

**CONTRACT**

**STATE OF SOUTH CAROLINA**

**COUNTY OF GEORGETOWN**

**THIS AGREEMENT**, entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and effective immediately by and between \_\_\_\_\_, doing business as a (individual/partnership/corporation), with its principal office in the City of \_\_\_\_\_, \_\_\_\_\_ County, \_\_\_\_\_ (State),(hereinafter called the "Contractor") and the City of Georgetown, a duly organized and validly existing political body of the State of South Carolina (hereinafter called "City"),

**WITNESSETH THAT WHEREAS**, The City desires to engage the services of a professional contractor for the purpose of \_\_\_\_\_, hereinafter referred to as "Project"; and,

**WHEREAS**, The City has solicited bids for same by that certain Request for Bid for Construction Services, hereinafter referred to as "RFB", a copy of which is attached; and,

**WHEREAS**, The Contractor has represented to City that it has the qualifications, experience, expertise, training, and personnel to timely perform the Project for City; and,

**WHEREAS**, The Contractor has expressed its desire to do so by their bid, dated \_\_\_\_\_, 20\_\_\_\_, hereinafter referred to as "Bid" or "Proposal", a copy of which is attached hereto for all purposes as **Exhibit "A"**; and,

**WHEREAS**, the parties desire to enter in an agreement for the Contractor to perform the Project for City per all the terms and conditions more particularly set out herein below;

**NOW, THEREFORE**, for and in consideration of the foregoing, and of other good and valuable consideration, the adequacy of which is hereby acknowledged, the parties hereto agree as follows:

(1) **SCOPE OF SERVICES:**

- a. Contractor hereby agrees to perform the tasks and services as outlined in the RFB, incorporated into this Agreement as **ATTACHMENT "A"** and hereinafter referred to as "Work";
- b. Contractor further agrees to commence and complete any and all extra work in connection therewith, under the terms as stated in the RFB; and at his/hers (its or their) own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendents, labor, insurance, and other accessories and services necessary to complete the said project in accordance with the conditions and prices stated in the Bid Proposal the plans, including all maps, plats, blueprints, and other drawings and printed or written explanatory matters thereof, the specifications and contract documents all of which are made a part hereof and collectively evidence and constitute the Contract.
- c. City may, from time to time require changes in the Work of the Contractor to be performed hereunder. Such changes, which are mutually agreed upon by and between City and the Contractor, shall be incorporated by written amendment to this Agreement.

(2) **COMPENSATION:**

City agrees to pay Contractor a sum not to exceed \_\_\_\_\_ dollars (\$ \_\_\_\_\_) in accordance with the Bid Form or Proposal, incorporated into this Agreement and hereinafter referred to as "Compensation";

- a. In the event funds are not appropriated or become non-appropriated for an included fiscal year by City, it is agreed by the parties that this Agreement will become null and void and the City's obligations cannot extend beyond the date of non-appropriation.

(3) **PERIOD OF SERVICES:**

- a. the Work to be performed hereunder by the Contractor shall begin upon the date outlined to the City's Notice to Proceed letter to the Contractor, incorporated into this Agreement as **ATTACHMENT "B"** and hereinafter referred to as "NTP"
- b. The Work shall be completed in accordance with the Schedule, incorporated into this Agreement as **ATTACHMENT "C"** and hereinafter referred to as "Schedule".

- c. Modifications to the Schedule may be required. Such modifications, which are mutually agreed upon by and between City and the Contractor shall be incorporated by written amendment to this Agreement.

(4) **FORCE MAJEURE:**

- a. Force majeure includes acts of God, acts of other branches of government in either their sovereign or contractual capacities, or any similar cause beyond the reasonable control of the parties.
- b. Any delays in or failure of performance by either party that are caused by a Force Majeure shall not constitute breach of this Agreement.
- c. In the event that any event of force majeure, as herein defined occurs, both parties shall be entitled to a reasonable extension of time for performance of its WORK.

(5) **NOTICES:**

- a. Any notices, bills, invoices, or reports required by this Agreement shall be sufficient if sent by the parties via electronic email or in the United States mail, postage paid, to the addresses of the Project Manager.

(6) **RECORDS AND INSPECTIONS:**

- a. Contractor shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of one year after the completion of the project.
- b. City shall have free access at all proper times to such records, and the right to examine and audit the same and to make transcripts there from, and to inspect all program data, documents, proceedings, and activities.

(7) **COMPLETENESS OF AGREEMENT:**

- a. This Agreement and any additional or supplementary document or documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind any of the parties hereto.
- b. This Agreement is entered into with full understanding and awareness of such requirement.

- c. City shall be allowed to rely upon the representations of Contractor as set out in the Proposal.
- d. With the exception of the foregoing, this Agreement constitutes the entire agreement between the parties hereto and may not be modified or amended except in writing signed by both parties hereto.

(8) **CONFLICTS:**

- a. In the case of any conflict between the terms and conditions of this Agreement and the terms of any other agreement between the parties hereto, the terms of this Agreement shall control.
- b. If there is a conflict between the Bid and this Agreement, then this Agreement shall control.
- c. If there is a conflict between the City's Request for Bids and the Contractor's Bid, the City's Request for Bids shall control.
- d. Both parties agree that all conflicts arising under this Agreement that cannot be settled between the parties shall be resolved in the Georgetown County Court of Common Pleas (Non-Jury).

(9) **SEVERABILITY:**

- a. If any part or provision of this Agreement is held invalid or unenforceable under applicable law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining parts and provisions of this Agreement.

(10) **NONWAIVER:**

- a. The waiver by City or Contractor of a breach of this Agreement shall not operate as a waiver of any subsequent breach, and no delay in acting with regard to any breach of this Agreement shall be construed to be a waiver of the breach.
- b. In no event shall the making of any payment by City to the Contractor constitute or be construed as a waiver by City of any breach of covenant, or any default which may exist on the part of the Contractor.

- c. The making of any such payment by City while any such breach or default shall exist in no way impairs or prejudices any right or remedy available to City in respect to such breach or default.

(11) **GOVERNING LAW:**

- a. This Agreement and the rights, obligations and remedies of the parties hereto, shall in all respects be governed by and construed in accordance with the laws of the State of South Carolina.

(12) **RESPONSIBILITY:**

- a. Each party shall be responsible for its own acts as provided under the law of South Carolina and will be responsible for all damages, costs, fees and expenses which arise out of the performance of this Agreement which are due to that party's own negligence, tortious acts and other unlawful conduct and the negligence, tortious action and other unlawful conduct of its respective agents, officers and employees.

(13) **FREEDOM OF INFORMATION ACT (FOIA)**

- a. The parties acknowledge that all documents are subject to release under the South Carolina Freedom of Information Act (FOIA) and will be released to the public unless exempt from disclosure under the FOIA.
- b. If the Contractor contends a document is exempt from disclosure under the FOIA, it shall mark any such documents plainly, and seek protection from disclosure by filing an appropriate action in Circuit Court and shall bear the cost of the action and any monetary or attorney's fees awarded to the person or entity making the FOIA request.
- c. If the Contractor objects to release and litigation is commenced against the City under the FOIA, the City agrees to promptly notify the Contractor, who shall move in intervene as a party. The Contractor agrees to hold the City harmless from and indemnify for all costs (including plaintiff's attorney's fees if awarded by the Court) incurred by the City in defending the lawsuit and the funds necessary to satisfy any judgment and all costs on appeal, if any.

(14) **THIRD PARTY OBLIGATIONS:**

- a. Neither party shall be obligated or liable hereunder to any party other than the second party to this Agreement.

(15) **RESTRICTIONS ON LOBBYING:**

- a. Contractor shall comply with all requirements of Section 1352, Title 31 of the U.S. Code, which prohibits all recipients of federal funds from using appropriated monies for lobbying activities.

(16) **SUCCESSORS AND ASSIGNS:**

- a. The rights and obligations herein shall inure to and be binding upon the successors and assigns of the parties hereto.

(17) **INSURANCE PROVISIONS**

The selected bidder will be required to provide and maintain proof of insurance throughout the contract term in the amount of \$1,000,000.00 and as required at point of contract negotiation by the City's Risk Manager as follows:

- Comprehensive General Liability (per occurrence);
- Comprehensive Auto Liability (per occurrence); and
- Workers' Compensation Liability
- Automobile Liability

The City is to be named as "Additional Insured" on the above insurance coverage as respect to the City's interest under the contract. Certificates showing proof of insurance shall be submitted to the City prior to commencement of services under the Agreement.

(18) **INDEMNITY PROVISIONS**

Bidder agrees to and shall indemnify and hold the City harmless from and against all liability, loss, damages or injury, and all costs and expenses (Including attorney fees and costs of any suit related thereto) suffered or incurred by the City, arising from or related to the terms of this project, or bidder's performance thereunder.

(19) **CITY BUSINESS LICENSE**

The selected bidder shall be required to obtain all applicable City permits and business licenses **prior to work commencing**. Contact Finance Department at 843.545.4041, for business license information.

**IN WITNESS WHEREOF**, City and the Contractor have executed this agreement as of the date first written above.

CITY OF GEORGETOWN, SOUTH CAROLINA  
(OWNER)

\_\_\_\_\_  
(SIGNATURE)

By: \_\_\_\_\_

(SEAL)

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

\_\_\_\_\_  
(CONTRACTOR)

\_\_\_\_\_  
(SIGNATURE)

By: \_\_\_\_\_

(CORPORATE SEAL)

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

Attest:

\_\_\_\_\_  
It's Secretary

\_\_\_\_\_  
Witness