

## SPARTANBURG COUNTY CONTRACT FOR PROFESSIONAL SERVICES

THIS CONTRACT is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between SPARTANBURG COUNTY, a political subdivision of the State of South Carolina, hereinafter referred to as the "COUNTY"; and, \_\_\_\_\_, a \_\_\_\_\_ Corporation, hereinafter referred to as "CONTRACTOR".

NOW THEREFORE FOR AND IN CONSIDERATION of the mutual promises stated in this Agreement, the COUNTY and CONTRACTOR agree as follows:

### ARTICLE 1 - CONTRACT DOCUMENTS:

1.1. The documents listed in Section 1.2 of this Article shall constitute the contract documents. These contract documents shall represent the entire agreement and understanding between the parties. All other statements, discussions and negotiations, whether oral or written, are hereby merged into these contract documents. Any oral or written understanding not incorporated in these contract documents is not binding on any of the parties. The contract documents are presented in descending order of priority with the first document listed being of the highest priority and governing over subsequently listed documents, in case of conflict or ambiguity.

1.2. The Contract Documents consist of:

1. Spartanburg County Contract for Professional Services;
2. Spartanburg County – Task Order(s) for Professional Services (when executed);
3. [Addenda or Addendum \_\_ to RFP # \_\_\_\_ (attached hereto as Exhibit A and incorporated herein by reference);]
4. Request for Proposal Number (“RFP”) # \_\_\_\_ (attached hereto as Exhibit B and incorporated herein by reference); and
5. Proposal in response to RFP # \_\_\_\_ submitted by the CONTRACTOR (attached hereto as Exhibit C and incorporated herein by reference).

Collectively, these materials shall comprise the “CONTRACT DOCUMENTS.”

1.3. It is the intent of the CONTRACT DOCUMENTS to describe a functionally complete whole contract to be constructed in strict accordance with the CONTRACT DOCUMENTS. Any labor, services, documentation, materials, or equipment that may reasonably be inferred from the CONTRACT DOCUMENTS or from prevailing custom or trade usage as being required to produce the intended result shall be provided by the CONTRACTOR whether or not specifically called for without increase in the Contract Price or Contract Period, as described in Articles 3 and 4 below.

1.4. MODIFICATION / CHANGE ORDERS. Any change orders, alteration, amendments or other modifications hereunder shall not be effective unless reduced to writing, signed by the County Administrator and CONTRACTOR, and executed with the same formality as this contract.

**ARTICLE 2 – SCOPE OF SERVICES:**

2.1 COUNTY has employed CONTRACTOR to provide services for the Spartanburg County (NAME OF PROJECT).

2.2 These services to be provided by CONTRACTOR are set forth more fully in the CONTRACT DOCUMENTS.

**ARTICLE 3 – CONTRACT PERIOD**

3.1. EFFECTIVE DATE. This Agreement shall begin upon the final date of execution by all parties.

3.2. NOTICE TO PROCEED. This Agreement shall begin on the effective date of the Purchase Order. In compliance with the Request for Proposal, and subject to all conditions, thereof, the undersigned offers and agrees, to furnish the services for the base Proposal and all Proposal voluntary adds, at the prices as set forth, within \_\_\_\_\_ days after fax or electronic receipt of purchase order.

3.3. FORCE MAJEURE. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strikes, industry wide material shortages, riots, insurrection, fires, flood, storm, explosions, earthquakes, pandemic flu, acts of God, war, governmental action and labor conditions. In the case of an industry wide material shortage the CONTRACTOR shall provide to the County within 24 hours of CONTRACTOR’s determination that there exists an industry wide material shortage, the following in order for the COUNTY, or its authorized representative, to concur that there is an industry wide shortage of the specific material so identified by CONTRACTOR: 1) A written description of the specific material alleged to be in short supply; 2) a written list of all manufacturers, wholesalers, suppliers and/or retailers from which CONTRACTOR has attempted to obtain, and/or contracted to obtain, said material; 3) a written description detailing all actions taken by CONTRACTOR to obtain said materials; 4) a written statement, signed by an authorized representative of CONTRACTOR, that CONTRACTOR has used due diligence to secure said materials in the most expeditious manner; and 5) a written time frame in which CONTRACTOR anticipates that it will obtain said materials.

**ARTICLE 4 - CONTRACT PRICE AND TERMS OF PAYMENT:**

4.1. APPROPRIATION / NON-APPROPRIATION. The COUNTY shall pay for these services out of appropriated funds. It is understood and agreed by the parties that in the event funds are not appropriated in the current fiscal year or any subsequent fiscal years, this contract will become null and void and the County will only be required to pay for services completed to the satisfaction of the County.

4.2. CONTRACT PRICE. The COUNTY agrees to pay a total contract price that shall not exceed \_\_\_\_\_ (\$\_\_\_\_\_).

4.3. PAYMENT TERMS. Payments shall occur as follows:

CONTRACTOR will submit invoices to COUNTY, which shall include a detailed listing of charges and a final bill upon completion of services. Within ten (10) business days of receipt of an invoice COUNTY shall notify CONTRACTOR of any dispute with the invoice and CONTRACTOR, upon such notice, shall provide to COUNTY back-up data supporting the invoice. COUNTY and CONTRACTOR will, thereafter, promptly resolve any disputed items. Payment on undisputed invoice amounts is due upon receipt of the invoice by COUNTY and is past due thirty (30) days from the date the invoice is received. If payment remains past due sixty (60) days from the date the invoice is received by the COUNTY, then CONTRACTOR shall have the right to either suspend all services provided pursuant to this Agreement, without prejudice, or terminate this Agreement in accordance with the provisions of Article 8. No deposit nor advance sums shall be paid. NO INTEREST OR OTHER LATE PENALTIES SHALL ACCRUE ON LATE PAYMENTS.

#### **ARTICLE 5 - INDEMNIFICATION.**

CONTRACTOR agrees to defend, indemnify and save harmless the COUNTY and all COUNTY officers, agents and employees from and against any loss, damage, claim or action, including all expenses incidental to such claim and action, to the extent arising from any negligent acts or omissions by CONTRACTOR, its agents, staff, consultants and contractors employed by it, in the performance of the services under this Agreement. CONTRACTOR shall not be responsible for any loss, damage, or liability to the extent arising from acts of the COUNTY, its agents, staff, and other consultants employed by it. This section shall survive the termination of this Agreement.

#### **ARTICLE 6 - RIGHTS AND RESPONSIBILITIES OF CONTRACTOR:**

6.1. NON-DISCRIMINATION. During the performance of this Agreement, CONTRACTOR agrees that:

1. It will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of CONTRACTOR; that it will post in conspicuous places, available to employees and applicants for employment, notices setting forth non-discrimination practices, and that it will state, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, that it is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient to meet this requirement; and
2. It will include the provisions of the foregoing paragraph in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

6.2. DRUG FREE WORKPLACE. During the performance of this Agreement, the CONTRACTOR agrees to comply with Section 44-107-30 of the South Carolina Code of Laws, 1976 as amended.

6.3. ILLEGAL IMMIGRATION REFORM ACT. The CONTRACTOR providing goods or services to the COUNTY under this Agreement represents and warrants to the COUNTY that it is in compliance with Section 8-14-10 *et seq.* of the South Carolina Code of Laws, 1976 as amended, or that this law is inapplicable to CONTRACTOR and its subcontractors. This is required of all CONTRACTORS and subcontractors.

6.4. COMPLIANCE WITH APPLICABLE LAWS. The CONTRACTOR providing goods or services to the COUNTY under this Agreement represents and warrants to the COUNTY that it is in compliance with federal, state and local laws and regulations applicable to the performance of the services procured.

6.5. SOUTH CAROLINA ETHICS ACT. The CONTRACTOR providing goods or services to the COUNTY under this Agreement represents and warrants to the COUNTY that it is in full compliance with the South Carolina State Ethics, Government Accountability and Campaign Reform Act, codified as Sections 8-13-100 through 8-15-1520, of the South Carolina Code of Laws, 1976 as amended.

6.6. SAFETY AND HEALTH. The CONTRACTOR providing goods or services to the COUNTY under this Agreement represents and warrants to the COUNTY that the Contractor's safety, health and security programs shall be in compliance with all regulatory requirements and shall furnish, upon request, accident, incident, injury, and other records and reports required by Federal or State law, or as required by the COUNTY.

6.7. COMPLIANCE WITH CODES AND STANDARDS. CONTRACTOR's professional services shall incorporate those federal, state and local laws, regulations, codes and standards that are applicable at the time CONTRACTOR rendered its services.

6.8. AUDIT. The CONTRACTOR hereby agrees to retain all books, records, and other documents relative to this engagement for five (5) years after final payment for services. Spartanburg County Government, its authorized agents, and agents of the State and federal government shall have full access to documents and the right to examine any materials during the said period.

6.9. LITIGATION. CONTRACTOR agrees to produce documents, witnesses and/or general assistance to any litigation, arbitration or mediation involving the COUNTY, if the COUNTY requests such documents, witnesses and/or general assistance. The COUNTY shall reimburse CONTRACTOR for all direct expenses incurred and time according to CONTRACTOR's rate schedule as of the date of the execution of this Agreement.

6.10. CONFIDENTIALITY. CONTRACTOR will maintain as confidential any documents or information provided by the COUNTY and will not release, distribute or publish same to any third party without prior written permission from the COUNTY, unless compelled by law or order of a court or regulatory body of competent jurisdiction. CONTRACTOR shall provide

written notice to the COUNTY in sufficient time to allow the COUNTY to intervene as necessary.

6.11. PUBLIC RESPONSIBILITY. The COUNTY has a duty to conform to applicable codes, standards, regulations and ordinances with regard to public health and safety. CONTRACTOR will at all times alert the COUNTY to any matter of which Contractor becomes aware and believes requires the COUNTY to issue a notice or report to certain public officials, or to otherwise conform with applicable codes, standards, regulations or ordinances.

6.12. SUBCONTRACTOR INSURANCE. The CONTRACTOR shall agree to cause each subcontractor employed by CONTRACTOR to purchase and maintain insurance of the type specified herein, unless the CONTRACTOR'S insurance provides coverage on behalf of the subcontractor. Evidence of subcontractor insurance shall be made available to the County upon request of the County.

#### **ARTICLE 7 – RIGHTS AND RESPONSIBILITIES OF COUNTY:**

7.1. DEFAULT. In case of default by the CONTRACTOR for failure to deliver or perform in accordance with the Contract specifications or terms and conditions and CONTRACTOR'S failure to cure the default within thirty (30) calendar days of CONTRACTOR'S receipt of notice from the COUNTY of the default, the COUNTY may procure the articles or services from other sources and hold the defaulting CONTRACTOR responsible for any resulting additional purchase and administrative costs, in addition to recovery of fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs. If the completion of the contract work results in increased costs to the COUNTY, a letter will be sent to the defaulting CONTRACTOR requiring payment for these costs. The CONTRACTOR will be removed from future bidding until the payment has occurred. Provided further, that the COUNTY reserves the right to debar CONTRACTOR from doing further business with the COUNTY. Failure of a CONTRACTOR'S source to deliver is not considered to be an unavoidable cause. The burden of proof rests with the CONTRACTOR to demonstrate that CONTRACTOR should not be debarred. Nothing in the section shall be construed to limit or waive CONTRACTOR'S ability to avail itself of remedies available under applicable laws.

7.2. RIGHT OF ENTRY. The COUNTY will provide for the right of entry for CONTRACTOR, its subcontractors, and all necessary equipment in order to complete the work under this Agreement. CONTRACTOR agrees to be responsible for any damage to property that is caused by CONTRACTOR, its subcontractors and/or equipment and further agrees to take all necessary corrective action for any damage to property that is caused by CONTRACTOR, its subcontractors and/or equipment.

#### **ARTICLE 8 – TERMINATION:**

8.1. TERMINATION BY COUNTY. The COUNTY may terminate this Agreement and project for any reason upon seven (7) calendar days notice. Anything contained in the Agreement to the contrary notwithstanding a termination under this section shall not waive any right or claim to damages which COUNTY may have with respect to work performed by the CONTRACTOR

which has been completed prior to the date of termination, and COUNTY may pursue any cause of action which it may have by law or under this Agreement on account of such completed work.

8.2 STOP WORK UPON NOTICE OF TERMINATION. After receipt of a notice of termination, except as otherwise directed, the CONTRACTOR shall stop work on the date of receipt of the notice of termination or other date specified in the notice; place no further order or subcontracts for materials, services, or facilities except as necessary for completion of such portion of the work not terminated; terminate all vendor and subcontracts; and settle all outstanding liabilities and claims.

8.3 COMPENSATION TO CONTRACTOR IF TERMINATED. In the event of a termination under section 8.1 of this Agreement, CONTRACTOR acknowledges and agrees that it shall not be entitled to any compensation in excess of the value of the work performed plus its settlement and close-out costs. Under no circumstances shall CONTRACTOR, or any subcontractor, be entitled to anticipatory or unearned profits, unabsorbed overhead, opportunity costs or consequential or other damages as a result of a termination under this section. Payment to CONTRACTOR of any and all sums already earned by CONTRACTOR under the terms of Article 4 constitutes CONTRACTOR's exclusive remedy for a termination hereunder.

**ARTICLE 9 – WARRANTIES:**

9.1. WORK PERFORMED TO INDUSTRY STANDARDS. CONTRACTOR warrants to COUNTY that the work performed pursuant to the Agreement shall conform to all professional principles generally accepted as standards of the industry in the State.

9.2. WARRANTY. CONTRACTOR warrants to COUNTY that all services and labor furnished to progress the work under this Agreement will be performed in accordance with the standard of care and diligence normally practiced by recognized firms of this type in performing services of a similar nature, free from defects which would not normally be found in work of this nature, and that the work will be of good quality, and in strict conformance with this Agreement. All work not conforming to these requirements may be considered defective.

**ARTICLE 10 – MISCELLANEOUS:**

10.1. NOTICES. The following persons shall be contact persons for the parties, and notices given them, by certified mail return receipt requested to the addresses shown, shall constitute valid notice under the requirements of this Agreement. The parties may amend such addresses by written notice to the opposite party at the given address.

1. For COUNTY:

Katherine O'Neill  
County Administrator  
P.O. Box 5666  
Spartanburg, SC 29304-5666

With a copy to:

Spartanburg County Attorney  
P.O. Box 5666  
Spartanburg, SC 29304-5666

2. For CONTRACTOR: (Name)  
(Address)  
(City, State, Zip)

10.2 INVOICE / PAYMENT ADDRESSES. The following persons shall be contact persons for the parties, for the purpose of submitting invoices and payments under this Agreement by depositing the same in the United States mail with postage prepaid, to the addresses shown:

1. For COUNTY: (Name)  
(Title)  
P.O. Box 5666  
Spartanburg, SC 29304-5666

2. For CONTRACTOR: (Name)  
(Address)  
(City, State, Zip)

10.3. CHOICE OF LAW / VENUE. The parties agree that this Agreement is governed by and shall be interpreted in accordance with the laws of the State of South Carolina, and that proper venue, in the event of litigation concerning this matter, is in the state or federal courts located in Spartanburg County, South Carolina. The parties agree that any litigation involving this Agreement shall be brought only in such courts. The parties herein each consent to the jurisdiction of such courts and hereby waive any jurisdictional or venue defenses otherwise available.

10.4. SEVERABILITY. In the event that any provision of this Agreement is unenforceable, then the parties agree that all other provisions of this Agreement have full force and effect and shall not be affected thereby.

10.5. WAIVER. Any failure of the COUNTY or CONTRACTOR to demand rigid adherence to one or more of the terms and provisions as set forth in this Agreement, on one or more occasions, shall not be construed as a waiver nor deprive the COUNTY or CONTRACTOR of the right to insist upon compliance with the terms of this Agreement. Any waiver of a term of this Agreement, in whole or in part, must be in writing and signed by the party granting the waiver to be effective.

10.6. SUCCESSORS AND ASSIGNS. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their successors, transferees and assigns. No party may assign this Agreement nor the rights and obligations hereunder to any other third party without the prior express written consent of the other parties.

10.7. HEADINGS. CONTRACTOR and County agree that the Article and Paragraph headings are for convenience only and are not a part of this Agreement.

10.8. SPARTANBURG COUNTY PROCUREMENT ORDINANCE. CONTRACTOR acknowledges that the Spartanburg County Procurement Ordinance is applicable to this

Agreement. Contractual claims and disputes shall be conducted pursuant to the Spartanburg County Procurement Ordinance.

10.9. NO JOINT VENTURE. Neither this Agreement nor any agreements, instruments, documents or transactions completed hereby shall in any respect be interpreted, deemed or construed as making any party a partner or joint venture with any other party or as creating any similar relationship or entity. No party has the authority to act on behalf of or bind any other party concerning the transactions related to this Agreement.

10.10. FACSIMILE/SCANNED SIGNATURE. The parties agree that use of a fax or scanned signature and the signatures, initials, and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signature, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

10.11. COUNTERPARTS. This Agreement (and any amendments or modifications) may be executed in multiple counterparts, each of which shall be an original, and all of which shall be one and the same Agreement.

WITNESS the following signatures and seals in agreement with the above terms:

[SIGNATURES ON FOLLOWING PAGE]



SPARTANBURG COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
KATHERINE O'NEILL  
COUNTY ADMINISTRATOR

Attested:

\_\_\_\_\_  
Debbie C. Ziegler  
Clerk to County Council

[NAME OF CONTRACTOR]

By: \_\_\_\_\_ (Signature)

\_\_\_\_\_ (Printed Name)

Its: \_\_\_\_\_ (Title)

Witnesses:

\_\_\_\_\_  
\_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
COUNTY ATTORNEY'S OFFICE  
Date: \_\_\_\_\_