Concord
NORTH CAROLINA
High Performance Living
850 Warren C. Coleman Blvd., P.O. Box 308, Concord, NC 28026 - www.ci.concord.nc.us

March 2, 2012

To: Interested Transportation Planning Consultants

Subject: Request for Qualifications
Transportation Planning Services for the
Cabarrus Rowan Metropolitan Planning Organization (CRMPO)
City of Concord: Lead Agency

The City of Concord is soliciting statements of qualifications from interested consultants to provide urban area transportation planning services for the Cabarrus Rowan Metropolitan Planning Organization (CRMPO). The selected firm will serve as contracted staff to the CRMPO under the general supervision of the Transportation Director of the City of Concord. The metropolitan planning area covers all of Cabarrus and Rowan counties in North Carolina. Direct and quantifiable working experience with North Carolina MPO's is required for these services. If interested, please submit your statement by the date and time specified under Section VIII. SUBMISSION DEADLINE in the submission information document.

Thank you for your consideration and if you have any questions, please call us at 704-920-5362.

Sincerely,
CITY OF CONCORD

J. K. Wilson, III, P.E.
Transportation Director

JKW/lmp

Enclosure

cc: Project File: Transportation Planning Services, CRMPO – City of Concord: Lead Agency
Sid Talbert, Purchasing
Pam Hinson, Finance

REQUESTS FOR QUALIFICATIONS FOR TRANSPORTATION PLANNING SERVICES

CABARRUS ROWAN METROPOLITAN PLANNING ORGANIZATION (CRMPO)
CITY OF CONCORD, LEAD AGENCY

TRANSPORTATION DEPARTMENT

P.O. Box 308 - 850 Warren C. Coleman Blvd.
Concord, North Carolina 28026-0308

EXHIBIT "A"
TRANSPORTATION PLANNING SERVICES

I. OVERVIEW AND PURPOSE

The Cabarrus Rowan Urban Area Metropolitan Planning Organization (CRMPO) is the officially designated body responsible for administrating the transportation planning process required under Federal Law. The CRMPO plans for regional transportation needs including highway, transit, air, bicycle and pedestrian facilities within both Cabarrus and Rowan counties as well as coordinating connections to the greater Metrolina Area and activities with adjacent MPOs. Priority goals of the CRMPO planning process include:

- Promote the safe and efficient management, operation and development of transportation system;
- Serve the mobility needs of people and freight;
- Public participation and partnership;
- Foster economic growth and development; and
- Minimize the negative effects of transportation including air quality.

The City of Concord, as the Lead Agency of the CRMPO is soliciting statements of qualification from interested consultants to provide urban area transportation planning services for the CRMPO. The selected firm will serve as contracted staff to the CRMPO under the general supervision of the Transportation Director of the City of Concord. The metropolitan planning area covers all of Cabarrus and Rowan counties in North Carolina. Direct and quantifiable working experience with North Carolina MPO's is required for these services.

The City of Concord reserves the right to select and enter into a contract with a transportation planning consultant through this process for an initial term of <u>three (3) years with an option to renew for two (2) additional one (1) year terms for a total of five (5) years.</u>

II. SCOPE OF WORK

Items that will be required of the selected firm include, but are not limited to:

- Daily staffing of the CRMPO including phone, email, and customer service duties.
- All technical planning, mapping, and data management including maintenance of the Regional Travel Demand Model prepared in partnership with the Mecklenburg-Union, Gaston, Rock Hill MPOs and the NC and SC Departments of Transportation.
- Routine maintenance/updates of the CRMPO website.
- Administration of the Technical Coordinating Committee (TCC) and Transportation Advisory Committee (TAC) boards, monthly meetings, and reporting.
- Grant and program reporting to local, state and federal agencies.
- Financial Planning and Planning Work Program development.
- Long Range Transportation Plan (LRTP) and the Comprehensive Transportation Plan (CTP) development including the following topics: financial forecasts, project identification, mapping, goals and objectives, and socioeconomic projections.
- Local Transportation Improvement Program (TIP) Project(s) identification, facilitation and coordination.
- Experience with transportation demand modeling, transportation conformity, and air quality regulations.
- Provide specialized transportation planning services to CRMPO member governments.

- Transit Planning and Regional Mass Transit knowledge.
- Work with elected and appointed boards and commissions.
- Public speaking and education about the CRMPO and urban metro area.
- Liaison with the public, local governments, CRAFT, NCDOT, FHWA, etc.
- Ability and flexibility of firm to adapt to changing needs and multiple work tasks assigned by the Lead Agency and CRMPO policy board.

These services may expand based on the annual needs of the CRMPO. Qualified firms will need to show the ability to meet these and all other work tasks as assigned with experienced transportation planning personnel. Qualified firms must also locate an office within the Concord city limits and be able to provide daily customer service to all interested parties.

III. SUBMITTAL REQUIREMENTS

Individuals and firms should have no contact related to this request and associated submittal with elected officials or appointed officials during the RFQ, selection, and award process. Any such contact will subject the individual or firm to immediate disqualification for consideration.

The selection will be based on the totality of the circumstances as presented in the detailed qualifications statement which addresses the certain items as set forth below. The presence or absence of one or more of these items, except for those required by law, shall not be totally disqualifying but shall be taken into consideration as a portion of the totality of the circumstances reflecting positively or negatively on the qualifications. A committee representing the Lead Agency may narrow applicants to three or four and conduct interviews prior to recommending an individual or firm.

Qualification packages must indicate general qualifications of the respondent(s) in disciplines appropriate to the project, as well as specific prior experience and qualifications applicable to this project. Qualification statements should include and clearly and concisely address the following:

- Brief overview and history of the firm or individual work.
- Key individual or firm name and location of office where work will be performed, including the program manager and any known sub-consultants; their qualifications and experience as related to the Scope of Work detailed above and their anticipated assignments, including specific information on their experience with similar work.
- Examples of previous work with other MPOs and/or clients directly related to technical aspects and processes described in this request.
- Client references from other MPOs, for related governmental, institutional (hospitals, universities, etc.) or similar private contracts, including name, address, telephone number and contact person most involved with the project.
- Evidence of financial responsibility and ability to meet budgets and schedules
- Experience with publicly funded and/or governmental projects in North Carolina.
- Other work commitments, professionalism, etc. of the specified key personnel.
- Documentation of any litigation over the past 10 years associated with performance and/or professional liability.

It is an absolute requirement of the Lead Agency that the selected consultant's office and work force be drug free and that associated individuals, including subcontractors, be free of prior or pending felony convictions, the qualifications statement should include a commitment to this requirement and an indication of the plan of the individual or firm to ensure compliance with this requirement.

Individuals and firms must submit verification of their insurance coverage and list the City of Concord as an additional insured. Information regarding insurance coverage and minimum limits shall be as indicated in the STANDARD FORM OF AGREEMENT FOR PROFESSIONAL SERVICES, Sec. 6. Insurance and Liability.

IV. SELECTION CRITERIA

Selection will be made after a thorough review conducted by a panel of City of Concord staff selected by the City of Concord Transportation Department. Actual interviews may be conducted after review of the responses by interested individuals or firms. The qualification package submitted by each respondent will be evaluated according to the following factors, and their weighted scores will be utilized for selection:

50% Specialized experience, familiarity, knowledge, and technical competence of the respondents assigned staff relative to the Scope of Work, associated task requirements and demonstrated ability in satisfying the client's preferences.
- Experience of the program manager.
- Experience of other assigned individuals or company resources.

25% The ability of the individual or firm's North Carolina office to perform the work and meet critical time schedule(s) and deadline(s). Responsiveness to client input and flexibility to adjust Scope of Work to accommodate the goals of the CRMPO. References reflecting previous work experience and product.

10% The individual or firm's financial ability to undertake the work and assure the reliability, as well as adequacy, of an accounting system to identify chargeable costs. The successful experience of assigned staff to perform the required services within the budget established by CRMPO officials.

10% The individual or firm's ethical and professional standing and satisfactory performance on any previous contracts with the CRMPO and Lead Agency including a positive client relationship through excellent customer service.

05% Evidence of MBE/DBE/WBE participation

The panel will seek a proposal for services and, if deemed favorable, negotiate a contract with the top rated individual or firm following selection. If a contract cannot be successfully negotiated, the panel will proceed to the second rated individual or firm. Individuals and firms that are not selected will be notified.

The City of Concord, acting as the Lead Agency for the CRMPO, reserves the right to reject any and all statements of interest. It is anticipated that a firm will be selected and notified by **mid-April 2012.**

V. CONTRACTING AND CONTRACTUAL OBLIGATIONS

Any contract developed for this work shall be construed and enforced in accordance with the laws of the State of North Carolina. Any controversy or claim arising as a result of contracting shall be settled by an action initiated in the appropriate division of the General Court of Justice in Cabarrus County, North Carolina.

The selected firm will be expected to enter into the City's standard service agreement. This agreement is attached and any questions or comments should be communicated to J.K. Wilson, III, PE, Transportation Director before they are selected as the consultant for this project.

Payment to the consultant will be based upon the satisfactory completion and delivery of profession services as proposed and in accordance with the associated fee(s) as specified in Exhibit "B" to the executed contract. Submitted requests of payments from the consultant shall include at a minimum:

- Summary of activities during the period.
- Adherence to schedule and budget.
- Problems encountered during the period.
- Projected activities for the next period.
- Pertinent and supporting documents relating to service provided

VI. SUPERVISION AND CLARIFICATION

The selected consultant's contact with the Lead Agency shall be the Transportation Director of the City of Concord or his designee. If clarification regarding the Scope of Work is needed, please contact Mr. J.K. Wilson III, PE at (704) 920-5362 or at wilsonj@concord.nc.gov Any questions or inquiries for additional information should be submitted, in writing, to the City of Concord Transportation Department, P. O. Box 308, 850 Warren C. Coleman Blvd., Concord, North Carolina 28026-0308, at least one week prior to proposal deadline. Required responses will be in writing and made a part of the contract as an Addendum.

VII. EQUAL EMPLOYMENT OPPORTUNITY AND DRUG FREE WORK PLACE

The local government of the City of Concord does not discriminate administering any of its programs and activities. The Consultant awarded the contract for work will be required to assure that no person shall be denied employment or fair treatment, or in any way discriminated against on the basis of race, sex, religion, age, national origin, or disability.

Although no percentage is assigned, it is an absolute requirement of the City that the project work site and work force be drug free and that associated individuals, including subcontractors, working on the project be free of prior or pending felony convictions, the qualifications statement should include a commitment to this requirement and an indication of the plan of the firm to ensure compliance with this requirement.

VIII. MINORITY – DISADVANTANGED BUSINESS PARTICIPATION

Reference City of Concord DBE Program Policy Statement following.

IX. SUBMISSION DEADLINE

The submission should be limited to twenty (20) pages, on 8½" by 11" paper, and single-spaced. Fold out pages are not allowed. Front and back covers and transmittal letter are not considered a part of the 20-page submittal. Submissions exceeding the 20-page limitation will not be considered. If you would like to be considered for these MPO Transportation Planning Services,

please submit four (4) copies of the statement which are due no later than **5:00 p.m.** on **March 20, 2012**. No statements will be accepted after this time. The mailing address is:

City of Concord
W. Brian Hiatt, City Manager
c/o
Attn: J.K. Wilson III, P.E., Transportation Director
P.O. Box 308
Concord, NC 28026

CITY OF CONCORD DBE PROGRAM

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The City of Concord has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The City of Concord has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the City of Concord has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the City of Concord to ensure that DBEs as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT–assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT – assisted contracts;
2. To create a level playing filed on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The City's Purchasing Officer has been designated as the DBE Liaison Officer. In that capacity, Purchasing Officer is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the City of Concord in its financial assistance agreements with the Department of Transportation.

The City of Concord has disseminated this policy statement to the Concord City Council and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. The policy statement is available in the City Clerk's office and the DBE Liaison's office and will be mailed to all parties requesting a copy or a City transportation-related RFP, or expressing an interest in obtaining a transportation-related contract with the City.

W. Brian Hiatt 11/12/2012

City Manager Date

EXHIBIT "B"
ATTACHMENT SHEET
FOR
CONSULTING PROPOSAL AND FEE SCHEDULE
TRANSPORTATION PLANNING SERVICES

CITY OF CONCORD

_____
PRINT NAME OF CONSULTANT

By: _____
City Manager

By: _____
Title: _____

ATTEST BY:

_____
City Clerk

ATTEST BY:

_____
Title: _____

SEAL

SEAL

APPROVED AS TO FORM

_____
City Attorney

TRANSPORTATION DEPARTMENT

P.O. Box 308 - 850 Warren C. Coleman Blvd.
Concord, North Carolina 28026-0308
704-920-5362

EXHIBIT "C"
NOTICE OF AWARD AND ACCEPTANCE OF NOTICE

TO:

FROM: City of Concord (City)
P.O. Box 308 - 26 Union Street, South
Concord, North Carolina 28026-0308

PROJECT: Transportation Planning Services
Cabarrus Rowan Metropolitan Planning Organization (CRMPO)
City of Concord, Lead Agency

You are hereby notified that the Professional Consulting Services Agreement 's Scope of Services and Fee for Scope of Services submitted by you for the above named project in response to the City of Concord's Requests for Qualifications dated, March 2, 2012 in the amount not to exceed _____ and ____ / 100.....DOLLARS ($ _____) has been accepted.

You are hereby requested to execute the formal Agreement with the City of Concord and to furnish your Certificate of Insurance and associated Power of Attorney(s) along with any other documents pertaining to the project work as designated by the City of Concord.

Dated this the ____ day of _____, 2012

City of Concord, North Carolina

By: _____
Title: City Manager

ACCEPTANCE OF NOTICE

Receipt of the above **NOTICE OF AWARD** is hereby acknowledged this the ____ day of _____, **2012**

_____
Witness

By: _____
Title: _____

TRANSPORTATION DEPARTMENT

P.O. Box 308 - 850 Warren C. Coleman Blvd.
Concord, North Carolina 28026-0308
704-920-5362

EXHIBIT "D"
ATTACHMENT SHEET FOR INSURANCE FORM
(To be used after Selection)

(Refer to the STANDARD FORM OF AGREEMENT FOR PROFESSIONAL SERVICES, Sec. 6. Insurance and Liability. for information and directions)

TRANSPORTATION DEPARTMENT

P.O. Box 308 - 850 Warren C. Coleman Blvd.
Concord, North Carolina 28026-0308
704-920-5362

EXHIBIT "E"
FINANCE DEPARTMENT
SUPPLIED FORMS

(Refer to the following forms for Sales Tax and Payment Requests.)

TRANSPORTATION DEPARTMENT

P.O. Box 308 - 850 Warren C. Coleman Blvd.
Concord, North Carolina 28026-0308
704-920-5362

City of Concord
Post Office Box 308
Concord, North Carolina 28026-0308

For Office Use Only:

Charge to P.O. #_____

Due _____

PROJECT:
Date Notice to Proceed: _____
Completion Date: _____
Days Remaining in Contract: _____
Percent Work Complete: _____
Percent Time Complete: _____
Percent Payment Complete: _____

APPLICATION FOR PAYMENT NO._____ SHEET NO._____ OF_____

PERIOD FROM:_____ TO:_____

CERTIFICATE OF THE CONTRACTOR

To the best of my knowledge and belief, I certify that this periodical estimate is correct and all work has been performed and materials supplied in full accordance with the terms and conditions of the contract documents between the undersigned contractor and the City of Concord.

GROSS AMOUNT OF PARTIAL PAYMENT - - -$

LESS: RETAINAGE AT 0% PERCENT - - - - - - $
PREVIOUS PAYMENT - - - - - - - - - - - - $
LIQUIDATION DAMAGES
_____ DAYS @ $_____ - - - - - - - - - $
OTHER DEDUCTIONS:
_____ - - - - - - - - - - - - $
_____ - - - - - - - - - - - - $

TOTAL DEDUCTIONS - $

NET AMOUNT DUE THIS ESTIMATE - - - - - - - - - - - - - - $

Name of Contractor:_____ Address:

Signed:_____ Title:_____ Date:_____

CERTIFICATE OF CONSTRUCTION ADMINISTRATOR/ENGINEER

I certify that I have verified this periodical estimate and that to the best of my knowledge and belief, it is a true and correct statement of work performed and materials supplied under the contract.

Consultant Engineer:_____ Date:_____

Construction Administrator:_____ Date:_____

APPROVED AND PAYMENT RECOMMENDED:
CITY OF CONCORD

Signed:_____ Title:_____ Date:_____

FIN/AP/31
Revised 5/18/05

NORTH CAROLINA SALES TAX REPORT

OWNER: City of Concord

CONTRACTOR: _____

PROJECT: Transportation Planning Services

PURCHASE ORDER: _____

DATE	VENDOR NAME	INVOICE NO.	NET INVOICE AMOUNT	STATE TAX AMOUNT	COUNTY TAX AMOUNT	SPECIAL COUNTY TAX	COUNTY PAID
TOTAL							

I certify that the above listed vendors were paid sales tax upon purchases of materials during the period covered by the Construction Estimate, and the property upon which such taxes were paid with or will be used in the performance of this contract. No tax on purchases or rentals of tools and/or equipment is included in the above list. All of the materials above became a part of or is annexed to the building or structure being erected, altered or repaired.

_____
Contractor or Subcontractor Name (PRINT)

Signature: _____

Name (print): _____

Title: _____

SWORN AND SUBSCRIBED BEFORE ME THIS _____ DAY OF _____, ____.

_____

NOTARY PUBLIC
MY COMMISSION EXPIRES: _____

FIN/AP/30
REVISED 5/18/05

EXHIBIT "F"
NOTICE TO PROCEED
(DATE OF AVAILABILITY)

TO:

FROM: City of Concord (City)
P.O. Box 308 - 26 Union Street, South
Concord, North Carolina 28026-0308

PROJECT: Transportation Planning Services
Cabarrus Rowan Metropolitan Planning Organization (CRMPO)
City of Concord, Lead Agency

PROJECT SCOPE OF SERVICES: The Contractor's scope of services and work includes, but is not limited to, the Contractor performing all due diligence and providing professional services for the Project as set forth in this paragraph or in Exhibit "A" defining tasks and fees.

You are hereby formally notified to commence work on or before the ____ day of _____, **2012** under the assigned City of Concord Purchase Order No. _____ in accordance with the Agreement documents for the scope of services and work.

Dated this the day of _____, 2012

City of Concord, North Carolina

By: _____
Title: City Manager

TRANSPORTATION DEPARTMENT

P.O. Box 308 - 850 Warren C. Coleman Blvd.
Concord, North Carolina 28026-0308
704-920-5362

EXHIBIT "G"

ATTACHMENT SHEET FOR
ADDITIONAL EXHIBITS TO AGREEMENT

TRANSPORTATION DEPARTMENT

P.O. Box 308 - 850 Warren C. Coleman Blvd.
Concord, North Carolina 28026-0308
704-920-5362

STANDARD FORM OF AGREEMENT
FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this _____ day of _____, 2012, by and between the CITY OF CONCORD acting as Lead Agency for the Cabarrus Rowan Metropolitan Planning Organization, (herein referred to as the "City") located at 26 Union Street, South, Concord, North Carolina, and _____, a _____ (herein referred to as "Contractor") located at _____, _____, North Carolina _____;

WITNESSETH:

WHEREAS, the Contractor is engaged in the business of performing consulting services relating to professional transportation planning services matters; and

WHEREAS, the City desires to contract with the Contractor to perform such services for the Cabarrus Rowan Metropolitan Planning Organization (herein referred to as the CRMPO), the designated planning agency fro all transportation projects in Cabarrus and Rowan Counties;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

Sec. 1. Professional Services to be Provided. The Contractor will provide professional services for the Project as set forth in Exhibit "A" attached hereto and incorporated herein by reference. The fee shall not exceed the amount set forth in Exhibit "B". Additional Exhibits may be used to further define this Agreement when the Contractor and City so agree. Any additional exhibits shall be designated as exhibits to the Agreement with capitalized, sequential letters of the alphabet, shall be attached hereto and incorporated herein by reference as if the same were fully recited, and shall become terms of this Agreement upon execution by both parties.

Sec. 2. Standards of Performance.

A. The standard of care for all professional and related services performed or furnished by Contractor under this Agreement will be the care and skill ordinarily used by members of Contractor's profession practicing under similar conditions and circumstances and in a similar locality.

B. Contractor shall be responsible for the technical accuracy of its services and documents resulting therefrom, and City shall not be responsible for discovering deficiencies therein. Contractor shall correct such deficiencies without additional compensation, except to the extent such action is directly attributable to deficiencies in City-furnished information.

C. Contractor shall perform or furnish professional transportation planning services and related services as detailed in Exhibit "A" and other attached Exhibits in all phases of the consulting service to which this Agreement applies. Contractor may employ such Contractor's consultants as Contractor deems necessary to assist in the performance or furnishing of the services. The meaning of the term "consultant" shall include "subcontractor." Contractor shall not be required to employ any Contractor consultant unacceptable to Contractor; however, the Contractor shall obtain the City's written approval for each consultant selected. Such approval may be granted by the City Manager or by any duly authorized agent of the City Manager.

D. Contractor and City shall comply with all applicable local, state and Federal Laws and Regulations or Standards. Changes made to these requirements subsequent to the City's issuance of the Notice to Proceed may be the basis for modifications to City's responsibilities or to the scope, schedule, and compensation for Contractor's services.

E. City shall be responsible for, and Contractor may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by City or other member jurisdictions of the CRMPO to Contractor pursuant to the Agreement. Contractor may use such requirements, reports, data, and information in performing or furnishing services under this Agreement.

F. City shall make decisions and carry out its other responsibilities in a timely manner so as not to unreasonably delay the services of Contractor.

G. Contractor shall guarantee the performance of any consultant hired by, or otherwise relied upon by Contractor and shall assume responsibility for any such consultant's failure to furnish and perform the Work in accordance with this Agreement.

H. Contractor shall not be responsible for the acts or omissions of any contractor(s), subcontractor, or supplier, or of any of the contractor's agents or employees or any other persons (except Contractor's own employees or consultant's hired by or working directly for the Contractor) for these services or otherwise furnishing or performing any of the Contractor's work; or for any decision made on interpretations or clarifications by the City of the Contract Documents when such interpretations or clarifications are given without the consultation and advice of Contractor.

Sec. 3. <u>Project Site</u>. Reasonable precautions will be taken to minimize damage to any public or private property or infrastructure at a Project Site from the Contractor's activities and use of equipment. The Contractor, well in advance of any testing, data collection, or site investigation, will research and identify the accurate location of all utilities located on the Project Site including the presence and accurate location of hidden or obscured man-made objects known to the City. Contractor shall take all reasonable precautions to locate any hidden or obscured utilities or other man-made objects which may be on the Project Site, but are unknown to the City.

Sec. 4. <u>Time of Service</u>. The Contractor shall commence work upon the execution date of the written Notice to Proceed from the City. The date that is executed date of the Notice to Proceed shall be the "Commencement Date." All work as set forth in the Scope of Services in Exhibit "A" shall be fully provided to the satisfaction of the City within the terms of this professional services contract as set forth in the Exhibits. The date that is last day of the City's Fiscal Year covered by the term of this contract and as provided by notice to the Contractor by the City shall be the agreement's "Completion Date." Time is of the essence with regard to this agreement for professional services. If Contractor's obligations are not completed by the Completion Date, the City reserves the right to nullify this Agreement, order the Contractor to immediately cease all work under this Agreement and vacate the premises, and to seek professional services equivalent to those outlined in Exhibit "A." The Contractor shall be held accountable for all damages incurred by the City as a consequence of the missed Completion Date. The exercise of any of these rights by the City shall not be interpreted to prejudice any other rights the City may have in law or equity.

Sec. 5. <u>Cancellation for Non-Conformity</u>. In the event of the Contractor's failure to deliver or perform in accordance with the terms and conditions set forth herein, the City shall have the right to nullify this Agreement or any part hereof, without prejudice to its other rights, and the Contractor agrees that the City may return part or all of any delivery and may charge the Contractor with any loss or expense sustained as a result of such failure to deliver or to perform.

Sec. 6. Insurance and Liability. Contractor shall maintain and cause all consultants to maintain insurance policies at all times with minimum limits as follows:

Coverage	Minimum Limits
Workers' Compensation	$100,000 each accident, $500,000 bodily injury by disease, $500,000 bodily injury by disease policy limit
General Liability	☐ $500,000 per occurrence if contract does not exceed 30 days and does not exceed $25,000; otherwise, ☒ $1,000,000 per occurrence/$2,000,000 aggregate
Automobile Liability	☐ $500,000 per occurrence if contract does not exceed 180 days and does not exceed $500,000; otherwise, ☒ $1,000,000 per occurrence
Umbrella	☐ $1,000,000 per occurrence if contract does not exceed 180 days and does not exceed $500,000; otherwise, ☒ $2,000,000 per occurrence

Professional Liability insurance policy limit requirements shall be based on the total amount of compensation to be paid to Contractor under this Agreement and as set forth in applicable Exhibits, and on a determination by City of whether the services provided under this Agreement are for hazardous or non-hazardous activities. The required limits are:

For Non-Hazardous Activities:

☐ $500,000 for contracts under $50,000

☒ $1,000,000 for contracts above $50,000 but less than $100,000

☐ $5,000,000 for contracts over $100,000

For Hazardous Activities:

☐ $1,000,000 for contracts under $50,000

☐ $2,000,000 for contracts above $50,000 but less than $100,000

☐ $5,000,000 for contracts over $100,000

Sec. 7. Documentation Requirements:

A. Contractor shall provide the City with a **Certificate of Insurance** for review prior to the issuance of any contract or Purchase Order. All Certificates of Insurance will require written notice by the insurer or contractor's agent in the event of cancellation, reduction or other modifications of coverage by the insurer. Such notice shall be not less than 30 days for nonrenewal by the insurer, not less than 10 days for cancellation due to nonpayment of the premium and as soon as possible for all other types of modifications. In addition to the notice requirement above, Contractor shall provide the City with written notice of cancellation, reduction, or other modification of coverage of insurance whether instigated by the insurer or by the Contractor immediately upon Contractor's receipt of knowledge of such modifications. Upon failure of the Contractor to provide such notice, Contractor assumes sole responsibility for all loses incurred by the City for which insurance would have provided coverage. The insurance certificate shall be for the insured period in which the initial contract period begins and shall be renewed by the contractor for each subsequent renewal period of the insurance for so long as the contract remains in effect.

The City shall be named as an **additional insured** and it is required that coverage be placed with "A" rated insurance companies acceptable to the City. Statement should read, "City of Concord is added as an additional insured as evidenced by an endorsement attached to this certificate." Failure to maintain the required insurance in force may be cause for termination of this Agreement. In the event that the contractor fails to maintain and keep in force the insurance herein required, the City has the right to cancel and terminate the Agreement without notice.

B. All those doing business with the City must have a current **Privilege License** issued by the City of Concord if a privilege license is authorized by law.

C. Contractor shall provide a completed W-9 form to the City prior to execution by the City of this Agreement.

Sec. 8. **Indemnification.** To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless the City of Concord, its agents, officers, and employees, from and against all charges that arise in any manner from, in connection with, or out of this Agreement as a result of the acts or omissions of the Contractor or its subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable except for damage or injury caused solely by the negligence of the City its agents, officers, or employees. In performing its duties under this section, the Contractor shall at its sole expense defend the City of Concord, its agents, officers, and employees with legal counsel reasonably acceptable to City. As used in this subsection – "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, expenses, interest, reasonable attorney's fees, and amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this Agreement or by operation of law. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this Agreement. This section shall remain in force despite termination of this Agreement (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this Agreement.

Sec. 9. **Intellectual Property**. If any claim based upon alleged infringement of rights in any patent, copyright, trademark, or trade name is asserted against the City by virtue of the purchase or use of any good, service, or process hereunder, the Contractor shall indemnify and hold the City harmless from all claims, demands, and legal obligations against the City in preparation or in defense of such claims, or in settlement thereof.

Sec. 10. **Documents.** All documents, including but not limited to drawings, specifications, reports, boring logs, field notes, laboratory test data, calculations and estimates, prepared by the Contractor pursuant to this Agreement, shall be the City's sole property. The Contractor shall furnish or

cause to be furnished to the City any and all such reports, data, studies, plans, specifications, documents, computer files, and other information created or collected by the Contractor for the Project. The documents so provided will remain the property of the City. All documents prepared by the Contractor for the City are subject to public records requirements, and the City will not assume any responsibility for any third party's use of the documents that are produced.

Sec. 11. Attachments. The following attachments are made a part of this contract and incorporated herein by reference: REQUEST FOR QUALIFICATIONS, EXHIBIT "A" TRANSPORTATION PLANNING SERVICES, EXHIBIT "B" ATTACHMENT SHEET FOR AND CONSULTING PROPOSAL AND FEE SCHEDULE TRANSPORTATION PLANNING SERVICES, EXHIBIT "C", NOTICE OF AWARD AND ACCEPTANCE OF NOTICE, EXHIBIT "D" ATTACHMENT SHEET FOR AND CERTIFICATE OF INSURANCE, EXHIBIT "E" ATTACHMENT SHEET FOR AND FINANCE PROVIDED FORMS, EXHIBIT "F" NOTICE TO PROCEED, EXHIBIT "G" ATTACHMENT SHEET FOR AND ADDITIONAL EXHIBITS TO AGREEMENT, ANY ADDENDUM(S) TO EXHIBITS, WRITTEN CHANGE ORDERS, DIRECTIVES TO THE CONTRACTOR BY THE CITY, AND ANY WRITTEN PROPOSALS SUBMITTED BY THE CONTRACTOR TO THE CITY AND ACCEPTED AS PART OF THE CONTRACT BY THE CITY.

In the event any terms in any attachment hereto conflict with any terms in this Agreement without said attachment, the terms of this Agreement as written without said attachment shall control and take precedence over the contradictory language in the attachment, except in such case where the City has expressly waived said conflicting terms by stating the specific term in this Agreement which is to be waived and the alternative term which is to be effective. The waiver must be in writing and signed by the City Manager or a duly authorized representative of the City Manager.

Sec. 12. Strict Compliance. The City may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous course of dealing or course of performance between the parties to the contrary.

Sec. 13. Corporate Status. If the Contractor experiences any change in corporate status whatsoever, including but not limited to incorporation, dissolution or suspension of incorporation, or any change in the status of partnership or sole proprietorship, and the Contractor does not notify the City of such change in status within three (3) business days from the date of the change in status, and/or the status existing at the time of execution of this Agreement is not reinstated within thirty (30) days, The City may, at its sole option, either declare the Agreement null and void or require execution by the Contractor of a new Agreement reciting the Contractor's correct legal entity and executed by a duly authorized agent of that entity.

Sec. 14. Notices:

A. All notices and other communications required or permitted by this Agreement shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the City:
J.K. Wilson, III, PE
City of Concord
P.O. Box 308
Concord, NC 28206
Fax Number: (704) 795-0404

Albert Benshoff, Esq.
City Attorney
P.O. Box 308
Concord, NC 28026

To the Contractor:

B. Change of Address, Date Notice Deemed Given: A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this Agreement shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by US Mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the US Postal Service or upon actual delivery, whichever first occurs.

Sec. 15. Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the City and the Contractor shall survive the completion of the services and the termination of this Agreement.

Sec. 16. Miscellaneous:

A. Choice of Law and Forum. This Agreement shall be deemed made in Cabarrus County, North Carolina, and shall be governed by and construed in accordance with the laws of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the appropriate division of the North Carolina General Court of Justice, in Cabarrus County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

B. Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

C. Performance of Government Functions. Nothing contained in this Agreement shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

D. Severability. If any provision of this Agreement shall be unenforceable, the remainder of this Agreement shall be enforceable to the extent permitted by law.

E. Assignment, Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out this contract. Unless the City otherwise agrees in writing, the Contractor and all assigns shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this Agreement and all of the City's claims that arise out of this Agreement. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this Agreement shall be binding upon it and its heirs, personal representatives, successors, and assigns.

F. City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

G. EEO Provisions. During the performance of this Agreement the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall post in conspicuous places available to employees and applicants for employment, notices setting forth these EEO provisions.

(2) The Contractor in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.

H. No Third Party Right Created. This Agreement is intended for the benefit of the City and the Contractor and not any other person.

I. Principles of Interpretation. In this Agreement, unless the context requires otherwise the singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. Reference to statutes or regulations include all statutory or regulatory

provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The word "person" includes natural persons, firms, companies associations, partnerships, trusts, corporations, governmental agencies and units, and any other legal entities.

J. Modifications, Entire Agreement. A modification of this Agreement is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager or other duly authorized official signs it for the City. This Agreement, including all exhibits and attachments hereto, contains the entire agreement between the parties pertaining to the subject matter of this Agreement. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this Agreement.

- Signatures continued next page -

CITY OF CONCORD:

_____
(Typed or Printed Legal Name of Contractor)

By: _____
City Manager

ATTEST

By: _____
City Clerk

By: _____
Signature of President/Vice President/Manager/Partner

Printed Name: _____

Title: _____

ATTEST
By: _____
Signature of Vice President, Secretary, or other officer

Printed Name: _____

Title: _____

SEAL

SEAL

APPROVED AS TO FORM:

_____
Attorney for the City of Concord

APPROVAL BY CITY FINANCE OFFICER

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

_____
Signature