



**Request for Qualifications**

**On-Call Transportation Services**

**July 5, 2018**

## **I. OVERVIEW AND PURPOSE**

The City of Concord is soliciting proposals from well-qualified consultants to provide transportation consulting services on an on-call basis, for a period up to five (5) years as outlined in Sec. VI Time. The consulting firm selected for the on-call contract will serve as an extension of Concord staff. This on-call contract is intended to provide a flexible and effective way for the City to respond to a range of transportation needs with an available consultant ready to provide multi-dimensional services, as needed.

## **II. SCOPE OF WORK**

The following is a general description of the scope of work required. This is not intended to be all-inclusive.

This is an on-call, open-ended contract for as-needed professional services, primarily transportation consulting services. The scope and fee will be determined separately for each assignment prior to notice to proceed (NTP). At the direction of the City, project scopes may include, but not be limited to, the following core service areas:

- Preparation of a transportation impact analysis (TIA) ordinance to include emphasis on multimodal elements
- Transportation planning, including, but not limited to, sub-area and corridor studies as well as associated modeling, feasibility studies, and long-range plan development
- Transportation engineering, operations, and studies
- Bicycle and pedestrian planning, bike/pedestrian counts, studies, design, and project development
- Comprehensive, small area, and corridor land use planning services
- Assistance to the City in the application and completion of funding grants
- Attendance and presentations at neighborhood public meetings, public hearings, and planning board, council, and other meetings as required
- Engineering, design, planning, permitting, environmental studies, cost estimation, contract administration, inspection, and testing work associated with locally administered transportation infrastructure projects that are locally, Cabarrus Rowan Metropolitan Planning Organization (CRMPO), state, or federally funded
- National Environmental Policy Act (NEPA) and State Environmental Policy Act (SEPA) environmental studies
- Preparation and acquirement of required permit/environmental letters from agencies/municipalities
- Wayfinding plan implementation
- Consultation with individual property owners on design, location, and access questions
- Coordination with applicable local, state, regional, and federal agencies

- Preparation of computerized visualization/3-D modeling of design information suitable for use at public input opportunities as well as for placement on project websites

The firm selected for an on-call contract will be required to enter into a master agreement with the City of Concord. This master agreement will:

1. Fulfill the consultant solicitation and selection process for the work to be performed under the on-call contract; and
2. Establish current hourly rates as well as a method of calculation and payment for all other direct/indirect project expenses.

Work performed under the Master Agreement will be conducted in one of the following ways:

1. Small tasks not representing a complete project will be based on hourly rates as provided in the master agreement or applicable supplemental agreement. Such hourly agreements will be established through a supplemental agreement/project work plan to be updated annually.
2. Specific projects and/or deliverables identified by the City of Concord will be negotiated through scope-fee discussions and arranged through supplemental agreements. Supplemental agreements will identify work scope, timeframe, deliverables, and total cost.

The selected firm will report directly to the City of Concord. The selected firm is to administer the contract and ensure that all work is performed in accordance with the contract requirements.

The professional engineering firm (PEF) will be responsible for providing engineers, planners, landscape architects, and technicians with the appropriate skills and qualifications to ensure contract compliance. The PEF will be directly responsible for project oversight on behalf of the City.

Any firm wishing to be considered must be properly registered with the Office of the Secretary of State and with the North Carolina Board of Professional Engineers, Professional Landscape Architects, and Land Surveyors. Any proposed corporate subsidiaries or subcontractors must also be properly registered with the appropriate NC Board of Registration for their role in the project. The engineers or landscape architects performing the work and in responsible charge of the work must be registered Professional Engineers or Landscape Architects in the State of North Carolina and must have a good ethical and professional standing. It will be the responsibility of the selected private firm to verify the registration of any corporate subsidiary or subcontractor prior to submitting a qualifications package.

The firm and subconsultants shall not discriminate on the basis of race, religion, color, national origin, age, disability, or sex in the performance of any contract entered into under this pre-qualification process.

The firm must have the financial ability to undertake the work and assume the liability.

Refer to the attached Professional Services contract for additional terms.

Questions concerning the scope of this project should be directed in writing to Phillip L. Graham, PE, Transportation Director, contact information below. Any amendments to the RFQ shall be made in writing and distributed as an addendum.

Phillip L. Graham, PE  
Transportation Department  
Alfred M. Brown Operations Center  
850 Warren C. Coleman Blvd., S  
Concord, NC 28026  
704-920-5338  
704-795-0404 (fax)  
Email: [grahamp@concordnc.gov](mailto:grahamp@concordnc.gov)

**Firms should have no contact related to this project with elected officials or City of Concord Employees other than as directed herein, during the RFQ process.** Any such contact will subject the firm to immediate disqualification for consideration for this project. At the option of the selection committee, interviews may be held if it is determined to enhance the selection process.

### **III. SUBMITTAL REQUIREMENTS**

The selection of the firm will be based on the totality of the qualifications of the firm as presented in the detailed qualifications statement. The presence or absence of one or more of the items listed below, except for those items required by law, shall not be totally disqualifying but shall be taken into consideration as a portion of the totality reflecting positively or negatively on the qualifications of the firm. Qualification statements should clearly and concisely address the following:

#### **Table of Contents**

##### **1. Cover Letter**

Provide a cover letter addressed to Phillip L. Graham, PE, Transportation Director The cover letter is limited to one (1) page and should contain the following information:

- Expression of firm's interest and why you feel your firm is best suited for the On-Call Transportation Services contract.
- Statement regarding firms' possible conflict(s) of interest for the work.
- The name, phone number, and email address of the person who the City should contact if questions arise regarding the firm's submittal.

##### **2. Organization of Consultant Team**

Provide a team organization chart showing all firms and names of specific staff proposed for this project, including their titles. Although there is no required goal, the City encourages use of any minority-owned, women-owned, and small business enterprises (M/W/SBE).

Statement indicating how the work described in this RFQ will fit into the total workload of the firm.

Detailed resumes for key staff. Please include the office location in which each individual is located.

### **3. Qualifications and Experience**

- Provide a summary of at least three (3) projects similar, including administering federally and state funded projects, to those that may be identified under this on-call contract. Please only include projects within the last five (5) years for which the Consultant was primarily responsible. Each of the project summaries shall include the following:
  - a. Description of the project including size and scope. Please indicate if the project was publicly funded.
  - b. Description of services rendered by the Consultant.
  - c. Key staff involved, along with their assigned responsibilities.
  - d. Project duration.
  - e. Project references including current names, addresses, telephone numbers, and email.

### **4. Core Services**

- Provide a brief description of the firm's capability to perform the following:
  - a. Provide transportation planning and engineering services to include preparation of the TIA ordinance, preparation of TIAs, long-range transportation plan (LRTP), corridor and area studies, multimodal transportation planning, project planning/development, functional/conceptual designs, programmatic Categorical Exclusion (CE), feasibility studies, cost estimates, and permits.
  - b. Provide examples of your firm's successful track record for timely project completion. Completing projects efficiently and timely is imperative. There will be projects with federal deadlines, gathering and compiling information for permits and conceptual design services must be undertaken immediately after NTP to expedite construction documentation and construction of the project.
  - c. Discuss experience developing construction plans, specifications, and cost estimates in coordination with a municipality and NCDOT as part of a turn-key design service from feasibility study through preparation of final construction documents.
- There may be projects that would possibly require a PEF to provide right-of-way acquisition services. Your proposal should indicate if you have in-house capability or if you would subcontract the work.

## 5. Project Management

- Describe the project team’s method of quality control.
- Describe the method of keeping pre-construction activities, to include Design, Environmental Documentation, Right-of-Way Certification and final PS&E package on schedule.
- Approach to ensuring accurate coordination during all phases of project development.

## VI. QUALIFICATION STATEMENT DEADLINE

The statement of qualifications shall be limited to 18 pages inclusive of the cover sheet. ONLY ELECTRONIC SUBMISSIONS WILL BE ACCEPTED. Submissions should be in .pdf format. **Electronic submission of the statement of qualifications are due no later than 2:00 p.m. on Monday July 16, 2018 at the email address below.** No statement of qualifications will be accepted after this time.

The City reserves the right to reject any and all statements of interest. It is anticipated that a firm will be selected and notified by early November.

The statement of qualifications should be sent to the following e-mail address as a .pdf file: [grahamp@concordnc.gov](mailto:grahamp@concordnc.gov) An electronic receipt will be sent when your submission is downloaded to our server. Paper copies are not required. The subject line should contain the firm’s name and “On-Call Transportation Services”.

## V. SELECTION CRITERIA

The considerations below will be utilized for selection of the firm. Selection will be made after thorough review conducted by a City panel. Actual interviews may be conducted after review of the responses by interested firms.

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|---|-----|
| 1. Team organization and structure  | 10% |
| 2. Project personnel qualifications, experience, knowledge, familiarity and past performance with the desired services, similar on-call contract experiences with local governments | 35% |
| 3. Specialized experience of firm and related experience on similar projects within the last five years for other NC municipalities or the NCDOT                                    | 15% |
| 4. Core services experience; transportation planning and engineering services   | 30% |
| 5. Firm commitment to provide personnel resources and capacity  | 10% |

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.

The City of Concord panel will negotiate a contract with the top-rated firm following selection. If a contract cannot be successfully negotiated with the top-rated firm, the panel will proceed to the second rated firm. Firms that are not selected will be notified.

## **VI. Time**

The City will award the On-Call Transportation Services contract to one firm for Fiscal Year 2019, ending June 30, 2019. The awarded firm will be pre-qualified for on-call consulting services for an 4 additional years, total of 5 years, ending June 30, 2023.

The City of Concord may qualify additional consultants for the aforementioned period. The selected firm(s) shall provide consulting services on as-needed, on-call basis for projects to be determined during the term of the agreement.

Refer to the attached Standard form of Agreement for Professional Services, Sec. 4. Time of Service.

## **VII. CONTRACTING**

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.

## **VIII. EQUAL EMPLOYMENT OPPORTUNITY**

The local government of the City of Concord does not discriminate administering any of its programs and activities. The Consultant(s) 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.

**STANDARD FORM OF AGREEMENT  
FOR PROFESSIONAL SERVICES**

THIS AGREEMENT (this "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between the CITY OF CONCORD, (herein referred to as the "City") located at 35 Cabarrus Ave, W, Concord, North Carolina, and \_\_\_\_\_ (herein referred to as "Consultant") located at \_\_\_\_\_;

WITNESSETH:

WHEREAS, the City desires to contract with the Consultant to perform professional services set forth in Exhibit A;

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 Consultant 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 "A". Additional Exhibits may be used to further define this Agreement when the Consultant 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 Consultant under this Agreement will be the care and skill ordinarily used by members of Consultant's profession practicing under similar conditions and circumstances and in a similar locality.

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

C. Consultant shall perform or furnish professional administrative, traffic and transportation engineering as outlined in Exhibit "A" and related services in all phases of the Project to which this Agreement applies. Consultant may employ such consultants as Consultant deems necessary to assist in the performance or furnishing of the services. The meaning of the term "consultant" shall include "subconsultant." Consultant shall not be required to employ any subconsultant unacceptable to Consultant; however, the Consultant 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. Consultant 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 Consultant's services. Without limitation, Consultant shall comply with the requirements of Article 2, Chapter 64 (Verification of Work Authorization) of the North Carolina General Statutes relating to E-Verify. Further, if Consultant utilizes a subconsultant, Consultant shall require the subconsultant to comply with the requirements of Article 2 of Chapter 64 of the General Statutes.

E. City shall be responsible for, and Consultant may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by City to Consultant pursuant to the Agreement. Consultant 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 Consultant.

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

H. Except as provided in Subsection 2(g), Consultant shall not be responsible for the acts or omissions of any consultant(s), subconsultant, or supplier, or of any of the consultant's agents or employees or any other persons (except Consultant's own employees or consultants hired by or working directly for the Consultant) at the site or otherwise furnishing or performing any of the Consultant'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 Consultant.

I. Consultant shall require access to the City's information systems in order to perform the duties contracted herein. Such access shall be granted to Consultant in accordance with the needs of the contracted duties. Consultant shall follow the standards set forth in Exhibit E to this Agreement.

**Sec. 3. Project Site.** Reasonable precautions will be taken to minimize damage to the Project Site from the Consultant's activities and use of equipment. The Consultant, well in advance of any testing 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. Consultant 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. Time of Service.** The Consultant shall commence work immediately after receipt of written Notice to Proceed from the City. The date of the Consultant's receipt of the Notice to Proceed shall be the "Commencement Date" and end at June 30, 2019 "Completion Date". All work as set forth in the Scope of Services in Exhibit "A" shall be completed between the "Commencement Date" and the "Completion Date". This Contract will automatically renew upon the Completion Date and the first anniversary thereof, for a total of up to four (4) renewal terms, unless either party gives notice of cancellation to the other party at least thirty (30) days in advance of such date. The Parties may, by mutual agreement, agree to reasonable rate changes provided that the rates shall not increase by more than 5% per renewal term. Time is of the essence with regard to this Project. If Consultant's obligations are not completed by the Completion Date, the City reserves the right to nullify this Agreement, order the Consultant 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 Consultant 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 under any agreement or in law or equity.

**Sec. 5. Cancellation for Non-Conformity or Breach.**

A. In the event of the Consultant'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 Consultant agrees that the City may return part or all of any delivery and may charge the Consultant with any loss or expense sustained as a result of such failure to deliver or to perform.

B. In the event of a violation of any material term of this Agreement, the non-violating party may terminate the Agreement upon written notice. Such notice shall state the violation with specificity and shall give ten (10) days to cure the violation. The cure period shall be measured as ten (10) days from the date of receipt of notice by the violating party, or, if the date is not known, then thirteen (13) days from the date the notice is placed in the United States Post. If the violation remains uncorrected at the end of the cure period, the Agreement shall be terminated without any further action by the non-violating party.

C. Either party may cancel this Agreement upon thirty (30) days written notice to the other party. In the event of any termination, the Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination. If the Consultant's compensation is a fixed fee, the amount payable for services will be a proportional amount of the total fee based on the ratio of the amount of the services performed, as reasonably determined by the Consultant, to the total amount of services which were to have been performed.

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

<u>Coverage</u>	<u>Minimum Limits</u>
Workers' Compensation	\$100,000 each accident, \$100,000 bodily injury by disease each employee, \$500,000 bodily injury by disease policy limit
General Liability	\$1,000,000 per occurrence regardless of the contract size
Automobile Liability	\$1,000,000 per occurrence regardless of the contract size
Umbrella	<input checked="" type="checkbox"/> \$1,000,000 per occurrence if contract does not exceed 180 days and does not exceed \$500,000; otherwise, <input type="checkbox"/> \$2,000,000 per occurrence

Professional Liability insurance policy limit requirements shall be based on the total amount of compensation to be paid to Consultant under this Agreement and as set forth in Exhibit "A," 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:

\$1,000,000 per claim / \$1,000,000 annual aggregate

For Hazardous Activities:

For contracts less than \$100,000 –  
\$2,000,000 per claim / \$2,000,000 annual aggregate

For contracts over \$100,000 –  
\$5,000,000 per claim / \$5,000,000 annual aggregate

**Sec. 7. Documentation Requirements:**

A. Consultant 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 consultant'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, Consultant 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 Consultant immediately upon Consultant's receipt of knowledge of such modifications. Upon failure of the Consultant to provide such notice, Consultant assumes sole responsibility for all losses 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 consultant 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 shall constitute a material breach and shall, at City's option, may be cause for termination of this Agreement. In the event that the consultant 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. Consultant 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 Consultant 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 negligent acts or omissions of the Consultant or its consultants and subconsultants 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 Consultant 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 Consultant 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 Consultant 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 Consultant pursuant to this Agreement, shall be the City’s sole property. The Consultant 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 Consultant for the Project. The documents so provided will remain the property of the City. All documents prepared by the Consultant 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.** Additional Exhibits may be used to further define this Agreement when the Consultant 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.

*The following attachments* are made a part of this Agreement and incorporated herein by reference:

- (a) Exhibit “A” – Scope of Services / Fee for Scope of Services.
- (b) Exhibit “B” – Consultant must execute the Affidavit attached as Exhibit B, attesting to compliance with state and federal laws related to E-Verify. Not Applicable
- (c) Exhibit “C” – Tax Form(s).
- (d) Exhibit “D” - Certificate of Insurance.

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 Consultant 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 Consultant 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 Consultant of a new Agreement reciting the Consultant’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:

Phillip Graham, PE  
City of Concord  
P.O. Box 308  
Concord, NC 28206  
Fax Number: (704) 795-0404

To the Consultant:

VaLerie Kolczynski, Esq.  
City Attorney  
PO Box 308  
Concord, NC 28026

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 Consultant 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 Consultant shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out this Agreement. Unless the City otherwise agrees in writing, the Consultant and all assigns shall be subject to all of the City's defenses and shall be liable for all of the Consultant's duties that arise out of this Agreement and all of the City's claims that arise out of this Agreement. Without granting the Consultant the right to assign, it is agreed that the duties of the Consultant 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 Consultant agrees as follows:

(1) The Consultant 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 Consultant 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 Consultant shall post in conspicuous places available to employees and applicants for employment, notices setting forth these EEO provisions.

(2) The Consultant in all solicitations or advertisements for employees placed by or on behalf of the Consultant, 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 Consultant 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. No Employment Relationship. For all matters relating to this Agreement, Consultant shall be deemed an Independent Consultant. Nothing in this Agreement shall be construed in such a manner as to create an employee-employer relationship between Consultant and the City.

K. 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.

L. Corporate seal. If a corporate seal is included by any party to this Agreement, it is only for authentication purposes. This Agreement is not signed under seal.

IN WITNESS WHEREOF, the City of Concord and the Consultant have caused this Agreement to be executed by their respective duly authorized agents or officers.

[SIGNATURE PAGE(S) FOLLOW]

CITY OF CONCORD:

\_\_\_\_\_  
(Typed or Printed Legal Name of Consultant)

By: \_\_\_\_\_  
City Manager

By: \_\_\_\_\_  
Signature of President/Vice President/Manager/Partner

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST BY:

Date: \_\_\_\_\_

\_\_\_\_\_  
City Clerk

ATTEST:

BY: \_\_\_\_\_  
Signature of Vice President, Secretary, or other officer

APPROVED AS TO FORM:

Printed Name: \_\_\_\_\_

Title \_\_\_\_\_

\_\_\_\_\_  
Attorney for the City of Concord

SEAL

**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

**EXHIBIT "A"**

This document is an Exhibit to the Agreement for Professional Services between the CITY OF CONCORD and \_\_\_\_\_ dated \_\_\_\_\_.

**Scope of Services:** See attached Proposal dated \_\_\_\_\_.

**Fee for Scope of Services:**

The fee for services shall not exceed twenty-five thousand dollars (\$25,000) and shall be based on a time and material format, whereby fees would be invoiced by the amount of actual time/material expended. Fees for hourly staff time shall be based on the rate schedule provided as part of the letter dated \_\_\_\_\_. Invoices shall be directed to: City of Concord Attention: Phillip Graham, PE, Post Office Box 308, Concord, NC 28026-0308. Should changes or extra services be needed, which will cause a cost overrun; \_\_\_\_\_ will consult with the City for adjustments prior to conducting the work.

EXHIBIT "B" – NOT APPLICABLE

STATE OF NORTH CAROLINA

AFFIDAVIT

COUNTY OF CABARRUS

\*\*\*\*\*

I, \_\_\_\_\_ (the individual signing below), being duly authorized by and on behalf of \_\_\_\_\_ (the legal name of the entity entering the contract, "Employer")

after first being duly sworn hereby swears or affirms as follows:

- 1. Employer understands that E-Verify is the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with NCGS §64-26.
2. Employer understands that Employers Must Use E-Verify. Each employer (as such term is defined in NCGS § 64-25), after hiring an employee (as such term is defined in NCGS § 64-25) to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS§64-26(a). Employer attests that Employer is in compliance with the requirements of the federal and state laws relevant to E-verify.
3. Employer is a person, business entity, or other organization that transacts business in the State of North Carolina. Employer employs 25 or more employees in this State. (mark Yes or No)
a. YES \_\_\_\_, or b. NO \_\_\_\_.
4. Employer attests that all subconsultants employed by it as part of this contract comply with the requirements of E-Verify, and Employer will ensure compliance with E-Verify by any subconsultants subsequently hired by Employer as part of any contract with the City of Concord.
5. Employer shall have a continuing duty to inform the City of Concord of any changes to this sworn information.

This \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Signature of Affiant
Print or Type Name: \_\_\_\_\_

State of North Carolina County of Cabarrus

Signed and sworn to (or affirmed) before me, this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

My Commission Expires:

\_\_\_\_\_

Notary Public

(Affix Official/Notarial Seal)

EXHIBIT "C"

TAX FORM(S)

EXHIBIT "D"

CERTIFICATE OF INSURANCE