

APPENDIX C

GENERAL CONDITIONS

1. DEFINITIONS AND HEADINGS:

The Request for Proposals, the proposal, the notification of award, and the purchase order or contract constitutes the complete agreement between the parties (hereinafter the "Agreement"). References to the Agreement include these General Conditions. "City" and "Contractor" are the parties identified as such in this Agreement. "Services" means the services identified in this Agreement as being the services to be performed by the Contractor under this Agreement. The "Goods" means the equipment or items to be supplied by Contractor under this Agreement.

All headings of the Articles of these General Conditions are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

2. **PRECEDENCE:** Where conflict exists between the Request for Proposals, the Contractor's Proposal, and the Agreement, the terms of the Agreement shall prevail.
3. **AVAILABILITY OF APPROPRIATED FUNDS:** The parties agree that any and all payments due from the City, as required under the terms of the Agreement, are contingent upon the availability of appropriated funds. Such cancellations shall be without damage or further obligation.
4. **TAXES:** The City is exempt from all Federal excise and transportation taxes. The City is eligible for reimbursement for North Carolina sales and use tax. The City's registration number with the Internal Revenue Service is 56-6001316. No exemption certificates are required and none will be issued. Nothing in this paragraph is meant to exempt a Contractor from the payment of sales tax or use tax required to be paid with respect to its purchase or use of tangible personal property used or transferred in connection with the performance of its construction contract. If the City is required by law to pay any excise tax and then seek a refund or credit, the Contractor may add the amount of the tax to the bid price as a separate item. The Contractor will furnish sales tax certificates to the City for materials purchased under this contract.
5. **WARRANTY:** Contractor warrants to the City that work performed under this Agreement, shall be done in a skilled manner and shall comply with industry standards. Contractor shall promptly re-perform Services, after receiving notification from the City of defects or nonconformance.
6. **INDEMNITY:** Contractor agrees to indemnify and hold harmless the City, its elected officials, employees and agents from and against any and all liability, damages, claims, suits, liens, and judgments (including reasonable attorney's fees), of whatever nature, for injuries to or death of any person or persons, or loss of or damage to property, to the extent attributable to the negligent acts of Contractor, its subcontractors or its respective agents, servants, or employees or such parties' failure to perform in accordance with the provisions of this Agreement. Any term or condition is void to the extent that it requires the City to indemnify anyone.

7. **FORCE MAJEURE:** Neither party shall be liable for any failure or delay in its performance resulting from any cause beyond its reasonable control including, but not limited to, acts of God; acts or omissions of civil or military authority; fires, floods; unusually severe weather; strikes or other labor disputes; embargoes; wars; political strife; riots; delays in transportation; sabotage; or fuel, power, material or labor shortages, provided that the affected party notifies the other party, in writing, within forty-eight (48) hours subsequent to the commencement of an occurrence of Force Majeure.
8. **TERMINATION FOR CONVENIENCE:** The City reserves the right, at any time and for its convenience, to terminate this Agreement in whole or in any separable part by written notice to Contractor. Such notice shall be provided at least thirty (30) days prior to the intended termination date. Contractor shall be compensated for Goods accepted and for Services performed in accordance with the provisions of this Agreement up to the effective date of termination, less any payments previously made by the City for such Goods or Services, but in no event shall Contractor be entitled to recover loss of profits.
9. **TERMINATION FOR CAUSE:** In the event that either the Contractor or the City defaults in the performance of any obligation specified herein, the non-defaulting party shall notify the other party in writing and may suspend the Agreement, in whole or in part, pending remedy of the default. If such default is not remedied within fifteen (15) days from the date of receipt of such notice, or if the other party is diligently attempting to cure such default but is unable to cure such default within thirty (30) days from the date of receipt of such notice, then the non-defaulting party shall have the right to terminate the Agreement immediately by providing written notice of termination to the other party.

If the City terminates this contract in whole or in part, it may acquire, correct, or replace with services or supplies similar to those terminated, by contract or otherwise, and charge the Contractor the cost occasioned to the City thereby, or make an equitable adjustment in the contract price.

If, during the term of this Agreement, Contractor shall be adjudged bankrupt, make a general assignment for the benefit of its creditors, or become insolvent, Contractor shall give the City written notice of such occurrence as soon as is legally permissible. If such occurrence or proposed occurrence is unacceptable to the City, the City may terminate this Agreement immediately upon written notice thereof to Contractor.

10. **NOTICES:** All notices required under the Agreement resulting from the award of this RFP shall be in writing. Written notices shall be effective if delivered by hand, or if sent by registered or certified mail, by verified facsimile, or by confirmed courier to the address specified for each party in the Agreement.
11. **TIME IS OF THE ESSENCE:** Time is of the essence in the performance of this Agreement. In the event delivery of Goods or completion of Services is delayed, the City reserves the right, without liability, and in addition to its other rights and remedies, to terminate this Agreement by notice, and to purchase substitute Goods or Services elsewhere and charge Contractor with any loss of additional cost incurred.
12. **OWNERSHIP OF WORK PRODUCT:** The City, its Departments, employees, agents or assigns shall have the unrestricted right and authority to reproduce, distribute and use in whole or in part any submitted report or written materials generated by the Contractor in the performance of this Agreement.
13. **RECORDS, AUDIT AND INSPECTION:** Contractor shall maintain such records as may be necessary to adequately reflect the accuracy of Contractor's charges and invoices for reimbursement under this Agreement and such other additional records as the City may reasonably require in connection with this

Agreement. Contractor shall preserve such records in accordance with statutory requirements, but in no case for less than three (3) years after the date of final payment, without additional reimbursement or compensation therefor. The City and its duly authorized representatives shall have the right, from time to time, and upon reasonable notice, to audit, inspect and verify the records kept by Contractor in connection with this Agreement. The City and its duly authorized representatives shall have the right to visit, observe, audit, and inspect, during the Contractor's normal business hours, Contractor's production and related facilities utilized to perform its obligations under this Agreement.

14. **RELEASE OF LIENS:** Before any payment hereunder shall become due, the City, at its option, may require the Contractor to furnish reasonable evidence of the payment of all subcontractor accounts for labor and materials pertaining to Contractor's performance hereunder. Prior to payment, the City reserves the right to require the Contractor to furnish the City with a full and complete release of liens from all persons furnishing labor and materials toward the performance hereof, and in any event, the Contractor agrees to indemnify and hold harmless the City, its officials, employees and agents from and against any and all liens and encumbrances arising out of Contractor's performance of this Agreement.
15. **ASSIGNMENT:** Contractor shall not assign this Agreement in whole or in part nor delegate any duties, without the prior written consent of the City. Such consent shall not be unreasonably withheld. Any assignment consented to by the City shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the original Agreement and to assume the duties, obligations, and responsibilities being assigned.
16. **PUBLICITY:** Neither the Contractor nor any tier subcontractor shall use the name of the City, or quote the opinion of any City employee in any advertising, publicity, endorsement or testimonial, without the prior written approval of the City.
17. **COMPLIANCE WITH LAWS:** In the performance of this Agreement, Consultant shall comply with all applicable laws, ordinances, rules and regulations of governmental authorities and shall further specifically comply with those Sections related to Equal Employment Opportunity. Consultant shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations. Consultant shall give required notices, and secure and pay for temporary permits, licenses, and easements required for performance of this Agreement.
18. **INDEPENDENT CONTRACTOR:** The employees, subcontractor, methods, facilities, and equipment used by the Contractor shall be at all times under Contractor's direction and control. Contractor's relationship to the City under this Agreement shall be that of an independent Contractor, and nothing in this Agreement shall be construed to constitute Contractor, its subcontractors or any of their employees as an employee, agent, associate, joint venturer, or partner of the City.
19. **SUBSTANCE ABUSE:** Consultant shall advise its employees and the employees of its subcontractors and agents that:

It is the policy of the City to provide a drug-free work environment. To that end the City prohibits the illegal use, possession, sale, manufacture, dispensing, and distribution of drugs or other controlled

substances on the work site, and prohibits in the workplace the presence of an individual with such substances in the body for non-medical reasons.

Any employee of Contractor who is found in violation of the policy may be removed or barred from the work site at the discretion of the City.

20. **GOVERNING LAW:** This Agreement shall be interpreted under the substantive law of the State of North Carolina, without giving effect to any choice of law provision.
21. **DISPUTES:** The basic and governing language of any contract resulting from this solicitation shall be comprised of this solicitation including any attachments and/or addendums. The laws of North Carolina shall govern any agreement arising as a result of this solicitation.
22. **CONTRACTOR CERTIFICATION:** Contractor certifies that it is not currently under suspension or debarment by the State of North Carolina or federal government, and if the Contractor cannot so certify, then it agrees to submit along with the bid a written explanation of why such certification cannot be made.

If the Contractor enters into subcontracts or employs under this Agreement any subcontractors or individual who is currently suspended or debarred by the State of North Carolina or federal government during the term of this Agreement or any extensions or renewals thereof, the City shall have the right to require the Contractor to terminate such subcontracts or employment, at no cost to the City. The Contractor agrees to reimburse the City for costs and expenses incurred due to the Contractor's noncompliance with the terms of this certification requirement.
23. **SEVERABILITY:** The provisions of this Agreement shall be deemed to be severable. Consequently, in the event that any provision of this Agreement is found to be void or unenforceable, such findings shall not be construed to render any other provision of this Agreement either void or unenforceable, and all other provisions shall remain in full force and effect unless the provisions which are void or unenforceable shall substantially affect the rights or obligations granted to or undertaken by either party.
24. **RESERVATION OF RIGHTS:** Either party's waiver of any of its remedies afforded hereunder or by law is without prejudice and shall not operate to waive any other remedies which such party shall have available to it, nor shall such waiver operate to waive such party's rights to any remedies for future breach, whether of a like or different character. Furthermore, any termination of this Agreement pursuant to the Articles herein entitled TERMINATION FOR CONVENIENCE and TERMINATION FOR CAUSE, shall not relieve or release either party hereto from any rights, liabilities, or obligations which it has accrued under law or under the terms of this Agreement prior to the date of such termination.
25. **ENTIRE AGREEMENT:** This Agreement contains the complete and entire Agreement between the parties and may not be altered or amended except in a writing executed by a duly authorized official of the City and by a duly authorized individual of the Contractor.

- - - - - **END OF GENERAL CONDITIONS** - - - - -