



**INVITATION TO BID AND CONTRACT BETWEEN CITY OF HICKORY AND
CONSULTANT FOR PROFESSIONAL
SERVICES**

City of Hickory

Contact: Jarod Marshall, El

Mailing Address:	City:	State:	Zip:
<u>PO Box 398</u>	<u>Hickory</u>	<u>NC</u>	<u>28603</u>

Phone Number: (828) 323 – 7500

Email: jbmarshall@hickorync.gov

The Contract is made and entered into on the last date executed below, by and between the City of Hickory and _____ hereinafter referred to as “CONSULTANT”.

All pages of this document must be completed and submitted to the City of Hickory at the contact information listed above by 12:00 PM on Tuesday, March 12, 2024 for this offer to be considered for contract.

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IMPORTANT INFORMATION AND INSTRUCTIONS

SECTIONS WITHIN THIS AGREEMENT:

[Contact Information](#)

[Important Information and Instructions](#)

[Project Information](#)

[Professional Services Contract Provisions](#)

[Special Conditions](#)

[General Contract](#)

[Exhibit A](#)

[Exhibit B](#)

1. **SUBMIT ALL PAGES:** All pages and exhibits of this document will be used as the Contract. CONSULTANT shall submit ***all*** pages of this document with completed information.
2. **GENERAL CONTRACT:** AUTHORIZED AGENT of CONSULTANT must sign before proposal is submitted to the City of Hickory. Upon acceptance of the proposal, the City of Hickory will sign the page following EXHIBIT B and the Contract shall be fully executed.
3. **EXHIBIT A:** Insert proposed scope, schedule, and associated costs for services behind this page.
4. **EXHIBIT B:** Insert completed E-verify form and all required certificates of insurance behind this page.

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PROJECT INFORMATION

1. **BACKGROUND:** The City of Hickory maintains NCDOT owned traffic signals as well as City owned traffic signals. As part of signal maintenance, the City of Hickory reviews traffic operations to determine areas in need of signal analysis, optimization, and/or coordination. The City of Hickory is soliciting bids for the services of a firm/team to analyze, optimize, and/or coordinate the selected corridor(s) described in this section.
2. **SELECTED CORRIDOR(S):** The City of Hickory has identified the need for signal analysis, optimization, and/or coordination along the Fairgrove Church Rd SE corridor from Tate Blvd SE to US 70 SE. This corridor includes the following intersections:
 - a. NCDOT 12-0536/COH 1402: Fairgrove Church Rd SE at Tate Blvd SE
 - b. NCDOT 12-0312/COH 1403: Fairgrove Church Rd SE at Greystone PI SE
 - c. NCDOT 12-0013/COH 1404: Fairgrove Church Rd SE at 11th Ave Dr SE
 - d. NCDOT 12-0004/COH 1405: Fairgrove Church Rd SE at 12th Ave PI SE
 - e. NCDOT 12-0325/COH 1406: Fairgrove Church Rd SE at I-40 WB Ramp
 - f. NCDOT 12-1520/COH 1407: Fairgrove Church Rd SE at I-40 EB Ramp
 - g. NCDOT 12-0647/COH 1501: Fairgrove Church Rd SE at US 70 SE
3. **PROJECT TASKS:** The tasks for this project include:
 - a. Collect and analyze traffic data for weekday and weekend peak and off-peak hours
 - b. Analyze signal operation and coordination under existing conditions
 - c. Propose optimized timing and coordination plans for weekday and weekend peak and off-peak hours
4. **PROVIDED DATA:** The City of Hickory will provide the following information at CONSULTANT's request:
 - a. Current plan of record (POR) for each intersection listed
 - b. Current timing data programmed through Tactics software for each intersection listed
5. **PROJECT SUBMITTALS:** The following submittals are required for project completion:
 - a. Analysis report(s) for existing conditions
 - b. Analysis report(s) for proposed timings
 - c. Proposed timing/time-of-day plans
 - d. Electronic files (Synchro, Excel, etc.) used in analysis of traffic data and existing and proposed timings

PROFESSIONAL SERVICES CONTRACT PROVISIONS

1. **ACCEPTANCE OF CONTRACT:** This document constitutes only the CONSULTANT's offer until it is accepted on behalf of the City of Hickory and is fully executed by both parties.
2. **EXECUTION OF CONTRACT:** Contract documents must contain the original signature(s) of the authorized representative(s) in the space(s) provided. Contract must be typed or printed in ink. Use of erasable ink is not permitted. The Contract, including the exhibits made part hereof, constitute the entire Contract between CONSULTANT and the City of Hickory, supersedes and controls over all prior written or oral understandings. The Contract may be amended, supplemented or modified only by a written instrument duly executed by the Parties in the same manner as the Contract.
3. **CONTROLLING AGREEMENT:** The Contract shall take precedence over any inconsistent or contradictory provisions contained in any proposal, purchase order, requisition, notice-to-proceed, or like document.
4. **CONTROLLING LAW AND VENUE:** The Contract is to be governed by the state of North Carolina. Jurisdiction and Venue shall lie with the courts of Catawba County, NC.
5. **COMPLIANCE WITH LAWS:** CONSULTANT, at his own expense, shall obtain and maintain all licenses, permits, liability insurance and worker's compensation insurance and shall comply with any and all other standards or regulations required by federal, state and local statute, ordinance, executive order and rules during the performance of any contract between CONSULTANT and the City of Hickory. Any such requirement specifically set forth in any contract document between CONSULTANT and the City of Hickory shall be supplementary to this section and not in substitution thereof.
6. **DISTRIBUTION OF CONTRACT:** One (1) copy of the Contract shall be furnished to CONSULTANT. It shall be CONSULTANT's responsibility to reproduce and distribute copies of the Contract as needed to employees/subcontractors of CONSULTANT. No additions, deletions or changes of any kind shall be made to the Contract by CONSULTANT.
7. **DELIVERY OF NOTICES:** Any notices required or permitted by the Contract will be considered sufficient if hand delivered, emailed with read receipt requested, or sent by certified mail to the Party entitled to receive the notice at the address of that Party set forth above. If a notice is sent by email, the Party entitled to receive the notice may request the original to be hand delivered or sent by certified mail. If a notice is sent by certified mail, it shall be deemed to have been given on the second business day after it is deposited in the United States mail, whether actually received by the addressee on that date or not.
8. **CHANGES:** The City of Hickory and CONSULTANT agree that no change or modification to the Contract, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of the Contract. The execution of the change shall be authorized and signed in the same manner as the Contract. Adjustments in the period of services and in compensation shall be in accordance with applicable paragraphs and sections of the Contract. Any proposed fees by CONSULTANT are estimates to perform the services required to complete the Project as CONSULTANT understands it to be defined. For those projects involving conceptual or process development services, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. CONSULTANT will inform the City of Hickory of such situations so that changes in scope and adjustments to the time of performance and compensation can be made as required. If such change, additional services, or

suspension of services results in an increase or decrease in the cost of or time required for performance of the services, an equitable adjustment may be made, and the Contract modified accordingly.

9. **WAIVER:** The City of Hickory reserves the right to waive any general provision, special provision or minor specification deviation when considered to be in the best interest of the City of Hickory. One or more waivers by the City of Hickory of any provision or specification shall not be construed by CONSULTANT as a waiver of any subsequent breach of the same provision or specification.
10. **SEVERABILITY:** If any provision under the Contract or its application to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity does not affect any other provision of the Contract or its application that can be given effect without the invalid provision or application.
11. **TERMINATION FOR CAUSE OR FOR CONVENIENCE BY THE CITY OF HICKORY**
 - a. The performance of work and/or delivery of services under the Contract may be terminated by the City of Hickory, in whole or in part, in instances where CONSULTANT is found to violate or breach the Contract or whenever it is determined to be in the best interest of the City of Hickory.
 - b. Any such termination shall be effected by the delivery to CONSULTANT of a Notice of Termination specifying the extent to which performance of work and/or delivery of services are terminated, and the date upon which such termination becomes effective.
 - c. After receipt of a Notice of Termination, CONSULTANT shall stop work and/or place no further orders under the Contract on the date and to the extent specified in the Notice of Termination.
 - d. CONSULTANT may invoice the City of Hickory for any work performed or services delivered up to the date specified in the Notice of Termination. Invoicing and payment shall be done in accordance with the invoicing and payment provision(s) of the Contract.
12. **REMEDIES:** In instances where CONSULTANT is found to violate or breach the Contract, the City of Hickory is authorized to seek replacement services elsewhere and to seek legal remedies against CONSULTANT as appropriate.
13. **BANKRUPTCY:** If CONSULTANT becomes bankrupt or insolvent, or if a petition of bankruptcy is filed against CONSULTANT, or if a receiver is appointed for CONSULTANT, the City of Hickory shall have the right to terminate the Contract upon written notice to CONSULTANT without prejudice to any claim for damages or any other right of the City of Hickory under the Contract to the time of such termination.
14. **ADVERTISING:** In executing the Contract, CONSULTANT agrees not to use the results therefrom as a part of any commercial advertising.
15. **ASSIGNMENT:** The Contract shall not be assigned by CONSULTANT without written consent of the City of Hickory.
16. **MISTAKES:** CONSULTANT is expected to examine the Contract, scope, delivery schedule, costs, all instructions and documents pertaining to services. Failure to do so will be at CONSULTANT's risk.
17. **INDEPENDENT CONTRACTOR:** CONSULTANT agrees that CONSULTANT and each subcontractor is acting in the capacity of an independent contractor with respect to the City of Hickory, and shall not at any time be or represent itself or its employee(s) as an agent(s) or employee(s) of the City of Hickory.

18. **CONFLICT OF INTEREST:** The Contract is subject to the provisions of City of Hickory's *Ethics Policy* and *Conflict of Interest Policy*, which are herein incorporated by reference in the Contract. CONSULTANT must disclose the name of any officer, director or agent who is also an employee of the City of Hickory or any of its agencies or subdivisions. Further, CONSULTANT must disclose the name of any City employee who owns, directly or indirectly, an interest of five percent (5%) or more in the CONSULTANT's firm or any of its branches.
19. **PROFESSIONAL LICENSURE:** All work shall be sealed by a professional properly licensed in North Carolina and doing business in the state of North Carolina. These shall include but not be limited to: Engineer, Landscape Architect, Surveyor, Architect, Geologist, etc.
20. **SERVICE AND WARRANTY:** The standard of care for all professional engineering, consulting and related services performed or furnished by CONSULTANT and its employees under the Contract will be the care and skill ordinarily used by members of CONSULTANT's profession. CONSULTANT makes no warranties, express or implied, under the Contract or otherwise, in connection with CONSULTANT's services.
21. **OPINIONS OF PROBABLE COST (COST ESTIMATES):** Any opinions of probable project cost or probable construction cost provided by CONSULTANT are made on the basis of information available to CONSULTANT and on the basis of CONSULTANT's experience and qualifications, and represents its judgment as an experienced and qualified professional. However, since CONSULTANT has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, CONSULTANT does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost CONSULTANT prepares.
22. **CONSTRUCTION PROCEDURES:** CONSULTANT's observation or monitoring portions of the work performed under construction contracts shall not relieve the contractor from its responsibility for performing work in accordance with applicable contract documents. CONSULTANT shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the work and shall not manage, supervise, control or have charge of construction. CONSULTANT shall not be responsible for the acts or omissions of the construction contractor or other parties on the Project. Any construction contract documents shall not contain provisions that extend the duties or liabilities of CONSULTANT beyond those set forth in the Contract.
23. **SAFETY STANDARDS:** Unless otherwise stipulated, all work performed pursuant to the Contract shall comply with applicable requirements of Occupational Safety and Health Act and any standards thereunder, which are herein incorporated by reference in the Contract.
24. **SERVICES AND INFORMATION**
- a. The City of Hickory will provide all criteria and information pertaining to the City of Hickory's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations. The City of Hickory will also provide copies of any City of Hickory-furnished Standard Details, Standard Specifications, Standard Bidding Documents or other documents which are to be incorporated into the Project.
 - b. In performing professional services hereunder, it is understood by the City of Hickory that CONSULTANT is not engaged in rendering any type of legal, insurance or accounting services, opinions or advice. Further, it is the City of Hickory's sole responsibility to obtain the advice of an attorney, insurance counselor or accountant to protect the City of Hickory's legal and financial interests. To that end, the City of Hickory agrees to have an appropriate representative examine all studies, reports, sketches, drawings,

specifications, proposals and other documents, opinions or advice prepared or provided by CONSULTANT, and will obtain the advice of an attorney, insurance counselor or other consultant as the City of Hickory deems necessary to protect the City of Hickory's interests before the City of Hickory takes action or forebears to take action based upon or relying upon the services provided by CONSULTANT.

25. **LIABILITY:** CONSULTANT shall indemnify and save harmless the City of Hickory, its departments, boards, commissions, agencies, institutions and all employees of the aforementioned against the claims by third parties resulting from CONSULTANT's breach of the Contract or CONSULTANT's negligent, reckless, or intentional acts, errors or omissions constituting a tort under statutory or common law; or violations of applicable statutes or regulations if such breach, act, error or omission is the proximate cause of the City of Hickory's loss, damage or expense indemnified. If such breach, act, error or omission is the proximate cause of the City of Hickory's damages, the City of Hickory is entitled to recover. However, neither Party to the Contract shall be liable to the other Party for any special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project or the Contract from any cause or causes, including but not limited to any such damages caused by the negligence, errors or omissions, strict liability or breach of contract.
26. **INSURANCE:** CONSULTANT agrees to procure and maintain, at its expense, the insurances listed below. The City of Hickory shall be made an additional insured on Commercial General and Automobile Liability insurance policies and certificates of insurance shall be furnished to the City of Hickory and included in EXHIBIT B. CONSULTANT agrees to indemnify and save harmless the City of Hickory for claims to the extent caused by CONSULTANT's negligent acts, errors or omissions.
- a. Worker's Compensation insurance as required by statute;
 - b. Employer's Liability insurance of \$250,000;
 - c. Automobile Liability insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles;
 - d. Commercial General Liability insurance of \$1,000,000 combined single limit for personal injury and property damage; and
 - e. Professional Liability insurance of \$3,000,000 per claim for protection against claims arising out of the performance of services under the Contract caused by negligent acts, errors, or omissions for which CONSULTANT is legally liable.
27. **PATENTS AND ROYALTIES:** CONSULTANT, without exception, shall indemnify and save harmless the City of Hickory, its departments, boards, commissions, agencies, institutions and all employees of the aforementioned from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process, design, or materials manufactured or used in the performance of the Contract including its use by the City of Hickory. If CONSULTANT uses any invention, process, design, or materials covered by letters, patent copyright, it is mutually agreed and understood without exception that the prices in EXHIBIT A shall include all royalties or cost rising from the use of such invention, process, design, or materials in any way involved in the work or service.
28. **RELEASE OF PATENTS AND COPYRIGHTS:** CONSULTANT agrees to relinquish ownership and exclusive rights to the City of Hickory for any patents and/or copyrights for any process, discovery, invention, design or document which arises or is developed in the course of the Contract. All plans, drawings, specifications, elements of design, models, reports, submissions, mock-ups and other documents and materials that are produced by CONSULTANT as part of the Contract, with the exception of those documents that constitute standard details, specifications, and/or

other data and/or materials that are regularly used by CONSULTANT and/or the professional design industry in the normal course of business, shall be deemed to be the property of the City of Hickory. Any reuse or modification of such documents for purposes other than those intended by CONSULTANT shall be at the City of Hickory's sole risk and without liability to CONSULTANT.

29. ACCESS TO RECORDS

- a) CONSULTANT agrees to provide, upon request, the City of Hickory or any of their authorized representatives access to any books, documents, papers, and records of CONSULTANT which are directly pertinent to the Contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- b) CONSULTANT agrees to permit any of the foregoing parties to reproduce records by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

30. RETENTION OF RECORDS: CONSULTANT agrees to retain all records pertaining to the Contract for no less than three (3) years after final payment is made and all other pending matters are closed.

31. TIME OF ESSENCE: Unless otherwise stated, time shall be considered of the essence to the Contract. CONSULTANT specifically agrees that it shall be liable for failure to deliver or delay in delivery. This includes without limitations: strikes, lockouts, inability to obtain material, lack of shipping space, breakdowns, delays of carriers or suppliers, and pre-existing governmental regulations of the federal and state government or any subdivision thereof; unless governmental acts and regulations affecting delivery could not be found, recognized, or discovered by due diligence on the part of CONSULTANT prior to the execution of the Contract.

It is further agreed that time is of the essence to each and every portion of the Contract and to the specifications wherein a definite portion and certain length of time is fixed for the performance of any act whatsoever; and where, under the Contract, any additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be the essence of the Contract.

32. ACCEPTANCE OF PURCHASE ORDERS: CONSULTANT is to accept only those purchase orders issued by the City of Hickory, prepared on Finance Department forms, unless instructed otherwise in the Contract.

33. PRICE ADJUSTMENTS: Manufacturer's price increases or other increases in the cost of doing business MAY NOT be passed on to the City of Hickory, nor may CONSULTANT withdraw or cancel the Contract, or any part of the Contract for these reasons. CONSULTANT may only cancel the Contract pursuant to the cancellation clause, if one is included as a part of the Contract, and then only if the contractual obligation has been fulfilled by CONSULTANT in accordance with the terms stated.

34. FEES: CONSULTANT shall be responsible for paying all fees related to regulatory or other governing authority submittal, review, permitting, etc. These fees shall be requested as a reimbursement from the City of Hickory at the direct cost with no markup.

35. PAYMENT/INVOICING:

- a. The CONSULTANT shall be paid within a reasonable time, not to exceed thirty (30) calendar days, after the submission of proper certified invoices to the City of Hickory at the prices stipulated in EXHIBIT A of the Contract. Invoices shall contain the Project name and purchase order number. Failure to follow these instructions may result in delay of processing invoices for payment. CONSULTANT shall be the only office authorized to receive purchase order, do the billing and invoicing, and receive payment.

- b. CONSULTANT will retain receipts for reimbursable expenses in general accordance with Internal Revenue Service rules pertaining to the support of expenditures for income tax purposes. Receipts will be available for inspection by the City of Hickory's auditors upon request.
- c. If the City of Hickory disputes any item(s) in CONSULTANT's invoice for any reason, including the lack of supporting documentation, the City of Hickory may temporarily delete the disputed item(s) and pay the remaining amount of the invoice. The City of Hickory will promptly notify CONSULTANT of the dispute and request clarification and/or correction. After any dispute has been settled, CONSULTANT will include the disputed item(s) on a subsequent, regularly scheduled invoice, or on a special invoice for the disputed item(s) only.

36. PARTIAL PAYMENTS:

- a. Partial payments may be made once each month as the work progresses. CONSULTANT shall submit a partial payment request for work completed by the 25th of each month. Said payments will be based upon estimates prepared by CONSULTANT and approved by the City of Hickory for the value of the work performed or service provided in accordance with the Contract.
- b. From the total of the amount determined to be payable on a partial payment, five percent (5%) of such total will be deducted and retained by the City of Hickory until the final payment is made. Ninety-five percent (95%) of the amount payable, less all previous payments, shall be certified for payment.
- c. CONSULTANT shall not receive partial payment based on quantities of work or services in excess of those provided in EXHIBIT A or covered by approved change orders, except when such excess quantities have been determined by the City of Hickory to be a part of the final quantity for the item of work or service in question.
- d. No partial payment shall bind the City of Hickory to the acceptance of any work or service as to quality or quantity.

37. EQUAL EMPLOYMENT OPPORTUNITY (under 41 C.F.R. Part 60): During the performance of the Contract, CONSULTANT agrees as follows:

- a) CONSULTANT will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation or affectation, national origin, ancestry, or physical or mental impairment. CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, sex, sexual orientation or affectation, national origin, ancestry, or physical or mental impairment. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- b) CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive considerations for employment without regard to race, creed, color, sex, sexual orientation or affectation, national origin, ancestry, or physical or mental impairment.
- c) CONSULTANT will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to

instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with CONSULTANT's legal duty to furnish information.

- d) CONSULTANT will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice, to be provided by the agency contracting officer, advising the said labor union or workers' representatives of CONSULTANT's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e) CONSULTANT will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f) CONSULTANT will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the City of Hickory and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- g) In the event of CONSULTANT's non-compliance with the nondiscrimination clauses of the Contract or with any of such rules, regulations, or orders, the Contract may be canceled, terminated or suspended in whole or in part and CONSULTANT may be declared ineligible for further City of Hickory contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- h) CONSULTANT will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. CONSULTANT will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided*, however, that in the event CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

38. **E-VERIFY COMPLIANCE:** Employers and their subcontractors with 25 or more employees as defined in Article 2 of Chapter 64 of the North Carolina General Statutes must comply with North Carolina Session Law 2013-418's E-Verify requirements to contract with local governments. E-Verify is a federal 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. A completed E-Verify affidavit is required to enter any contract with the City of Hickory and shall be included with EXHIBIT B.

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SPECIAL CONDITIONS

1. **ALLOCATION OF RISK:** The City of Hickory and CONSULTANT have evaluated the risks and rewards associated with the Project, including CONSULTANT's fee relative to the risks assumed, and agree to allocate certain of the risks, so, to the fullest extent permitted by law, the total aggregate liability of CONSULTANT (and its related corporations, subcontractors, and employees) to the City of Hickory and third parties granted reliance is limited to three million dollars (\$3,000,000) for any and all injuries, damages, claims, losses, or expenses (including attorney and expert fees) arising out of CONSULTANT's services or the Contract regardless of cause(s) or the theory of liability, including negligence, indemnity, or other recovery. This limitation shall not apply to the extent the damage is paid under CONSULTANT's Commercial General Liability insurance policy.
2. **LIQUIDATED DAMAGES:** If CONSULTANT should neglect, fail, or refuse to complete the services within the time stipulated in EXHIBIT A, then CONSULTANT does hereby agree, as a part of the consideration for the Contract to pay to the City of Hickory the sum of zero dollars (\$0) per day, not as a penalty, but as compensation to the City of Hickory for delays, damages, and additional expenses for such breach of contract as hereinafter set forth, for each and every calendar day that CONSULTANT shall be in default after the time stipulated in the Contract for completing the services. The said amount is fixed and agreed upon by and between CONSULTANT and the City of Hickory because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the City of Hickory would, in such event, sustain.
3. **REPORTING REQUIREMENTS:** CONSULTANT is responsible for submitting no Project reports detailing the progress achieved to date for the Project. CONSULTANT agrees to submit all reports, certifications or other documents required by any of the provisions in the Contract to the City of Hickory.
4. **EXTENSIONS:** The Contract may not be extended.
5. **APPLICABILITY OF FEDERAL REGULATIONS TO FEDERALLY FUNDED PROJECTS:** The Contract does not include federal funding.

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GENERAL CONTRACT

The undersigned, as AUTHORIZED AGENT of CONSULTANT, hereby declares that the only person(s) interested in the proposal as principal(s) is(are) named herein, and that no other person has any interest in this proposal, or in the Contract to be entered into; that this proposal is made without connection with any other person, company, or parties, and that it is in all respects, fair and in good faith, without collusion or fraud.

AUTHORIZED AGENT further declares that he has informed himself fully about all conditions regarding this proposal, that the AUTHORIZED AGENT has reviewed all related documents for the above mentioned Project and that he has satisfied himself about performance required by this proposal.

AUTHORIZED AGENT agrees that if this proposal is accepted, to contract with the City of Hickory in the form of a lump sum contract, to furnish all necessary management, supervision, equipment, tools, materials, apparatus, means of transportation, and labor necessary to complete the Contract in full and in complete accordance with the Contract documents, to the full and entire satisfaction of the City of Hickory.

AUTHORIZED AGENT warrants that prices, terms and conditions quoted in the proposal will be firm for a period of sixty (60) days from the date included with AUTHORIZED AGENT's signature.

By submitting this proposal, CONSULTANT agrees to coordinate their schedule with the City of Hickory forces working on the Project to the fullest extent possible.

The City of Hickory reserves the right to deduct any item(s) as deemed in the best interest of the City of Hickory. CONSULTANT further proposes and agrees hereby to commence work under the Contract on the date to be specified in a written Notice to Proceed by the City of Hickory and to complete all work within the time stipulated in Exhibit A.

The City of Hickory reserves the right to reject any and all proposals; and reject any quoted items that fail to meet the needs of the City of Hickory.

Do not include Federal tax or NC State and local sales or use taxes in your proposal. The City of Hickory is exempt from federal tax. CONSULTANT shall submit a certified Sales Tax Report for reimbursement of sales taxes by the City of Hickory.

SIGNATURE OF AUTHORIZED AGENT

PRINT NAME/TITLE

The following proposal includes all specifications and addendums.

Acknowledge Addendum # _____ Date _____

Acknowledge Addendum # _____ Date _____

Acknowledge Addendum # _____ Date _____



City of Hickory
Contract Number: 24-017
Project Name: Fairgrove Church Rd SE from Tate Blvd SE to US 70 SE

EXHIBIT A

INSERT EXHIBIT A BEHIND THIS PAGE

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Acceptance and entry into the Contract by and on behalf of the City of Hickory is made this _____ day of _____, 20____.

CITY OF HICKORY,

A North Carolina Municipal Corporation

(SEAL)

Warren M. Wood, City Manager

Attest:

Debbie D. Miller, City Clerk

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

Melissa Miller, Finance Officer

Approved as to form on behalf of the City of Hickory only:

Arnita M. Dula, Deputy City Attorney



City of Hickory
Contract Number: 24-017
Project Name: Fairgrove Church Rd SE from Tate Blvd SE to US 70 SE

EXHIBIT B

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CITY OF HICKORY
E-VERIFY EMPLOYER COMPLIANCE STATEMENT

E-Verify for Public Contracts: HB 786 (S.L. 2013-418)

The legislation referenced prohibits governmental units from awarding to or entering into contracts unless the contractor and the contractor's subcontractors comply with the E-Verify requirements of Article 2 of Chapter 64 of the NC General Statutes.

Contractor, hereafter Employer, understands that E-Verify is a federal 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. Employer is defined as: Any person, business entity, or other organization that transacts business in this State and that employs 25 or more employees in this State. This term does not include State agencies, counties, municipalities, or other governmental bodies.

Employer understands that Employers, as Defined Herein, Must Use E-Verify. Each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS§64-26(a).

Therefore, all employers must be in compliance with the E-Verify requirements to enter into contracts with the City of Hickory.

Employer affirms that if the answer to question B below is "yes" then after hiring an employee to work in the United States it shall verify the work authorization of said employee through E-Verify in accordance with North Carolina General Statute §64-26(a).

Employer acknowledges that a subcontractor that transacts business in the State of North Carolina and employs 25 or more employees in this State must comply with E-Verify.

Employer will ensure that any subcontractor subsequently hired by Contractor will comply with E-Verify.

Below check with the type of employer and complete the information.

A) Employer with less than 25 employees, not required to use E-verify: _____

Company Name

Signature and Title

Date

OR:

B) Employer with 25 or more employees required by NCS.L.213-418 to use E-verify:

Yes, we comply: _____

Company Name

Signature and Title

Date