



# Table of Contents

<b>1</b>	<b>REQUEST FOR QUALIFICATIONS.....</b>	<b>3</b>
1.1	Introduction .....	3
1.2	Background .....	3
1.3	RFQ Response Timeline .....	4
1.4	Pre-Submittal Conference/Site Visit .....	4
1.5	Proposal Submission Requirements and Contact Information.....	4
1.6	Rights to Submitted Material .....	5
<b>2</b>	<b>QUALIFICATION SUBMISSION REQUIREMENTS .....</b>	<b>5</b>
2.1	Evaluation Process .....	7
2.2	Evaluation Criteria and Selection Timeline .....	7
<b>3</b>	<b>SCOPE OF SERVICES.....</b>	<b>8</b>
<b>4</b>	<b>CONTRACT TERMS.....</b>	<b>10</b>
4.1	Non-discrimination.....	10
4.2	Minority or Women Owned Businesses.....	10
4.3	Assignment.....	11
4.4	Applicable Law .....	11
4.5	Insurance .....	11
4.6	Indemnity .....	12
4.7	Intellectual Property .....	12
4.8	Force Majeure .....	13
4.9	Advertising.....	13
4.10	Cancellation.....	13
4.11	Laws/Safety Standards .....	13
4.12	Applicability of North Carolina Public Records Law .....	14
4.13	Miscellaneous.....	14
4.14	Audit.....	15
4.15	E - Verify.....	15

# 1 REQUEST FOR QUALIFICATIONS

## 1.1 Introduction

The City of Raleigh Department of City Planning invites interested firms to submit qualifications for consulting services to undertake a study focused on evaluating and developing a strategic plan for the disposition of city-owned property in Downtown. The city currently holds a downtown inventory of properties totaling over 12 acres and \$37 million of assessed value, excluding property intended for municipal use. The goal of this RFQ process is to seek consulting services from qualified real estate professionals whose combination of experience and personnel will provide timely, cost-effective and quality professional services to the city to assist with the preparation of a strategic plan for the disposition of these downtown real properties.

The qualified team should have demonstrated experience and knowledge developing strategic plans; conducting real estate investment feasibility, market and economic analysis; executing real property transactions, economic development assessment, and recommending private public partnerships and property disposition agreements. The consultant team should also have experience in public engagement conducting public meetings, social media, online process, and public facilitation. The consultant team will work with City staff, the public, downtown stakeholders, and the City Council to develop a strategic plan for putting the City's portfolio of downtown real estate assets into the highest, best, and most efficient use while also serving the larger public interest and needs.

Consultant services will be required from the date of a fully executed contract through the subsequent six month period, or the date of successful completion of performing the tasks and work products defined in this RFQ.

## 1.2 Background

The City of Raleigh currently owns a number of significant properties (including vacant land and land with improvements) in Downtown Raleigh that are not intended for municipal use over the long term. These properties total over 12 acres and represent over \$37 million of assessed land and building value. Some were purchased long ago for purposes that are no longer valid (such as Sites 2 and 3, which were parking for a Civic Center which no longer exists), others were purchased more recently for economic development, and some are currently used for municipal purposes but are likely to be made available for development in the future.

City ownership of these properties is currently conferring little public benefit other than the "real option" value of influencing their future use. For the City to realize its goals for these properties, it will be necessary either to place them into the hands of a private development entity or make them ready for development through public private partnerships. Currently there is no strategic plan, process or procedure in place to make this outcome a reality. The properties are not currently advertised for sale. There are no adopted plans or policies regarding the future use of these properties, beyond their current zoning and future land use designations. Finally, there is no identified mechanism for how the properties would be sold and/or leased.

The City needs a strategic plan for its major downtown holdings to answer the following questions for each discrete assemblage of real property:

- Is the property best suited "for sale" or "for lease" or "public-private partnership"?
- If so, under what terms?
- What, if any, specific public purpose objectives are there for the future use of the property (e.g. affordable housing, economic development)? Are these goals best realized through a development agreement or through the use of proceeds from a cash sale?

- Based on the forgoing, what is the best method for the disposition of each property that accomplishes the long-term goals of the City for the property?

The purpose of the study is to evaluate and affirmatively answer each of these questions, and prepare a strategic plan that will be presented to the Raleigh City Council for approval. Following this action, City staff will be in a position to begin preparing for the disposition of the properties, marketing the properties, soliciting offers or proposals, and/or entertaining offers/partnership agreements.

### 1.3 RFQ Response Timeline

The RFQ process shall adhere to the following schedule:

RFP Process	Date and time	
RFQ posted	July 24, 2015	9:00 a.m.
<b>RFQ Due Date</b>	<b>August 7, 2015</b>	<b>4:00 p.m.</b>

Note: All times shown as Eastern Standard Time (EST).

### 1.4 Pre-Submittal Conference/Site Visit

There will be no Pre-Submittal Conference.

**NOTE:** Questions concerning the specifications in this Request for Qualifications will be received until July 31, 2015 by the Project Manager, Greg Pittman ([Greg.Pittman@raleighnc.gov](mailto:Greg.Pittman@raleighnc.gov)). A summary of all questions and answers will be posted on the internet as an addendum, located under the RFQ # being modified.

**It is the offeror's responsibility to assure that all addenda have been reviewed and, if need be, signed and returned.**

### 1.5 Proposal Submission Requirements and Contact Information

Proposals must follow the format as defined in Section 3 PROPOSAL FORMAT.

Submissions must include one (1) electronic version of the RFQ for Strategic Plan for Disposition of City-Owned Downtown Real Property for City of Raleigh, NC– (*Department of City Planning*) signed proposal. The electronic version of the Proposal must be submitted as a viewable and printable Adobe Portable Document File (PDF) on a flashdrive or as an attachment in electronic correspondence. If submitters choose to submit hard copy, both hard copy and electronic version must be received by the City on or before 4:00 PM EST on the August 7, 2015. Deliver proposals to the following mailing / physical address OR electronic mail address:

<u>DELIVERED BY US POSTAL SERVICE</u>	<u>DELIVERED BY ANY OTHER MEANS</u>
RFQ NO. DCP-2015-007 Greg Pittman Gregg Pollard City of Raleigh Department of City Planning	RFQ NO. DCP-2015-007 Greg Pittman Gregg Pollard City of Raleigh Department of City Planning

Division of Real Estate Services One Exchange Plaza, 10 <sup>th</sup> floor Raleigh, NC 27601	Division of Real Estate Services One Exchange Plaza, 10 <sup>th</sup> floor Raleigh, NC 27601  OR electronically at:  <a href="mailto:Greg.Pittman@raleighnc.gov">Greg.Pittman@raleighnc.gov</a> <a href="mailto:Gregg.Pollard@raleighnc.gov">Gregg.Pollard@raleighnc.gov</a>
---	--

Proposals received after the “RFQ Due” deadline above will not be considered. The outside of the submittal package or subject line must be clearly marked with the RFQ number and name. Please note that the City reserves the right to reject any or all proposals for any reason and to waive any informality it deems in its best interest. Any requirements in the submittal that cannot be met must be indicated in the proposal. Contractors must respond to the entire Request for Qualifications (RFQ). Any proposals received by the City that are incomplete in their responses will be immediately disqualified.

**1.6 Rights to Submitted Material**

All submissions, inquiries, or correspondence relating to or in reference to this RFQ, and all reports, charts, and other documentation submitted in response to this RFQ (other than materials submitted as and qualifying as trade secrets under North Carolina law) shall become the property of the City when received and the materials shall be subject to the public records laws of the State of North Carolina except where a proper trade secrets exception has been made by the submitter in accordance with North Carolina law. Any submission that is marked, in its entirety, as confidential may be rejected by the City as exceeding the scope of the trade secrets protections of North Carolina public records laws. By submitting a response to this RFQ, the submitter agrees to indemnify the City for any costs, including legal fees, associated with any challenge to the City withholding materials from public inspection that have been identified as trade secrets or confidential by the submitter.

The City reserves the right to retain all submissions and to use any ideas in a submission regardless of whether the City enters into a development contract with that submitter. A submission in response to this RFQ shall indicate acceptance by the submitter of the conditions contained in this RFQ.

**2 QUALIFICATION SUBMISSION REQUIREMENTS**

Responses must follow the format outlined herein. The City may reject as non-responsive at its sole discretion any proposal or any part thereof that is incomplete, inadequate in its response, or departs in any substantive way from the required format. Proposal responses shall be organized in the following manner:

The response package shall be limited to twenty double-sided pages, for a total of forty printed pages. The digital copy of the RFQ response document must be in 8 1/2” x 11” format, on flash drive in Adobe Portable Document Format (.pdf) or as delivered by email to the Project Manager. Complete responses to qualification requirements shall be organized as follows:

- A. Organization of Consultant Team
  - Team Organization Chart showing all firms, contractual relationship between firms, and names of specific staff proposed for this project, including their titles. Identify certified

Minority Business Enterprises (MBE) or Women Business Enterprises (WBE) firms, if any.

- Responsibilities to be fulfilled by each team member assigned to the Project. The description of responsibilities shall include an estimated percentage of the total project that is to be completed by each individual team member

B. Project Personnel Qualifications

- Detailed resumes for proposed staff

C. Firm Experience

Summary of at least three (3) projects of similar scope for which the Consultant was primarily responsible within the last five (5) years. Each of the project summaries shall include the following:

- Description of the project including size and scope
- Project schedule (initial schedule and actual / final schedule), including an explanation of delays, if any
- Initial project budget and final project cost
- Description of services rendered by the Consultant and degree of involvement (prime consultant or sub-consultant)
- Associate firms involved and their assigned responsibilities
- Key principal and associate staff involved, along with their assigned responsibilities
- Brief summary of client's proposal along with key successful disposition strategies that the Consultant helped implement
- Project references including current names, addresses and telephone numbers

D. Project Approach and Schedule

- Process for recording property inventory, conducting legal analysis, policy review, stakeholder sessions and strategic plan preparation
- Management tools, techniques, and procedures used to maintain project schedules
- Anticipated project schedule and delivery

E. Experience with public involvement including conducting public meetings, social media, online process, public facilitation techniques and other innovative public process involvement

F. Knowledge and specific experience in real estate economics, law, and property transactions

G. Billing Rate Structure

- Billing rate schedule for all personnel who will work on the Project. The form, timing and justification for the proposed compensation. Compensation will be negotiated with the selected consultant.

H. Legal Issues

- Listing of any pending or settled lawsuits in which the Consultant was involved during the past five (5) years.

I. IT Capabilities

- Description of Geographic Information System (GIS), NC Real Property Data, including system and software used, tax records, and other relevant systems.

J. Any other information confirming the respondent's experience, skills, capabilities and/or uniqueness to perform the Scope of Work.

## **Costs**

Any cost incurred by respondents in preparing or submitting a Request for Qualifications for the Project shall be the Proposer's sole responsibility. The City accepts no liability for the costs and expenses incurred by any client in order to respond to this RFQ, in preparing responses for clarification, in attending interviews, participating in contract development sessions, or in attending meetings and presentations required for the contract approval process. Each respondent that enters into the procurement process shall prepare the required materials and submittals at its own expense and with the express understanding that the respondent cannot make any claims whatsoever for reimbursement from the City for the costs and expenses associated with the procurement process. The RFQ does not commit the City to pay for any costs incurred prior to the execution of a final contract.

## **2.1 Evaluation Process**

The City of Raleigh Planning Department has established a procedure for evaluating consultant services. The purpose of this procedure is to ensure that consultants are evaluated in a fair and uniform manner, that those selected for work are qualified and experienced in implementing the disposition strategies, and to ensure that qualified consultants have the opportunity to be considered for providing requested professional services for the Project. The process for selection involves three stages:

### **1. Stage One: Qualifications**

Notification of this Request for Qualifications is advertised on the City's web site ([www.raleighnc.gov](http://www.raleighnc.gov)). A Request for Qualifications will be sent to all firms that express interest and request a copy of the RFQ. Upon receipt of the qualification packages from respondents, the Division of Real Estate Services will submit these qualifications to a selection committee. This team will work with the City's Project Manager and chosen consultant throughout the project.

### **2. Stage Two: Evaluation Committee**

An Evaluation Committee composed of City Departmental staff will review and score the RFQs based upon the "Evaluation Criteria" noted below in Section VII of this document. Interviews may be conducted. Once a firm is selected the Selection Committee will prepare a prioritized 'short list' of firms that will be forwarded to City Council. Council will be asked to authorize negotiation with the recommended firms in priority order.

### **3. Stage Three: Contract Negotiations**

Following the City Council's approval to negotiate with the recommended consulting firm, the City will begin negotiations. In the event negotiations of specific contract terms, conditions and fees prove unsuccessful with this firm, the City will begin negotiations with the second most qualified firm.

## **2.2 Evaluation Criteria and Selection Timeline**

The following criteria will be the basis on which consultants will be selected for further consideration (in no particular order):

- A. Team organization and structure
- B. Project personnel qualifications
- C. Specialized or appropriate expertise in the type of project

- D. Past performance of the lead consulting firm, sub-consultants, and members of the project team on similar projects
- E. Demonstrated experience in facilitating focus group meetings
- F. Adequate and experienced staff and proposed team for the project
- G. Level of MWBE participation
- H. Recent experience with successfully maintaining project schedules and budgets
- I. Current workload and firm capacity
- J. Proposed evaluation approach for the project
- K. Demonstration of an understanding of the area and context of the project
- L. Demonstration of a project record free of significant technical problems and litigation resulting from errors or omissions
- M. Other factors that may be relevant to the project

**Selection Timeline**

<i>RFQ Release</i>	<i>July 24, 2015</i>
<i>Deadline for questions</i>	<i>July 31, 2015</i>
<i>Questions answered and available</i>	<i>August 4, 2015</i>
<i>Deadline for proposal submission</i>	<i>August 7, 2015</i>
<i>Review of proposals</i>	<i>August 10 –17, 2015</i>
<i>Consultant shortlist contact, Interviews (if needed), and Selection</i>	<i>September 1 - 3, 2015</i>
<i>Recommendation to City Council</i>	<i>September 15, 2015</i>
<i>Start contract negotiation</i>	<i>September 16, 2015</i>
<i>Award contract</i>	<i>October 14, 2015</i>
<i>Kick-off</i>	<i>October 28, 2015</i>

**Communication**

Respondents are advised to refrain from contact with Selection Committee members. Any specific questions regarding the Request for Qualifications should be directed to the Project Manager. If a question of general concern is asked by any firm with regards to this Request for Qualifications, a copy of the written response will be sent to all firms.

**3 SCOPE OF SERVICES**

The following is provided as suggested scope of work for their undertaking. Respondents may wish to identify any proposed alterations as part of the Project Approach section of their responses.

**Task 1: Property Inventory**

The first step will be to compile an inventory and valuation of all city-owned downtown property assemblages. The inventory will include the property size, acreage, existing and proposed UDO

zoning<sup>1</sup>, site-specific zoning conditions, current structures and uses of the property, encumbrances on the property (such as easements and lease agreements), and any known environmental contamination issues. The inventory will also include a history of when the property was purchased, for what purpose, the source of funds, and whether the forgoing imposes any limitations on the future use or transaction of the property. All relevant City databases, GIS mapping, and records will be made available to the consultant for this task.

**Task 2: Legal Analysis**

The consultant will review the relevant sections of the North Carolina General Statutes and confer with the City Attorney’s Office regarding the statutory vehicles available to the City for real property disposition. Current state enabling authority places significant constraints on municipalities planning to sell real property. Among the statutes to be covered will be Article 12 of Chapter 160A; the Local Development Act of 1925 (Article 1 of Chapter 158); the Urban Redevelopment Law (Article 22 of 160A: some of the properties may have been acquired using redevelopment authority); Community Development law (Part 8 of Article 19 of 160A); and other applicable local, State and Federal statutes.

**Task 3: Plans and Policy Guidance Review**

The consultant will work with staff to produce a summary of adopted policy guidance concerning the future use and development of downtown properties. These will include the Comprehensive Plan, the recently completed Downtown Plan, and other plans as may apply. An assessment of the properties’ existing zoning, proposed UDO zoning and future land use will be completed to evaluate the current utilization and future land use potential of the property. A recently completed analysis of downtown municipal facilities and space needs will also be made available to the consultant. A copy of the city’s adopted plans such as most recent Consolidated Housing Plan and other economic development action plans shall be made available as resources.

**Task 4: Agency Interviews and Meetings**

The consultant will conduct interviews with various departments and divisions of the City, either individually or in small groups, to better understand the organization’s goals for specific properties and potential considerations concerning future disposition.

**Task 5: Downtown Stakeholder Focus Groups**

The consultant, working with staff, will convene a series of focus groups discussions on downtown property with logical clusters of downtown stakeholders. These would include the entertainment, tourism and convention industry; economic development entities including the Downtown Raleigh Alliance, Chamber, and Raleigh Economic Development office; downtown resident and neighborhood organizations; affordable housing advocates; and others.

**Task 6: Recommended Disposition Strategy**

Based on the above tasks, the consultant will produce a detailed report outlining the recommended strategic plan for disposition of the City’s downtown property. While other questions may arise during the study, the strategy should address the following:

- For each site, what are the likely highest and best uses that promote the overall vitality of downtown?

---

<sup>1</sup> The City is finishing a large-scale remapping that will result in the rezoning of all downtown land to a new district established under the recently-adopted Unified Development Ordinance. This process may be completed by the time this study commences.

- Where the city has a partial assemblage, should the city seek to complete the assemblage before sale, or leave that to the future buyer?
- Which sites should be sold to the highest bidder, and which should be considered for sale at less than full market value in return for larger public benefits? If the latter, what statutory vehicle should be used to conduct the sale?
- Should certain strategic sites be reserved for use as an incentive to attract a high profile use or user, such as a corporate headquarters, hotel, or anchor retailer?
- Should sites be pre-zoned prior to sale, rendering future development as of right?
- What are the best tools for marketing the sites for development? Should the City utilize an RFP process or a more general marketing mechanism?
- What should be the priorities, i.e., what is the optimal sequence and timing for the disposition of each site?

#### **Task 7: Public Meetings and Presentations**

It is anticipated that the consultants will present a draft of the report recommendations at a public meeting, to be hosted and staffed by the City; and at least one presentation to the City Council.

## **4 CONTRACT TERMS**

### **4.1 Non-discrimination**

In consideration of the signing of this Contract, the parties hereto for themselves, their agents, officials, employees and servants agree not to discriminate in any manner on the basis of race, color, creed, national origin, sex, age, handicap, or sexual orientation with reference to the subject matter of this Contract, no matter how remote. The parties further agree in all respects to conform with the provisions and intent of City of Raleigh Ordinance 1969-889, as amended. This provision is hereby incorporated into this Contract for the benefit of the City of Raleigh and its residents, and may be enforced by action for specific performance, injunctive relief, or other remedy as provided by law. This provision shall be binding on the successors and assigns of the parties with reference to the subject matter of this Contract.

### **4.2 Minority or Women Owned Businesses**

The City of Raleigh prohibits discrimination in any manner on the basis of race, color, creed, national origin, sex, age or handicap or sexual orientation and will pursue an affirmative policy of fostering, promoting and conducting business with women and minority owned business enterprises.

The City is required, by ordinance, to include certain non-discrimination assurances in each contract it undertakes. The selected consultant is expected to agree to this requirement, including entering into the following term as part of the contract: “In consideration of the signing of this contract, the parties hereto for themselves, their agents, officials, employees and servants agree not to discriminate in any manner on the basis of race, color, creed, national origin, sex, age, handicap, or sexual orientation with reference to the subject matter of this contract, no matter how remote. The parties further agree in all respects to conform with the provisions and intent to City of Raleigh Ordinance 1969-889, as amended. This provision is hereby incorporated into this contract for the benefit of the City of Raleigh and its residents, and may be enforced by action for specific performance, injunctive relief, or other remedy as by law provided. This agreement shall be binding on the successors and assigns of the parties with reference to the subject matter of this contract.”

### **4.3 Assignment**

This Contract may not be assigned without the express written consent of the City.

### **4.4 Applicable Law**

All matters relating to this Contract shall be governed by the laws of the State of North Carolina, without regard to its choice of law provisions, and venue for any action relating to this Contract shall be Wake County Civil Superior Court or the United States District Court for the Eastern District of North Carolina, Western Division.

### **4.5 Insurance**

Contractor agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Contract the following coverages and limits. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Contract.

**Commercial General Liability** – Combined single limit of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.

**Automobile Liability** – Limits of no less than \$1,000,000 Combined Single Limit. Coverage shall include liability for Owned, Non-Owned and Hired automobiles. In the event Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Auto Liability policy. Automobile coverage is only necessary if vehicles are used in the provision of services under this Contract and/or are brought on a COR site.

**Worker's Compensation & Employers Liability** – Contractor agrees to maintain Worker's Compensation Insurance in accordance with North Carolina General Statute Chapter 97 with statutory limits and employees liability of no less than \$1,000,000 each accident.

**Additional Insured** – Contractor agrees to endorse the City as an Additional insured on the Commercial General Liability, Auto Liability and Umbrella Liability if being used to meet the standard of the General Liability and Automobile Liability. The Additional Insured shall read '**City of Raleigh is named additional insured as their interest may appear**'.

**Certificate of Insurance** – Contractor agrees to provide COR a Certificate of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Contractor's insurer. If Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify the City within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. **The Certificate Holder address should read:**

**City of Raleigh  
Post Office Box 590  
Raleigh, NC 27602-0590**

**Umbrella or Excess Liability** – Contractor may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability, however, the Annual Aggregate limits shall not be less than the highest ‘Each Occurrence’ limit for required policies. Contractor agrees to endorse City of Raleigh as an ‘Additional Insured’ on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a ‘Follow-Form’ basis.

**Professional Liability** – Limits of no less than \$1,000,000 each claim. This coverage is only necessary for professional services such as engineering, architecture or when otherwise required by the City.

All insurance companies must be authorized to do business in North Carolina and be acceptable to the City of Raleigh’s Risk Manager.

#### **4.6 Indemnity**

Except to the extent caused by the sole negligence or willful misconduct of the City, the Contractor shall indemnify and hold and save the City, its officers, agents and employees, harmless from liability of any kind, including all claims, costs (including defense) and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract, and from any and all claims, costs (including defense) and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Contractor in the performance of this Contract. This representation and warranty shall survive the termination or expiration of this Contract.

The Contractor shall indemnify and hold and save the City, its officers, agents and employees, harmless from liability of any kind, including claims, costs (including defense) and expenses, on account of any copyrighted material, patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this Contract.

#### **4.7 Intellectual Property**

Any information, data, instruments, documents, studies, reports or deliverables given to, exposed to, or prepared or assembled by the Contractor under this Contract shall be kept as confidential proprietary information of the City and not divulged or made available to any individual or organization without the prior written approval of the City. Such information, data, instruments, documents, studies, reports or deliverables will be the sole property of the City and not the Contractor.

All intellectual property, including, but not limited to, patentable inventions, patentable plans, copyrightable works, mask works, trademarks, service marks and trade secrets invented, developed, created or discovered in performance of this Contract shall be the property of the City.

Copyright in and to any copyrightable work, including, but not limited to, copy, art, negatives, photographs, designs, text, software, or documentation created as part of the Contractor’s performance of this project shall vest in the City. Works of authorship and contributions to works of authorship created by the Contractor’s performance of this project are hereby agreed to be ‘works made for hire’ within the meaning of 17 U.S.C. 201.

#### **4.8 Force Majeure**

Except as otherwise provided in any environmental laws, rules, regulations or ordinances applicable to the parties and the services performed under this Contract, neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by an act of war, hostile foreign actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God. Either party to the Contract must take reasonable measures and implement reasonable protections when a weather event otherwise defined as a force majeure event is forecast to be eligible to be excused from the performance otherwise required under this Contract by this provision.

#### **4.9 Advertising**

The Contractor shall not use the existence of this Contract, or the name of the City of Raleigh, as part of any advertising without the prior written approval of the City.

#### **4.10 Cancellation**

The City may terminate this Contract at any time by providing thirty (30) days written notice to the Contractor. In addition, if Contractor shall fail to fulfill in timely and proper manner the obligations under this Contract for any reason, including the voluntary or involuntary declaration of bankruptcy, the City shall have the right to terminate this Contract by giving written notice to the Contractor and termination will be effective upon receipt. Contractor shall cease performance immediately upon receipt of such notice.

In the event of early termination, Contractor shall be entitled to receive just and equitable compensation for costs incurred prior to receipt of notice of termination and for the satisfactory work completed as of the date of termination and delivered to the City. Notwithstanding the foregoing, in no event will the total amount due to Contractor under this section exceed the total amount due Contractor under this Contract. The Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Contract, and the City may withhold any payment due to the Contractor for the purpose of setoff until such time as the City can determine the exact amount of damages due the City because of the breach.

Payment of compensation specified in this Contract, its continuation or any renewal thereof, is dependent upon and subject to the allocation or appropriation of funds to the City for the purpose set forth in this Contract.

#### **4.11 Laws/Safety Standards**

The Contractor shall comply with all laws, ordinances, codes, rules, regulations, safety standards and licensing requirements that are applicable to the conduct of its business, including those of Federal, State, and local agencies having jurisdiction and/or authority.

All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization, such as the American Society of Mechanical Electrical Engineers for pressure vessels; the Underwriters' Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type(s) of

devices offered and furnished. Further, all items furnished by the Contractor shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution.

Contractor must comply with *North Carolina Occupational Safety and Health Standards for General Industry, 29CFR 1910*. In addition, Contractor shall comply with all applicable occupational health and safety and environmental rules and regulations.

Contractor shall effectively manage their safety and health responsibilities including:

**A. Accident Prevention**

Prevent injuries and illnesses to their employees and others on or near their job site. Contractor managers and supervisors shall ensure personnel safety by strict adherence to established safety rules and procedures.

**B. Environmental Protection**

Protect the environment on, near, and around their work site by compliance with all applicable environmental regulations.

**C. Employee Education and Training**

Provide education and training to all contractors employees before they are exposed to potential workplace or other hazards as required by specific OSHA Standards.

**4.12 Applicability of North Carolina Public Records Law**

Notwithstanding any other provisions of this Contract, this Contract and all materials submitted to the City by the Contractor are subject to the public records laws of the State of North Carolina and it is the responsibility of the Contractor to properly designate materials that may be protected from disclosure as trade secrets under North Carolina law as such and in the form required by law prior to the submission of such materials to the City. Contractor understands and agrees that the City may take any and all actions necessary to comply with federal, state, and local laws and/or judicial orders and such actions will not constitute a breach of the terms of this Contract. To the extent that any other provisions of this Contract conflict with this paragraph, the provisions of this section shall control.

**4.13 Miscellaneous**

The Contractor shall be responsible for the proper custody and care of any property furnished or purchased by the City for use in connection with the performance of this Contract, and will reimburse the City for the replacement value of its loss or damage.

The Contractor shall be considered to be an Independent Contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. Nothing herein is intended or will be construed to establish any agency, partnership, or joint venture. Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such employees shall not be employees of or have any individual contractual relationship with the City.

This Contract may be amended only by written agreement of the parties executed by their authorized representatives.

#### **4.14 Audit**

The City of Raleigh Internal Audit Office may conduct an audit of Contractor's financial, performance and compliance records maintained in connection with the operations and services performed under this Contract. The City or its designee may conduct such audits or inspections throughout the term of this Contract and for a period of three years after final payment or longer if required by law.

In the event of such an audit, Contractor agrees that the City, or its designated representative, shall have the right to review and to copy any work, materials, payrolls, records, data, supporting documentation, or any other sources of information and matters that may in City's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. The Contractor agrees that the City, or its designated representative, shall have access to Contractor personnel pertaining to the performance of this contract, including but not limited to financial, performance, operations and compliance records. Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the City's auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. City's authorized representative or designee shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Contract and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article. Further, Contractor agrees to include a similar right to the City to audit and interview staff in any subcontract related to performance of this contract.

Contractor shall require all payees to comply with the provisions of this article by including the requirements hereof in a written contract agreement between Contractor and payee. Contractor will ensure that all payees have the same right to audit provisions contained in this Contract.

The City agrees to provide Contractor with an opportunity to discuss and respond to any findings before a final audit report is issued.

City's rights under this provision shall survive the termination of this agreement. The City may conduct an audit up to three years after this agreement terminates.

#### **4.15 E - Verify**

Contractor shall comply with E-Verify, 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 and as in accordance with N.C.G.S. §64-25 et seq. In addition, to the best of Contractor's knowledge, any subcontractor employed by Contractor as a part of this contract shall be in compliance with the requirements of E-Verify and N.C.G.S. §64-25 et seq.