

THIS INDEPENDENT CONTRACTOR AGREEMENT (hereinafter, this "Agreement"), entered into this ____ of _____, 2013, by and between the **CITY OF WINSTON-SALEM**, a North Carolina municipal corporation (hereinafter, the "City") and _____ (hereinafter "Contractor").

WHEREAS, the City and Contractor desire to enter into an Agreement whereby Contractor shall provide the following Service: _____

NOW, THEREFORE, in consideration of the mutual promises and obligations herein set forth, the sufficiency and adequacy of which is hereby acknowledged, the parties, and their respective successors, assigns, executors, administrators and legal representatives, hereby agree as follows:

General Terms. The Contractor shall provide the Service set forth hereinabove, in consideration for payment of no more than \$_____, based on unit prices contained in the contractor's proposal which is dated _____ attached hereto and incorporated herein by reference. Should any term of the attached proposal conflict with the terms contained in this Agreement, the terms of this Agreement shall control and supersede those terms of the Contractor's proposal. The Contractor warrants that it will perform the Scope herein in a good and workmanlike manner and that it knows and is familiar with all applicable laws, regulations and standard practices regarding these Services and has the expertise necessary to properly perform the obligations undertaken by this Agreement. The Contractor, and its employees and subcontractors, shall perform the Services herein as Independent Contractors and are not entitled to employee benefits of any kind. This Agreement will not be construed in any way to be a joint venture, partnership or employer-employee relationship. The Contractor further understands and agrees that he is responsible for the payment of all state and federal income taxes. In addition, the Contractor shall provide the City a business license and any other licenses or certifications required by federal, state or local law as well as copies of any amendments or renewals thereof. The Contractor shall give the City at least thirty (30) days written notice prior to any cancellation, modification or non-renewal of any license and/or certification required by federal, state or local law. Neither party may assign, transfer or delegate any of the rights or obligations herein without the prior written consent of the other party. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina and the venue for any litigation arising out of this Agreement shall be Forsyth County.

Payment. Contractor shall invoice City no more or less than once every 30 days. The City has the right to request that the Contractor provide reasonable documentation to support an invoice.

Release and Indemnity. The Contractor hereby releases and forever discharges the City, its officers, agents and employees, from any and all claims, demands, expenses, costs and liabilities of any kind or nature directly or indirectly related to any personal injury and/or property damage arising out of the performance of the Service, except those claims that result from the sole negligence of the City or a City employee acting within the scope of the employment. The Contractor shall indemnify, defend and hold harmless the City, its agents and employees from and against any and all claims, demands expenses, costs and liabilities of any kind or nature to the extent proximately caused by the intentional, negligent or reckless acts or omissions of the Contractor, and its agents or employees, in the performance of these services.

Insurance. During the performance of the Service described herein, the Contractor shall:

(1) Maintain Commercial General Liability to protect the Contractor against any and claims, demands expenses, costs and liabilities of any kind or nature to the extent proximately caused by the intentional, negligent or reckless acts or omissions of the Contractor, and its agents or employees, in the performance of these services. The insurance shall also include, coverage for explosion, collapse, and underground hazards, where required. This insurance shall provide bodily injury and property damage

limits of not less than \$1,000,000 for each occurrence, respectively, and shall provide at least \$5,000 in Medical Expenses (Med Pay) coverage. The minimum liability coverage required may be increased depending on the nature of the services provided.

(2) If this Agreement is for a design, engineering or consulting Service, maintain Professional Liability insurance of at least \$1,000,000.00 per claim.

(3) Maintain Owned, non-owned, and hired Automobile Liability insurance, including property damage insurance, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the Contractor in furtherance of these services. In addition, all mobile equipment used by the Contractor in connection with the contract work, will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy. This insurance shall provide bodily injury and property damages limits of not less than \$1,000,000 combined single limit/each accident.

(4) Maintain Workers' Compensation insurance as required by North Carolina law.

(5) Return with this agreement, before beginning the Service, an original, signed Certificate of Insurance, evidencing such insurance, naming the City as an additional insured, excluding professional liability insurance, and stating that the coverage is primary to any other coverage the City may possess. The Contractor shall furnish the City immediate written notice of any changes or cancellation of the policy. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished to the City's Risk Manager. Insurance coverage required in these specifications shall be in force throughout the Term. Municipal Exclusions, if any, for General Liability coverage shall be deleted. Should Contractor fail to immediately provide acceptable evidence of current insurance at any time during the Term, the City shall have the absolute right to terminate the Contract without any further obligation to the Contractor, and the Contractor shall be liable to the City for all available remedies – in equity and at law.

(6) The Contractor will secure evidence of all insurance policies of its subcontractors which shall be made available to the City on demand. The Contractor shall require its subcontractors to name the Contractor and the City as additional insured parties on the subcontractor's general and automobile liability insurance policies. The Contractor shall be as fully responsible to the City for the acts and omissions of its subcontractors and of persons employed by them as it is for the acts and omissions of persons directly employed by it.

(7) Contractual and other Liability insurance provided under this Contract shall not contain a supervision inspection or engineering services exclusion that would preclude the City from supervising and/or inspecting the project as to the end result.

Termination. Unless otherwise agreed upon in writing by the parties, this Agreement may be terminated by either party for convenience with no less than ten calendar days notice. In the event of termination, the Contractor will be paid for all Services properly rendered to the date of termination and shall promptly discontinue all Services affected (unless a termination notice from the City directs otherwise). In the event of any termination, the Contractor will be paid for all Services properly rendered to the date of termination and shall (i) promptly discontinue all Services affected (unless a termination notice from the City directs otherwise); and (ii) deliver to the City all documents, data, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Contractor in performing the Services herein. Other than being paid for Services properly rendered to the date of termination, Contractor hereby waives any and all other claims for lost profits, lost opportunity, and for any and all other direct, indirect special and consequential damages. In the event that the City terminates this Agreement due to the Contractor's poor workmanship, failure to perform the Service set out herein or, otherwise, for breach of the Agreement, or in the event that the Contractor terminates this agreement for convenience or otherwise, the City may pursue and recover all remedies available at law or in equity, as these remedies are cumulative and do not exclude each other.

Reuse of Documents. All documents, including drawings, specifications, supporting calculations, computer software, etc., prepared by the Contractor pursuant to this Agreement are instruments of service with respect to this Agreement and Contractor shall provide at least one copy of each to City upon City's request. Upon completion of the services and payment in full of all monies due to the Contractor, the Owner shall receive ownership of the documents prepared under this agreement. The reuse of these documents by the City or by others authorized by the City, whether in this project or any other project, entitles the Contractor to no additional compensation. The City reserves the right to require the Contractor to submit copies to the City of any Service information and documentation during and after the completion of the Service with the Contractor's compensation being limited to the direct printing and copying expense and/or direct expenses to copy and supply computer information on a diskette. The Contractor's indemnity, release and warranty are limited to the use contemplated in this Agreement and Contractor shall not be liable to the City or any third party for any claim arising out of the use of the Contractor's documents apart from this Agreement.

Notices. Any notice or other communication herein shall be in writing and shall be sent via a method permitting confirmed receipt (such as registered U.S. mail or an overnight courier service such as Federal Express). All notices shall be confirmed by facsimile transmission. All notices shall be deemed given when deposited, postage prepaid, in the United States mail or to the overnight courier service, addressed as set forth below, or to such other address as any one party shall advise the other in writing:

<u>If to the City:</u>	<u>If to the Contractor:</u>
Name: _____	Name: _____
Position: _____	Position: _____
Address: _____	Address: _____

Severability. If any provision of this Agreement is held to be void, invalid, illegal or unenforceable under any law or regulation, such void, invalid, illegal or unenforceable provision shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the City and the Contractor and this Agreement shall be considered as if such void, invalid, illegal or unenforceable provision had never been including herein.

Entire Agreement. This Agreement represents the entire understanding and agreement between the parties hereto relating to the Services and supersedes any and all prior negotiations, discussions and agreement, whether written or oral, between the parties regarding same. Headings within the Agreement are for convenience only and do not define, limit or construe the contents of such sections.

Amendment or Modification. This Agreement cannot be amended or modified except by another written document duly signed and executed by the City and the Contractor.

Waiver. Failure or delay on the part of the City to exercise any right, remedy, power or privilege hereunder shall not operate as a waiver of any current or future default. Further, a waiver of one provision of this Agreement is not a waiver of all or future provisions of this Agreement.

Safety Rules. Contractor hereby acknowledges that it has reviewed and agrees to abide by the City’s “Safety and Environmental Requirements for Contractors” located on the City’s website –whose specific address is:

<http://www.cityofws.org/Home/Departments/FinancialManagementServices/RiskManagement/Articles/EmployeeSafety> (right click on the link)

Ethics Policy. The Contractor hereby acknowledges that he has reviewed and agrees to abide by the City’s Ethics Policy located on the City’s website – www.cityofws.org – and whose specific address is: <http://www.cityofws.org/Home/FormsAndReports/Articles/Information#policies>

ADA, OSHA and Equal Opportunity. The Contractor shall comply with the applicable provisions of the Americans with Disabilities Act (ADA), the State of North Carolina Occupational/Safety and Health Act (OSHA) and the State and Federal Equal Opportunity Statutes, as well as all rules and regulations promulgated thereunder.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives and signed under seal on the day and the year first above written.

ATTEST:

CITY OF WINSTON-SALEM:

(SEAL)

(SEAL)

Renée L. Phillips, City Secretary

_____/_____
Name/Title

ATTEST:

COMPANY NAME

(SEAL)

(SEAL)

Signature

Signature

_____/_____
Print Name/Title

_____/_____
Print Name/Title

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

Approved as to form and legality.

This the ____ day of _____, 2013.

This the ____ day or _____, 2013.

Lisa Saunders, Assistant Financial Officer

Angela Carmon, City Attorney

INSTRUCTIONS FOR CITY OF WINSTON-SALEM CONTRACTS

- (1) The City may contract with three types of legal entities.
 - a. If the agreement is with an Individual, that individual should sign the agreement exactly as his/her name is set out. If the agreement is with an individually-owned business, the Contract should be signed by the individual owner, and not the named business. The individual's signature must be notarized.
 - b. Execution on behalf of a Corporation should be by the president or a vice president and attested by the corporate secretary, with the corporate seal affixed. An official other than the president or vice president should attach documentation of his/her authority to execute and bind the company.
 - c. If the agreement is with a Partnership, all members of the Partnership should execute unless an authorized partner is designated to execute. Documentation of the authorization should be attached. The Partner's signature must be notarized.
 - d. If the agreement is with a Limited Liability Company (LLC), have the LLC provide a copy of the Articles of Organization and Operating Agreement or other documentation that indicates that the person to sign the contract has the authority to bind the LLC. Generally, the Articles of Organization will state if the LLC is a member managed or manager managed and will state the name of the person who has the authority to bind the LLC. The Manger's signature should be attested to by the LLC Secretary.
- (2) The instrument should not be dated, except by the last person executing the Contract, normally the City Clerk.
- (3) Two originals of the contract are sent to the Contractor. The originals should be executed and returned to the City for execution, after which one original will be returned to the Contractor.
- (4) If the contract amount is for less than \$5,000, it may be signed on behalf of the City by a Department Head. If the contract amount is over \$5,000 and less than \$20,000, it may be signed on behalf of the City by an Assistant City Manager. If the contract amount is more than \$20,000 and less than \$100,000, it may be signed on behalf of the City by the City Manager. The signature line for the City should be changed accordingly. In either case, the signature should be attested to by the City Secretary.
- (5) All contracts must be pre-audited by the Budget Department and approved by the City Attorney's Office.
- (6) Please be sure to review the insurance provisions with the Contractor. Our standard policy limits are high and may not be applicable to the Contractor or the job that the Contractor is to perform. If any heavy machinery or driving is involved, we generally stick to these insurance limits.