (3) months to expire on January 31, 2019.
4. Except to the extent specifically provided above, this amendment shall not be interpreted or construed as waiving any rights, obligations, remedies, or claims the parties may otherwise have under the Contract.
5. In all other respects and except as modified herein, the terms of the Contract shall remain in force and effect.

[Signature Page Follows]

IN WITNESS WHEREOF, and in acknowledgement that the parties hereto have read and understood each and every provision hereof, the parties have caused this Third Amendment to be executed as of the date first written above.

MICRIFF, SEIBELS AND WILLIAMS, INC.

BY: [Signature]
(signature)
PRINT NAME: Chris Provost
TITLE: Senior Vice President
DATE: 3-18-2019

CITY OF CHARLOTTE:
CITY MANAGER'S OFFICE

BY: [Signature]
(signature)
PRINT NAME: Sabrina Joy Hogg
TITLE: Deputy City Manager
DATE: 3/28/19

CITY OF CHARLOTTE:
INSURANCE AND RISK MANAGEMENT

BY: [Signature]
(signature)
PRINT NAME: Christee Gibson
TITLE: Ins Mgr
DATE: 3/22/19

This instrument has been pre-audited in the manner required by Local Government Budget and Fiscal Control Act.

BY: _____
(signature)

DATE: _____

This instrument has been preaudited in the manner required by the "Local Government Budget and Fiscal Control Act."

[Signature]
Finance Officer
[Signature]
4-6-19

Contract/Change Order/Amendment Routing Form



Certificate of Insurance Reviewer
 TO: Sabrina Joy - Hoag
 Debbie Kirkley, Finance Office

CC: _____
 FROM: Tracey Keyes 03-29-19P04:45 RCYD
 DATE: March 14, 2019

CONTRACT TITLE: Blue Line Extension Insurance Broker Services
 DEPARTMENT: Charlotte Area Transit System

Following is the pertinent information on this contract document for your review and signature:

Vendor Name:		Vendor Number:	Contract/Change #:
McGriff, Seibels and Williams, Inc. ✓		130423	2018000139-4 ✓
Munis Contract Amounts		Amount Type: Estimated Annual Amount	
Initial Contract Amt.:	\$ 85,000.00	Contract Type:	Encumbered
Value of changes to Date:	\$ 46,528.00	NTE Explanation:	
Total Contract Amount:	\$ 131,528.00 ✓	Contract Term:	One year with four renewal options, plus one final one-year renewal option

Department certifies that the required funds are available in the account(s) below for this contract:

Funding Information:	Account or Project String (Encumbered)		
	6161-41-41-4131-413150-000000-151-530500 ✓		
Department Contact:	Tracey Keyes - 704-353-0776	Routing Contact:	Christine Goodson- 704-336-4323
<input type="checkbox"/> This change exceeds the RCA Approved Amount?		<input checked="" type="radio"/> Pick Up <input type="radio"/> Inter-Office	

Explanation:

This amendment is to extend the current contract to align with the expiration dates for OCIP and BR policies. Due to delays in the construction of the Blue Line Extension, these policies will not expire until March 31, 2019.

The original contract was a Not to Exceed and the number was 1300254. The spending details are below:

Initial Contract Amount: \$1,000,000; Value of changes: \$-283,333; Total Contract Amount: \$716,667

A new encumbered contract was established last year and the spending details for it are below:

Initial Contract Amount: \$85,000; Additional fee to be added: \$46,528; Total expenditure under the new contract#: 131,528. The spending for the contract falls below what was approved by Council in September 24, 2012.

The following documents are required to be included in this package:

- | | | | |
|-------------------------------------|-------------------------------------|--|--------------------------|
| Yes | NA | | OK 4/8/19 |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Request for Council Action | Date(s) approved: 9/4/12 |
| <input checked="" type="checkbox"/> | | Certificate(s) of Insurance | |
| <input checked="" type="checkbox"/> | | Two (2) copies of the subject Contract/ Amendment | |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Approved Sole Source / Piggyback / Cooperative Form | |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Citywide Procurement Policy (MFS24) Waiver (Signed by City Manager's Office) | |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Other: | |

By signing below or per the attached, signed memo, I certify that I have reviewed and approve the contract, amendment or change order herein.

John Lewis- CATS

[Signature] 3/27/19

[Signature] 3/23/19

OK 4/4/19 See per 4/6/19

Approved
by City Council*Ashleigh Price*Ashleigh Price
Approved 9/24/12**26. Blue Line Extension Insurance Broker Services**

- Action:**
- A. Approve a contract with McGriff, Seibels and Williams, Inc. for an Insurance Broker Services Feasibility study for an initial term of up to one year for \$25,000,**
 - B. Authorize the City Manager to approve a go-forward amendment with McGriff, Seibels and Williams, Inc. for Insurance Broker Services for four years in an annual amount up to \$215,000,**
 - C. Authorize the City Manager to approve one one-year renewal option for Insurance Broker Services as authorized by the contract, and contingent upon the company's satisfactory performance, and**
 - D. Authorize six years of consulting services following the completion of Insurance Broker Services, at no additional cost to the City.**

Staff Resource: Robert Campbell, Finance**Explanation**

- The Risk Management Division provides insurance and risk management services through an inter-local agreement to the City of Charlotte, Mecklenburg County and the Charlotte-Mecklenburg Board of Education.
- The Blue Line Extension (BLE) project is a multi-year construction project with numerous contractors and subcontractors, all of whom will require specialized insurance coverage.
- Most large construction projects utilize Owner-Controlled Insurance Program(s) (OCIP) in order to eliminate coverage gaps and unnecessary overlaps, protecting the owner and resulting in the most efficient treatment of the various risk exposures.
- Due to the complex nature of the construction process for the BLE and because of Federal funding guidelines, the City chose to separate the insurance brokering for the BLE from other City insurance programs.
- McGriff, Seibels and Williams, Inc. (the Company) will conduct an OCIP feasibility study, estimated to take up to one year, to assist CATS with determining which coverage should be included in their OCIP.
- Once the feasibility study is complete, the City and the Company shall assess whether an OCIP with just liability coverage administration or one also including workers' compensation coverage will be utilized.
 - The estimated annual cost for Liability Coverage Administration alone is \$85,000 annually.
 - Liability and Workers' Compensation Coverage administration is estimated at \$215,000 annually.
 - If the City elects to not move forward with an OCIP in any form, the contract will terminate at the end of the OCIP feasibility study.

- The Company shall also be responsible for the following services:
 - Specialized insurance consulting regarding the types of insurance required for the BLE project
 - Marketing and placement of appropriate insurance coverage
 - Acting as a claims liaison for the City and CATS, and reporting results to the City and the Federal Transit Administration

Selection Process

- The City issued a Request for Proposal (RFP) for BLE Insurance Broker Services on July 9, 2012.
- In response to the RFP, the City received seven proposals from interested service providers.
- The Project Team, consisting of staff from Shared Services, Procurement Services Division, Charlotte Area Transit, the City Attorney's Office and Finance, Risk Management Division, evaluated the proposals and shortlisted to three service providers for further evaluation and interviews.
- The Project Team recommends awarding the contract to McGriff, Seibels and Williams, Inc. as the service provider best meeting the City's needs in terms of qualifications, experience, and cost effectiveness.

Disadvantaged Business Enterprise Opportunity

A 0% DBE goal was set for this contract because subcontracting opportunities are not anticipated. A DBE goal was ascertained due to the Federal funding involved in the project.

Funding

Transit Operating Budget

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

**FOURTH AMENDMENT TO THE AGREEMENT TO PROVIDE
BLUE LINE EXTENSION INSURANCE BROKER SERVICES**

THIS FOURTH AMENDMENT TO THE AGREEMENT TO PROVIDE BLUE LINE EXTENSION INSURANCE BROKER SERVICES (this "Third Amendment") is made and entered into this 28 of March 2019, by and between McGriff, Seibels and Williams a Alabama corporation doing business in North Carolina (the "Company"), and the City of Charlotte, a North Carolina municipal corporation (the "City").

Statement of Background and Intent

- A. The City of Charlotte and the Company entered into an Agreement for Blue Line Extension Insurance Broker Services dated October 24, 2012 (the "Contract") pursuant to which the Company agreed to provide insurance brokering services for the City of Charlotte.
- B. The parties amended the Contract to extend the term by the first optional four (4) year renewal term, through October 23, 2017, and to make certain other changes.
- C. The parties amended the Contract to extend the term by the final one-year renewal term, and to incorporate certain other changes.
- D. The parties now desire to amend the Contract to extend the Term of the Contract for three (3) months.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby agree to the following:

AGREEMENT

1. The terms of the Contract are restated by and incorporated into this Fourth Amendment by reference.
2. Defined terms used in this Fourth Amendment shall have the same meaning as are assigned to such terms in the Contract.
3. The parties acknowledge and agree that the Contract has been in effect at all time from January 31, 2019 through the present, and that all purchases made during the period from January 31, 2019 through the date of this Amendment are covered by the Contract.
4. This Fourth Amendment extends the Term of the Contract by three (3) months to expire on March 31, 2019.
5. Except to the extent specifically provided above, this amendment shall not be interpreted or construed as waiving any rights, obligations, remedies, or claims the parties may otherwise have under the Contract.
6. In all other respects and except as modified herein, the terms of the Contract shall remain in force and effect.

[Signature Page Follows]

IN WITNESS WHEREOF, and in acknowledgement that the parties hereto have read and understood each and every provision hereof, the parties have caused this Fourth Amendment to be executed as of the date first written above.

MICRIFF, SEIBELS AND WILLIAMS, INC.

BY: [Signature]
(signature)
PRINT NAME: Chris Provost
TITLE: Senior Vice President
DATE: 3-18-2019

CITY OF CHARLOTTE:
CITY MANAGER'S OFFICE

BY: [Signature]
(signature)
PRINT NAME: Sabrina Joy Hogg
TITLE: Deputy City Manager
DATE: 3/28/19

CITY OF CHARLOTTE:
INSURANCE AND RISK MANAGEMENT

BY: [Signature]
(signature)
PRINT NAME: Christee Gibson
TITLE: Ins Mgr
DATE: 3/22/19

This instrument has been pre-audited in the manner required by Local Government Budget and Fiscal Control Act.

BY: _____
(signature)

DATE: _____

This instrument has been preaudited in the manner required by the "Local Government Budget and Fiscal Control Act."

[Signature]
Finance Officer
[Signature]
4-6-19

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

FIFTH AMENDMENT TO THE AGREEMENT TO PROVIDE
BLUE LINE EXTENSION INSURANCE BROKER SERVICES

THIS FIFTH AMENDMENT TO THE AGREEMENT TO PROVIDE BLUE LINE EXTENSION INSURANCE BROKER SERVICES (this "Fifth Amendment") is made and entered into this 1st of April 2019, by and between McGriff, Seibels and Williams a Alabama corporation doing business in North Carolina (the "Company"), and the City of Charlotte, a North Carolina municipal corporation (the "City").

Statement of Background and Intent

- A. The City of Charlotte and the Company entered into an Agreement for Blue Line Extension Insurance Broker Services dated October 24, 2012 (the "Contract") pursuant to which the Company agreed to provide insurance brokering services for the City of Charlotte.
- B. The parties amended the Contract to extend the term by the first optional four (4) year renewal term, through October 23, 2017, and to make certain other changes.
- C. The parties amended the Contract to extend the term by the final one-year renewal term, and to incorporate certain other changes.
- D. The parties amended the Contract to extend the term for three (3) months to expire on March 31, 2019.
- E. The parties now desire to amend the Contract to extend the Term of the Contract for two (2) months.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby agree to the following:

AGREEMENT

- 1. The terms of the Contract are restated by and incorporated into this Fifth Amendment by reference.
- 2. Defined terms used in this Fifth Amendment shall have the same meaning as are assigned to such terms in the Contract.
- 3. The parties acknowledge and agree that the Contract has been in effect at all time from March 31, 2019 through the present, and that all purchases made during the period from March 31, 2019 through the date of this Amendment are covered by the Contract.
- 4. This Fifth Amendment extends the Term of the Contract by two (2) months to expire on May 31, 2019.
- 5. Except to the extent specifically provided above, this amendment shall not be interpreted or construed as waiving any rights, obligations, remedies, or claims the parties may otherwise have under the Contract.
- 6. In all other respects and except as modified herein, the terms of the Contract shall remain in force and effect.

[Signature Page Follows]

IN WITNESS WHEREOF, and in acknowledgement that the parties hereto have read and understood each and every provision hereof, the parties have caused this Fifth Amendment to be executed as of the date first written above.

MICRIFF, SEIBELS AND WILLIAMS, INC.

BY: [Signature]
(signature)

PRINT NAME: Clint Powell

TITLE: Smir Vice President

DATE: 4-17-2019

CITY OF CHARLOTTE:
CITY MANAGER'S OFFICE

BY: [Signature]
(signature)

PRINT NAME: Sabrina Jay Hogg

TITLE: Deputy City Manager

DATE: 5/6/19

This instrument has been pre-audited in the manner required by Local Government Budget and Fiscal Control Act.

BY: [Signature]
(signature)

DATE: [Signature]

This instrument has been preaudited in the manner required by the "Local Government Budget and Fiscal Control Act."

[Signature]
Finance Officer
[Signature]
5-13-19

**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG**

**SIXTH AMENDMENT TO THE AGREEMENT TO PROVIDE
BLUE LINE EXTENSION INSURANCE BROKER SERVICES**

THIS SIXTH AMENDMENT TO THE AGREEMENT TO PROVIDE BLUE LINE EXTENSION INSURANCE BROKER SERVICES (this "Sixth Amendment") is made and entered into this 31st of May, 2019, by and between McGriff, Seibels and Williams, a Alabama corporation doing business in North Carolina (the "Company"), and the City of Charlotte, a North Carolina municipal corporation (the "City").

Statement of Background and Intent

- A. The City of Charlotte and the Company entered into an Agreement for Blue Line Extension Insurance Broker Services dated October 24, 2012 (the "Contract") pursuant to which the Company agreed to provide insurance brokering services for the City of Charlotte.
- B. The parties amended the Contract to extend the term by the first optional four (4) year renewal term, through October 23, 2017, and to make certain other changes.
- C. The parties amended the Contract to extend the term by the final one-year renewal term, and to incorporate certain other changes.
- D. The parties amended the Contract to extend the term for three (3) months to expire on March 31, 2019.
- E. The parties amended the Contract to extend the term for two (2) months to expire on May 31, 2019.
- F. The parties now desire to amend the Contract to extend the Term of the Contract by one month.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby agree to the following:

AGREEMENT

- 1. The terms of the Contract are restated by and incorporated into this Seventh Amendment by reference.
- 2. Defined terms used in this Seventh Amendment shall have the same meaning as are assigned to such terms in the Contract.
- 3. The parties acknowledge and agree that the Contract has been in effect at all times from May 31, 2019 through the present, and that all purchases made during the period from May 31, 2019 through the date of this Amendment are covered by the Contract.
- 4. This Sixth Amendment extends the Term of the Contract by one month to expire on June 30, 2019.
- 5. Except to the extent specifically provided above, this amendment shall not be interpreted or construed as waiving any rights, obligations, remedies, or claims the parties may otherwise have under the Contract.
- 6. In all other respects and except as modified herein, the terms of the Contract shall remain in force and effect.

[Signature Page Follows]

Contract#:2018000139

Amendment#: 6

Vendor#: 130423

IN WITNESS WHEREOF, and in acknowledgement that the parties hereto have read and understood each and every provision hereof, the parties have caused this Sixth Amendment to be executed as of the date first written above.

MCGRUFF, SEIBELS AND WILLIAMS, INC.

CITY OF CHARLOTTE:
CITY OFFICE

BY: 
(signature)

BY: 
Signature

PRINT NAME: Dan Probst

PRINT NAME: John Lewis

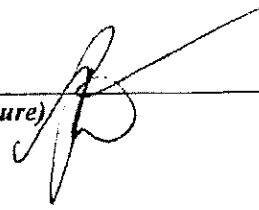
TITLE: Senior Vice President

TITLE: Executive Director

DATE: 12-3-19


DATE: 12/9/19

This instrument has been pre-audited in the manner required by Local Government Budget and Fiscal Control Act.

BY: 
(signature)

DATE: _____

This instrument has been preaudited in the manner required by the "Local Government Budget and Fiscal Control Act."


Finance Officer

Pharal Shah

12-17-19

**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG**

**SEVENTH AMENDMENT TO THE AGREEMENT TO PROVIDE
BLUE LINE EXTENSION INSURANCE BROKER SERVICES**

THIS SEVENTH AMENDMENT TO THE AGREEMENT TO PROVIDE BLUE LINE EXTENSION INSURANCE BROKER SERVICES (this "Seventh Amendment") is made and entered into this 30th of June 2019, by and between McGriff, Seibels and Williams, a Alabama corporation doing business in North Carolina (the "Company"), and the City of Charlotte, a North Carolina municipal corporation (the "City").

Statement of Background and Intent

- A. The City of Charlotte and the Company entered into an Agreement for Blue Line Extension Insurance Broker Services dated October 24, 2012 (the "Contract") pursuant to which the Company agreed to provide insurance brokering services for the City of Charlotte.
- B. The parties amended the Contract to extend the term by the first optional four (4) year renewal term, through October 23, 2017, and to make certain other changes.
- C. The parties amended the Contract to extend the term by the final one-year renewal term, and to incorporate certain other changes.
- D. The parties amended the Contract to extend the term for three (3) months to expire on March 31, 2019.
- E. The parties amended the Contract to extend the term for two (2) months to expire on May 31, 2019.
- F. The parties amended the Contract to extend the Term of the Contract by one month to expire on June 30, 2019.
- G. The parties now desire to amend the Contract to extend the Term of the Contract for two (2) months.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby agree to the following:

AGREEMENT

- 1. The terms of the Contract are restated by and incorporated into this Seventh Amendment by reference.
- 2. Defined terms used in this Seventh Amendment shall have the same meaning as are assigned to such terms in the Contract.
- 3. The parties acknowledge and agree that the Contract has been in effect at all times from June 30, 2019 through the present, and that all purchases made during the period from June 30, 2019 through the date of this Amendment are covered by the Contract.
- 4. This Seventh Amendment extends the Term of the Contract by one month to expire on August 25, 2019.
- 5. Except to the extent specifically provided above, this amendment shall not be interpreted or construed as waiving any rights, obligations, remedies, or claims the parties may otherwise have under the Contract.

Contract#:2018000139

Amendment#: 7

Vendor#: 130423

6. In all other respects and except as modified herein, the terms of the Contract shall remain in force and effect.

[Signature Page Follows]

Contract#:2018000139

Amendment#: 7

Vendor#: 130423

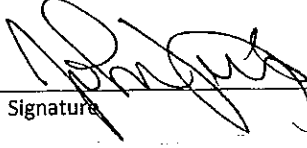
IN WITNESS WHEREOF, and in acknowledgment that the parties hereto have read and understood each and every provision hereof, the parties have caused this Seventh Amendment to be executed as of the date first written above.

MCGRIFF, SEIBELS AND WILLIAMS, INC.

CITY OF CHARLOTTE:

CITY _____ OFFICE _____

BY: 
(signature)

BY: 
Signature

PRINT NAME: Chris Faust

PRINT NAME: John Lewis

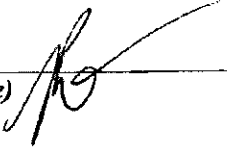
TITLE: Senior Vice President

TITLE: Executive Director

DATE: 12-3-19

DATE: 12/9/19

This instrument has been pre-audited in the manner required by Local Government Budget and Fiscal Control Act.

BY: 
(signature)

DATE: _____

This instrument has been preaudited in the manner required by the "Local Government Budget and Fiscal Control Act."


Finance Officer

Shavul Shah
12/17/19