

MARCH 31, 2025

**REQUEST FOR PROPOSALS (RFQ)
COMPREHENSIVE BIKE AND PEDESTRIAN PLAN**



**PROPOSALS DUE
April 23, 2025
by 5:00 PM**

Project Description:

The Town of Cornelius is seeking a qualified firm to provide planning services for a Comprehensive Bicycle and Pedestrian Plan. The Town received CRTPO grant funding for this plan. The Town anticipates starting this project late July/early August 2025. The plan should be complete by Spring 2026 per funding requirements.

The plan should focus on the following components:

1. Sidewalk and Multiuse Path connections, this should include new facilities as well as upgrades to existing pedestrian facilities
2. Bike facilities which include but not limited to bike lanes, bike routes, sharrows, signage, etc.
3. Crosswalk improvements which include new crosswalks and safety improvements (raised crosswalks, RRFBs, or HAWK signal, etc.)
4. Cost estimates for each project
5. Easy to read and understand format that should include maps and charts showing project limits and cost estimates for each identified project.

All firms must be prequalified in any combination the following Discipline Codes by NCDOT at the time of submittals and shall maintain the prequalification throughout the duration of the contract:

- Multimodal Transportation Planning – 141
- Comprehensive Transportations Planning Development – 260
- Municipal & Regional Planning Studies – 315
- Multi-Use Trail Design, Survey & Layout – 316
- Bicycle Map Preparation – 318
- Public Involvement in the Transit/Transportation Planning Process – 498
- Multimodal Facilities Planning - 501

The Town has previously adopted Bicycle and Pedestrian Plans which can be referenced with these links.

Link to BIKE! Cornelius:

<https://connect.ncdot.gov/municipalities/PlanningGrants/Documents/Cornelius%20Bike%20Plan.pdf>

Link to Comprehensive Pedestrian Plan:

<https://connect.ncdot.gov/municipalities/PlanningGrants/Documents/Cornelius%20Ped%20Plan.pdf>

The plan does not need to include demographic information, market information, or greenway planning. However, the Town’s Parks and Greenway Master Plan and existing greenway system should be considered in developing this plan.

Link to Parks and Greenway Master Plan =

https://cms2.revize.com/revize/cornelius/Parks%20and%20Recreation/Cornelius%20Parks%20and%20Greenways%20Master%20Plan_FINAL%203-29-2024.pdf

Meetings and Public Involvement:

Proposals shall include the following meetings with Town Staff, Town Advisory Boards, and a public workshop meeting:

- One (1) Public Open House/Workshop that will be one afternoon/evening.

- This Open House will include:
 - A designated time for the Transportation Advisory Board and Town Board together.
 - A designated time for the Planning Board and Parks & Recreation Advisory Board together.
 - Time for general public
- Two (2) meeting with the Town’s Transportation Advisory Board (1)at a mid-way portion of the plan development and (2)to present the final report. These meetings occur the first Tuesday of the month starting at 6:00 pm.
- One (1) Town Board meeting to present the final report. Meetings occur the 1st and 3rd Monday of the month starting at 6:00 pm
- Two (2) meetings with staff. First meeting will be initial kick off meeting. The second meeting will be to review draft plan. Correspondence with Town Staff will be on an as needed basis throughout the project via phone, email, or video meeting.

Consultant will be responsible for all materials, maps, documents, etc. necessary to conduct these meetings. As well as, compiling all comments, feedback, information from the meetings above.

Project Schedule:

- Proposals due April 23, 2025, no later than 5:00 PM.
- Town to interview/select firm by end of May.
- Contract considered by Town Board for approval June/July 2025 with Notice to Proceed soon to follow.
- Final deliverables no later than 9 months after Notice to Proceed. The grant needs to be closed out by June 30, 2026. This will mean all work and final invoices should be sent by April 30, 2026.

Final deliverables shall include:

1. GIS files and editable charts/spreadsheets with all recommended improvements for bike, sidewalk, multi-use path, and crosswalk improvements. Files must be compatible with Town’s GIS system (ArcPro) and existing GIS layers.
2. Electronic copy of the final plan.
3. Five (5) hard copies of the final plan.

Document accessibility and ownership:

1. All documents printed or electronically produced as part of this project shall be the property of the Town of Cornelius.
2. The Town of Cornelius shall remain free to copy and edit any and all documents and presentation materials, electronic or otherwise.
3. Electronic documents shall not be locked, or password protected, and the Town of Cornelius shall retain the ability to edit and update documents, including original word processing, spreadsheet, database and mapping files and resulting Acrobat files.

Statements of Qualifications Submittal Content:

Shall include, but not be limited to:

- General profile of the firm.
- Relevant personnel involved in the project
- Firms relevant work within the past 5 years to this scope, specifically relevant personnel's experience with similar projects
- Proposed plan for completing the project
- Schedule/timeline
- Any comments on contract or terms and conditions

Statements of Qualifications should be no longer than 25 pages double sided, though it is encouraged to be a succinct and concise as possible.

Project Contact:

Electronic Submittals and Questions should be submitted to:

Tyler Beardsley, Assistant Town Manager
 Town of Cornelius
 (o) 704-892-6031 ext. 127
 (c) 704-746-4962
tbeardsley@cornelius.org

If a submittal is too large to email, flash drives or other electronic storage devices can be hand delivered to the Town of Cornelius Town Hall at 21445 Catawba Avenue, Cornelius, NC 28031 or mailed to Town of Cornelius, PO Box 399, Cornelius, NC 28031.

Please notify Tyler Beardsley of interest in submitting, so all questions can be circulated to interested parties.

Questions should be submitted by April 11, 2025. The Town will provide responses to all interested firms no later than April 17, 2025.

Late proposal submittals will not be accepted.

Selection Criteria:

All prequalified firms who submit responsive statements of qualifications will be considered.

In selecting a firm/team, the selection committee will take into consideration qualification information such as:

- | | |
|---|-----|
| 1) Relevant work experience of firm | 35% |
| 2) Relevant experience of personnel involved | 35% |
| 3) Firms proposed plan for completing the project | 15% |
| 4) Schedule/Timeline | 15% |

Miscellaneous:

- Applicants should feel free during the selection process to provide any suggestions or comments that might be advantageous for the Town of Cornelius to consider in terms of any efficiencies, issues, processes, or products.

- The Town of Cornelius reserves the right to reject any and all proposals, to consider alternatives, to wave irregularities and to re-solicit proposal submittals.
- All proposal submittals must be valid for a minimum period of one hundred eighty (180) days after the date of the proposal submittal opening.
- The Town of Cornelius reserves the right to select the most responsible and responsive proposal submittal which it finds to be within the best interests of the Town.
- The Town of Cornelius makes no guarantees to any proposing firm until such time the Town approves the negotiated contract.
- **Proprietary Information:** Any restrictions on the use of the data contained within the proposal submittal must be clearly stated in the proposal submittal itself.
- The Town of Cornelius is not liable for any costs incurred by those who have submitted proposal submittals prior to issuance of a signed contract.
- The Town of Cornelius in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit Statements of Qualifications (SOQs) in response to this Bike and Pedestrian Plan and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.
- The Town of Cornelius encourages the use of Small Professional Services Firms (SPSF). Small businesses determined to be eligible for participation in the SPSF program are those meeting size standards defined by Small Business Administration (SBA) regulations, 13 CFR Part 121 in Sector 54 under the North American Industrial Classification System (NAICS). The SPSF program is a race, ethnicity, and gender-neutral program designed to increase the availability of contracting opportunities for small businesses on federal, state or locally funded contracts. SPSF participation is not contingent upon the funding source.
 - The Firm, at the time the Letter of Interest is submitted, shall submit a listing of all known SPSF firms that will participate in the performance of the identified work. The participation shall be submitted on the Department's Subconsultant Form RS-2. RS-2 forms may be accessed on the North Carolina Department of Transportation website at [NCDOT Connect Guidelines & Forms](#).
 - The SPSF must be qualified with the Department to perform the work for which they are listed.

Contract:

Once selected, the firm chosen by the Town must submit a completed copy of the Town's contract for consulting services based on the scope described herein. All final contract terms and conditions must be mutually agreed upon. **DRAFT CONTRACT INCLUDED.**

**TOWN OF CORNELIUS
BIKE AND PEDESTRIAN PLAN UPDATE
CONTRACT**

This Contract ("Contract") is made and entered into to be effective [Date] ("Effective Date") between **Town of Cornelius** (the "Town") and [Full Legal Name of the Vendor] (the "Vendor" or "Contractor"). For and in consideration of the mutual promises set forth in this Contract, the parties do mutually agree as follows:

1. Obligations of the Vendor; Description of Products and Services Provided.
 - A. Vendor agrees to provide the services, goods, materials, equipment, and/or software (the "Services" and/or "Goods," as appropriate) as more particularly described on the scope and price list attached hereto and incorporated herein by reference as **Exhibit 1(FINAL NEGOTIATED SCOPE)**.
 - B. The term of this Contract shall be from the Effective Date – [date of end of term].
 - C. This Contract does not grant the Vendor the right or the exclusive right to provide specified services to the Town. Similar services may be obtained from sources other than the Vendor (or not at all) at the discretion of the Town.
 - D. The Vendor shall begin work immediately upon issuance of a written notice to proceed. The Vendor agrees to perform the Services in a timely, complete, and professional manner and in accordance with the terms and conditions of this Contract. Furthermore, the Vendor represents and warrants that (i) it is duly qualified and, if required by law, licensed to provide the Services; (ii) it will provide the Services in a manner consistent with the level of care and skill ordinarily exercised by contractors providing similar Services under similar conditions; (iii) it possesses sufficient experience, personnel, and resources to provide the Services; (iv) it shall provide the Services in compliance with applicable laws, statutes, ordinances, codes, orders, rules and regulations; and (v) its reports, if any, shall be complete, accurate, and unambiguous.
 - E. **Additional Standard Term and Condition for Designer Contracts (which include Architectural, Engineering, Surveying, and Technical Services). Additional Insurance.** In addition to the insurance required pursuant to Section 22 of the Standard Terms and Conditions for All Contracts, the Vendor certifies that it currently has and agrees to purchase and maintain during its performance under the Contract the following insurance from one or more insurance companies acceptable to the Town and authorized to do business in the State of North Carolina: Professional liability insurance in commercially reasonable amounts as reasonably determined by the Town.
2. Obligations of the Town. The Town hereby agrees to pay to the Vendor for the faithful performance of this Contract as follows ("Contract Price"):

			Budget Account No.:
(i) Vendor's Fee	\$		
(ii) Travel Not to Exceed	\$		
(iv) Other (e.g. any applicable taxes)	\$		
(v) Total Not to Exceed	\$		

3. Town's Project Coordinator. [Name of primary contact for the Town], is designated as the Project Coordinator for the Town. The Project Coordinator shall be the Town's representative in connection with the Vendor's performance under this Contract. The Town has complete discretion in replacing the Project Coordinator with another person of its choosing.
4. Primary Client Contact for the Vendor. [Name of primary contact for the Vendor], is designated as the Primary Contact for the Vendor. The Primary Contact is fully authorized to act on behalf of the Vendor in connection with this Contract.

5. Terms and Methods of Payment. The Town will make payment after invoices are approved on a net 30-day basis. Applicable North Carolina sales tax shall be invoiced as a separate item. Invoices shall be sent to the Town's Chief Finance Officer with a copy to the Town's Project Coordinator. The Town will not pay in advance without the prior approval of the Town's Finance Officer. The Vendor to submit invoices on the following schedule: **[Invoice Schedule]**.
6. Standard Terms and Conditions: The Vendor agrees to the Standard Terms and Conditions set forth as **Attachment A** attached hereto and incorporated herein by reference.
7. Use of Federal Funds. If the source of funds for this Contract is federal funds, all applicable federal laws, regulations and provisions apply, specifically including (without limitation) the following federal provisions that apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as applicable): Equal Employment Opportunity (41 C.F.R. Part 60); Davis-Bacon Act (40 U.S.C. 3141-3148); Copeland "Anti-Kickback" Act (40 U.S.C. 3145); Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387); Debarment and Suspension (Executive Orders 12549 and 12689); Byrd Anti-Lobbying Amendment (31 U.S.C. 1352); Procurement of Recovered Materials (2 C.F.R. § 200.322); and Record Retention Requirements (2 CFR § 200.324).
8. Counterpart Execution. This Contract may be executed and recorded in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. Each party shall be entitled to rely upon executed copies of this Contract transmitted by facsimile or electronic "PDF" to the same and full extent as the originals.

IN WITNESS WHEREOF, the Town and the Vendor have executed this Contract on the day and year first written above.

[Full Legal Name of the Vendor]

the Vendor Name

Signature of Authorized Representative Date

the Vendor's Federal Identification #
[if Contract is with Organization or Social Security Number if individual]

Town of Cornelius

Signature of Authorized Representative Date

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

Signature of Authorized Finance Officer Date

Attachment A

Standard Terms and Conditions (All Contracts)

1. **Defined Terms.** "Contract" means the agreement between the Town and Vendor which consists of the applicable Contract Documents. "Contract Documents" means: (i) any applicable purchase order between Vendor and the Town specifically including all terms and conditions set forth or referenced herein and on the face of a Purchase Order, (ii) any attachments hereto, (iii) any applicable solicitation documentation related to hereto (including without limitation any request for proposals or invitation for bids and Vendor's response thereto), and (iv) any other terms and conditions of a written agreement signed by Vendor and the Town that deals with the same subject matter. "Goods" means any supplies, materials, products or other tangible personal property provided by Vendor to the Town. "Purchase Order" mean any applicable purchase order issued by the Town. "Services" means services, specifically including without limitation construction services, design services, professional or consulting services and software as a service, The "Town" means the Town of Cornelius. "Vendor" means the party contracting with the Town and includes individual and entities that may be referred to in Contract Documents as "vendor", "seller", "service provider", or "contractor".
2. **Written Agreement Signed by Both Parties; Acceptance of Purchase Order Terms and Conditions when there is not a Separate Written Agreement Signed by Both Parties.** When a Contract is signed by both the Town and Vendor then the Purchase Order issued by the Town is for administrative convenience and is not part of the Contract Documents. When there is not a separate Contract signed by both the Town and Vendor, then Vendor's acknowledgment of the terms of any Purchase Order, without timely objection, or Vendor's shipment or performance of any part of a Purchase Order, constitutes an agreement to all terms and conditions set forth or referenced herein and on the face of the Purchase Order, together with the terms and conditions of any other applicable Contract Documents. The terms and provisions set forth in the Contract Documents shall constitute the entire agreement between Vendor and the Town with respect to the purchase by the Town of the Services and/or Goods work performed as described in the Contract Documents. In the event of any conflict between any terms and conditions of the Contract Documents, the terms and conditions most favorable to the Town shall control. A Purchase Order constitutes an offer by the Town and expressly limits acceptance to the terms and conditions stated therein. No additional or supplemental provision or provisions in variance herewith that may appear in Vendor's quotation, acknowledgment, invoice, or in any other communication from Vendor to the Town shall be deemed accepted by or binding on the Town. The Town hereby expressly rejects all such provisions which supplement, modify or otherwise vary from the terms of the Contract Documents, and such provisions are superseded by the terms and conditions stated in the Contract Documents, unless and until the Town's authorized representatives expressly assent, in writing, to such provisions. Stenographic and clerical errors and omissions by the Town are subject to correction.
3. **Cancellation of Purchase Order.** The Town may cancel any Purchase Order or portion thereof without liability, if: (a) Vendor fails upon request to give reasonable assurance of timely performance or the Town otherwise determines that it has reasonable grounds for insecurity regarding Vendor's performance; (b) conforming Goods or Services (including the quantities specified for delivery) are not delivered within the time specified or, if no time is specified, within a commercially reasonable time; (c) Vendor otherwise breaches the Contract and such breach is not corrected within thirty (30) days following written notice of breach; or (d) cancellation is otherwise required or allowed by law. Additionally, the Town may cancel any Purchase Order or portion thereof for convenience. If the Purchase Order is cancelled by the Town in accordance with this paragraph, the Vendor will be paid for Goods actually delivered; otherwise such cancellation shall be without liability.
4. **Quantities.** Shipments must equal exact amounts ordered unless otherwise agreed in writing by the Town. The award of a term contract neither implies nor guarantees any minimum or maximum purchases. Materials received in excess of quantity specified on the purchase order, at the Town option's, may be returned at the Vendor's expense.
5. **Prices.** If Vendor's price or the regular market price of any of the Goods covered hereunder is lower than the price stated in the Contract Documents on the date of shipment of such Goods, Vendor agrees to give the Town the benefit of such lower price on any such Goods. In no event shall Vendor's price be higher than the price last

quoted or last charged to the Town unless otherwise agreed in writing. No charges for transportation, boxing, crating, etc. are allowable unless such charges are included in the Contract Documents.

6. Invoices. It is understood and agreed that orders will be shipped at the established Contract prices in effect on dates orders are placed. Invoicing at variance with this provision may subject the Contract to cancellation. Applicable North Carolina sales tax shall be invoiced as a separate item. Invoices shall be sent to the Town's accounts payable department with a copy to the Town Project Coordinator.
7. Freight on Board. All shipments of Goods are FOB destination unless otherwise stated in the Contract Documents. Any freight charges prepaid by Vendor are to be itemized on the invoice unless stated otherwise in writing by form of quote, bid, contract. In instances where Goods are shipped against this order by parties other than those specified on the Purchase Order, the third-party shipper must be instructed to list the Town purchase order number on all packages, bills of lading, etc. to insure prompt identification of order.
8. Taxes. Taxes are included in the Contract Price. Applicable taxes shall be invoiced as a separate item for the Town's records.
9. Payment Terms. Payment terms are Net 30 days after receipt of correct invoice or acceptance of Goods, whichever is later.
10. Condition and Packaging. Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.
11. Safety Data Sheets. Safety Data Sheets must be provided with shipment of all chemicals."
12. Delays in Shipment. Time and date of delivery are of the essence, except when delay is due to causes beyond Vendor's reasonable control and without Vendor's fault or negligence.
13. Risk of Loss. Vendor shall have the risk of loss of and damage to the Goods subject to the Contract Documents until such Goods are delivered to the destination and accepted by the Town or its nominee.
14. Rejection. All Goods shall be received subject to the Town's inspection. Goods that are defective in workmanship or material or otherwise not in conformity with the requirements of the Contract Documents may be rejected and returned at Vendor's expense or may be accepted at a reduced price. the Town may require Vendor to promptly replace or correct any rejected Goods Services and, if Vendor fails to do so, the Town may contract with a third party to replace such Goods Services and charge Vendor the additional cost.
15. Warranties. Vendor warrants that all Goods delivered hereunder will be free from defects in materials and workmanship and will conform strictly to the specifications, drawings, or samples specified or furnished. This warranty shall survive any inspection, delivery, acceptance or payment by the Town of the Goods and shall run to the Town and any user of the Goods. This express warranty is in addition to Vendor's implied warranties of merchantability and fitness for a particular purpose which shall not be disclaimed. In addition to any other rights available at law or equity, the Town shall be entitled to all rights and remedies provided by the Uniform Commercial Code, Chapter 25 of the North Carolina General Statutes, for breach of express warranties and implied warranties of merchantability or fitness for a particular purpose, including but not limited to consequential and incidental damages.
16. Compliance with All Laws. Vendor warrants that all performance hereunder shall be in accordance with all applicable federal, state and local laws, regulations and orders. The right of Vendor to proceed may be terminated immediately by written notice if the Town determines that Vendor, its agent or another representative, has violated any provision of law.
17. Nondiscrimination. During the performance of the Contract, the Vendor shall not discriminate against or deny the Contract's benefits to any person on the basis of sexual orientation, national origin, race, ethnic background, color, religion, gender, age or disability.
18. Conflict of Interest. The Vendor represents and warrants that no member of the Town or any of its employees or officers who may obtain a direct benefit, personal gain or advantage for themselves or a relative or associate as a result of the Contract, subcontract or other agreement related to the Contract is in a position to influence or has attempted to influence the making of the Contract, has been involved in making the Contract, or will be involved in administering the Contract. the Vendor shall cause this paragraph to be included in all Contracts, subcontracts and other agreements related to the Contract.
19. No Gratuities to the Town. The right of the Vendor to proceed may be terminated by written notice if the Town determines that the Vendor, its agent or another representative offered or gave a gratuity to an official or employee of the Town in violation of policies of the Town.

20. No Kickbacks to the Vendor. The Vendor shall not permit any kickbacks or gratuities to be provided, directly or indirectly, to itself, its employees, subcontractors or subcontractor employees for the purpose of improperly obtaining or rewarding favorable treatment in connection with a Town contract or in connection with a subcontract relating to a Town contract. When the Vendor has grounds to believe that a violation of this clause may have occurred, the Vendor shall promptly report to the Town in writing the possible violation.
21. E-Verification. The Vendor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.
22. Indemnification. The Vendor shall indemnify and hold harmless the Town, its officers, agents, employees and assigns from and against all claims, losses, costs, damages, expenses, attorneys' fees and liability that any of them may sustain (a) arising out of the Vendor's failure to comply with any applicable law, ordinance, regulation, or industry standard or (b) arising directly or indirectly out of the Vendor's breach of the terms and conditions of the Contract. In the event the Vendor, its employees, agents, subcontractors and or lower-tier subcontractors enter premises occupied by or under the control of the Town in the performance of the Contract Documents, the Vendor agrees that it will indemnify and hold harmless the Town, its officers, agents, employees and assigns, from any loss, costs, damage, expense or liability by reason of property damage or personal injury of whatsoever nature or kind arising out of, as a result of, or in connection with such entry.
23. Insurance. Unless such insurance requirements are waived or modified by the Town, the Vendor certifies that it currently has and agrees to purchase and maintain during its performance under the Contract the following insurance from one or more insurance companies acceptable to the Town and authorized to do business in the State of North Carolina: Automobile - the Vendor shall maintain bodily injury and property damage liability insurance covering all owned, non-owned and hired automobiles. The policy limits of such insurance shall not be less than \$1,000,000 combined single limit each person/each occurrence. Commercial General Liability - the Vendor shall maintain commercial general liability insurance that shall protect the Vendor from claims of bodily injury or property damage which arise from performance under the Contract. This insurance shall include coverage for contractual liability. The policy limits of such insurance shall not be less than \$1,000,000 combined single limit each occurrence/annual aggregate. Worker's Compensation and Employers' Liability Insurance - If applicable to the Vendor, the Vendor shall meet the statutory requirements of the State of North Carolina for worker's compensation coverage and employers' liability insurance. The Vendor shall also provide any other insurance or bonding specifically recommended in writing by the Town or required by applicable law. Certificates of such insurance shall be furnished by the Vendor to the Town and shall contain the provision that the Town be given 30 days' written notice of any intent to amend or terminate by either the Vendor or the insuring company. Failure to furnish insurance certificates or to maintain such insurance shall be a default under the Contract and shall be grounds for immediate termination of the Contract.
24. Termination for Convenience. In addition to all of the other rights which the Town may have to cancel this Contract, the Town shall have the further right, without assigning any reason therefore, to terminate the Contract, in whole or in part, at any time at its complete discretion by providing 10 days' notice in writing from the Town to the Vendor. If the Contract is terminated by the Town in accordance with this paragraph, the Vendor will be paid for Services actually delivered or performed.
25. Termination for Default. The Town may terminate the Contract, in whole or in part, immediately and without prior notice upon breach of the Contract by the Vendor. In addition to any other remedies available to the Town law or equity, the Town may procure upon such terms as the Town shall deem appropriate, Services substantially similar to those so terminated, in which case the Vendor shall be liable to the Town for any excess costs for such similar goods, supplies, or services and any expenses incurred in connection therewith.
26. Contract Funding. It is understood and agreed between the Vendor and the Town that the Town's obligation under the Contract is contingent upon the availability of appropriated funds from which payment for Contract purposes can be made. No legal liability on the part of the Town for any payment may arise until funds are made available to the Town's Finance Officer and until the Vendor receives notice of such availability. Should such funds not be appropriated or allocated, the Contract shall immediately be terminated. the Town shall not be liable to the Vendor for damages of any kind (general, special, consequential or exemplary) as a result of such termination.
27. Improper Payments. The Vendor shall assume all risks attendant to any improper expenditure of funds under the Contract. The Vendor shall refund to the Town any payment made pursuant to the Contract if it is subsequently determined by audit that such payment was improper under any applicable law, regulation or

procedure. The Vendor shall make such refunds within 30 days after the Town notifies the Vendor in writing that a payment has been determined to be improper.

28. **Contract Transfer.** The Vendor shall not assign, subcontract or otherwise transfer any interest in the Contract without the prior written approval of the Town.
29. **Contract Personnel.** The Vendor agrees that it has, or will secure at its own expense, all personnel required to provide the Services set forth in the Contract.
30. **Contract Modifications.** The Contract may be amended only by written amendment duly executed by both the Town and the Vendor.
31. **Relationship of Parties.** The Vendor is an independent contractor and not an employee of the Town. The conduct and control of the work will lie solely with the Vendor. The Contract shall not be construed as establishing a joint venture, partnership or any principal-agent relationship for any purpose between the Vendor and the Town. Employees of the Vendor shall remain subject to the exclusive control and supervision of the Vendor, which is solely responsible for their compensation.
32. **No Advertisement.** The Contract will not be used in connection with any advertising by the Vendor without prior written approval by the Town.
33. **No Pre-Judgment or Post-Judgment Interest.** In the event of any action by the Vendor for breach of contract in connection with the Contract, any amount awarded shall not bear interest either before or after any judgment, and the Vendor specifically waives any claim for interest.
34. **Background Checks.** At the request of the Town's Project Coordinator, the Vendor (if an individual) or any individual employees of the Vendor shall submit to the Town criminal background check and drug testing procedures.
35. **Confidential Information.** Employee Personnel Information: If, during the Vendor's performance of the Contract, Vendor should obtain any information pertaining to employees of the Town's personnel records, Vendor agrees to keep any such information confidential and to not disclose or permit it to be disclosed, directly or indirectly, to any person or entity. Other Confidential Information: (a) the Vendor agrees that it will at all times hold in confidence for the Town all designs, know-how, techniques, devices, drawings, specifications, patterns, technical information, documents, business plans, item requirements, forecasts and similar data, oral, written or otherwise, conveyed by the Town to the Vendor in connection herewith or procured, developed, produced, manufactured or fabricated by the Vendor in connection herewith or procured, developed, produced, manufactured or fabricated by the Vendor in connection with the Vendor's performance hereunder (collectively, "Information"). The Vendor shall exercise the same degree of care to prevent disclosure of any Information to others as it takes to preserve and safeguard its own proprietary information, but in any event, no less than a reasonable degree of care. The Vendor shall not, without the prior written consent of the Town, reproduce any Information; nor disclose Information to any party; nor use any Information for any purpose other than performance for the benefit of the Vendor hereunder. Any technical knowledge or information of the Vendor which the Vendor shall have disclosed or may hereafter disclose to the Town in connection with the Services or other performance covered by the Contract shall not, unless otherwise specifically agreed upon in writing by the Town, be deemed to be confidential or proprietary information and shall be acquired by the Town free from any restrictions as part of the consideration of the Contract.
36. **Intellectual Property.** The Vendor agrees, at its own expense, to indemnify, defend and save the Town harmless from all liability, loss or expense, including costs of settlement and attorney's fees, resulting from any claim that the Town's use, possession or sale of the Services or any goods infringes any copyright, patent or trademark or is a misappropriation of any trade secret.
37. **Mediation.** If a dispute arises out of or relates to the Contract, or the breach of the Contract, and if the dispute cannot be settled through negotiation, the parties agree to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to litigation.
38. **No Third-Party Benefits.** The Contract shall not be considered by the Vendor to create any benefits on behalf of any third party. The Vendor shall include in all contracts, subcontracts or other agreements relating to the Contract an acknowledgment by the contracting parties that the Contract creates no third-party benefits.
39. **Force Majeure.** If the Town is unable to perform its obligations or to accept the Services because of Force Majeure (as hereinafter defined), the time for such performance by the Town or acceptance of Services will be equitably adjusted by allowing additional time for performance or acceptance of Services equal to any periods

of Force Majeure. "Force Majeure" shall mean any delays caused by acts of God, riot, war, terrorism, inclement weather, labor strikes, material shortages and other causes beyond the reasonable control of the Town.

40. Strict Compliance. The Town 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.
41. General Provisions. The Town's remedies as set forth herein are not exclusive. Any delay or omission in exercising any right hereunder, or any waiver of any single breach or default hereunder, shall not be deemed to be a waiver of such right or of any other right, breach, or default. If action be instituted by the Vendor hereunder, the Town shall be entitled to recover costs and reasonable attorney's fees. the Vendor may not assign, pledge, or in any manner encumber the Vendor's rights under this Contract, or delegate the performance of any of its obligations hereunder, without the Town's prior, express written consent.
42. Contract Situs. All matters, whether sounding in contract or tort relating to the validity, construction, interpretation and enforcement of the Contract, will be determined in Mecklenburg County, North Carolina. North Carolina law will govern the interpretation and construction of the Contract.