

STANDARD VENDOR AGREEMENT

This Standard Vendor Agreement (this “Agreement”) is made and entered into as of the date of last execution of this Agreement by both parties (the “Effective Date”), and is made by and between the Town of Mooresville, a municipal corporation located in Iredell County, North Carolina (the “Town”), and _____, a _____ authorized to do business in the State of North Carolina, with its principal place of business at _____ (“Vendor”). The Town and Vendor are sometimes herein referred to individually each as a “Party” and collectively as the “Parties.”

This Agreement sets forth the terms and conditions under which the Vendor will perform certain services and/or provide certain goods and materials for the Town as more specifically detailed in the Statement of Work (as hereinafter defined). In consideration of the mutual promises contained in this Agreement, and for other valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, The Town and Vendor agree as follows:

1 DEFINITIONS

The following terms have the meanings given below unless otherwise specified in this Agreement:

- 1.1 “Deliverables” means the Services provided, including goods and materials, identified in the Statement of Work or in a Purchase Order.
- 1.2 “Purchase Order” means a document provided by Town to Vendor to confirm the purchase of goods or services and that funds are available and authorized for said purchase.
- 1.3 “Services” means the services furnished by or on behalf of Vendor to the Town under this Agreement.
- 1.4 “Statement of Work” or “SOW” means the description of the Services, specifications, Deliverables, and the fees due in exchange for the same, attached hereto and incorporated herein as **Exhibit A**. Any pre-printed terms and conditions on a SOW or Purchase Order or on any Vendor issued documents are hereby rejected by the parties, and any such terms are hereby voided.

2 SERVICES AND DELIVERABLES

- 2.1 Services and Deliverables. Vendor shall perform the Services in a good and workmanlike manner and/or provide any goods or materials without damage in accordance with this Agreement and the SOW. Vendor represents and agrees that:
 - 2.1.1 Vendor is experienced, qualified, skilled and fully capable of performing the Services in a competent and professional manner;
 - 2.1.2 Vendor will exercise reasonable care and diligence, and will act in accordance with generally accepted standards of Vendor’s practice that are applicable in the area;
 - 2.1.3 Vendor shall comply with all applicable federal, state, and local laws, ordinances, codes, rules, and regulations;

- 2.1.4 Vendor shall possess all necessary qualifications, licenses, and certifications to perform the Services or provide the Deliverables;
 - 2.1.5 Vendor shall perform all work in a timely manner and in accordance with all schedules or agreed upon delivery dates;
 - 2.1.6 Vendor shall work in good faith with the Town to meet any requirements imposed by the federal or state government or other funding entity if grants are used to fund any portion of the work;
 - 2.1.7 Vendor shall ensure that the individual(s) signing this Agreement have the right and power to do so and bind Vendor to the obligations set forth herein, and such individual(s) warrant that they have such authority.
- 2.2 Amendment to Agreement. Either party may propose changes to the Statement of Work or this Agreement. In order to be effective, such changes must be mutually agreed to in a writing signed by both parties.

3 COOPERATION AND DELAYS

- 3.1 Cooperation. The parties agree to reasonably cooperate in good faith to ensure the successful completion of the SOW, including the dedication of necessary resources and personnel necessary to achieve completion within established timeframes and maintaining ongoing communications throughout the duration of the SOW. Town shall issue an initial Purchase Order in connection with this Agreement after approval in accordance with the contents of **Exhibit A**. The terms of this Agreement shall apply to any and all subsequent Purchase Orders issued either during the term of this Agreement or during the term of any renewal hereof.
- 3.2 Town Delay. The Town acknowledges that achieving the completion dates set forth in the SOW is contingent upon the Town's cooperation, including timely delivery to the Vendor of all reasonably requested content, materials, information, and approvals specified in the SOW. The Town shall be responsible for any delay in the Services and failure to meet the specified due dates to the extent such delay arises out of the Town's action or inaction or failure to provide any items reasonably requested by Vendor as set forth herein ("Town Delay").
- 3.3 Vendor Delay. Time is of the essence in the performance of this Agreement. In the event the SOW specifies a due date, and the Vendor is unable to meet the due date, Vendor shall promptly notify the Town of the delay. The Vendor shall be responsible for any delay in the Services and failure to meet the specified due dates to the extent such delay arises out of the Vendor's action or inaction, including the action or inaction of Vendor's employees, agents or subcontractors ("Vendor Delay"). For purposes of this Section, "Vendor" includes Vendor's employees, agents and all subcontractors working for Vendor. Whether a Vendor Delay constitutes a material breach of this Agreement shall be determined in the reasonable discretion of the Town.

4 PAYMENT AND ACCEPTANCE

- 4.1 Invoicing. Vendor shall invoice the Town for the fees payable for the Services and Deliverables to be provided by Vendor hereunder. Payments for Services and Deliverables accepted by the Town as set forth in this Agreement shall be due within forty-five (45) days from the date the Town receives an invoice for same. In the event the Town finds any part of an invoice not to be acceptable, it shall identify

to Vendor the part or parts which are not acceptable and shall pay the part or parts of the invoice which are acceptable. The Town shall have the right to deduct from payments to the Vendor any costs or damages incurred, or which may be incurred, by Town as a result of Vendor's failure to perform the Services, following reasonable notice and opportunity to cure such nonperformance by Vendor.

- 4.2 Expenses and Equipment. Unless otherwise agreed to in a writing signed by both parties, each party shall be solely responsible for its own expenses associated with performing its obligations under this Agreement, including but not limited to out of pocket expenses paid or incurred by the Vendor (such as travel, lodging, meals, gas, tolls, and mileage), as well as provision and maintenance of all equipment, tools, supplies, hardware, software, facilities, and other materials and services necessary for the performance of the Services and creation of the Deliverables. Town assumes no responsibility for the equipment or property of Vendor used in connection with the performance of its obligations hereunder and no insurance coverage provided to Town by Town's provider shall apply to said equipment or property.
- 4.3 Acceptance. All work performed pursuant to this Agreement is subject to inspection and approval by both (i) the Town, through its authorized employees or agents and (ii) the Town's Risk Management Department or insurance carrier, which may include without limitation inspection for functionality, as well as regulatory, environmental or occupational compliance. Vendor shall be responsible for the professional quality, technical accuracy, competence, methodology, and coordination of all services hereunder to the satisfaction of the Town.
- 4.4 Total Compensation. Unless otherwise agreed to in writing by the Town, the total amount of compensation payable by Town to all parties under this Agreement shall not exceed \$_____. This amount represents the total amount allocated for the services rendered or goods provided under this Agreement and may be increased only through an Amended Agreement executed by both parties.

5 PERSONNEL

- 5.1 Each Party shall be fully responsible for, and comply with all applicable laws, rules and regulations regarding any personnel performing obligations hereunder, including but not limited to any employees, contractors, subcontractors, consultants, agents, and representatives. Vendor shall provide the Town a listing of all key personnel and/or subcontractors performing the work, which shall be approved by the Town pursuant to this Agreement and designated on **Exhibit A**. Should Vendor use the services of a subcontractor, Vendor shall remain fully responsible for performance of all obligations it is required to perform under this Agreement. No changes in those personnel or subcontractors as designated shall occur without the prior written consent of Town, which shall not be unreasonably withheld, so long as the replacement personnel have the same or higher qualifications than the original personnel or subcontractor submitted and meets all other applicable standards. Should the Town determine in its discretion that any person on the project appears to be incompetent, disorderly, or otherwise unsatisfactory, Town shall notify Vendor in writing and such person shall be removed from the project and shall not again be employed on it except with the prior written consent of the Town. No automatic extension of the Agreement term will be granted for replacement of personnel or subcontractors.

6 TERM AND TERMINATION

- 6.1 Term. The term of this Agreement (the "Term") shall begin on the Effective Date and continue until _____, unless earlier terminated due to (i) termination for convenience as

provided for in Section 6.2 below; or (ii) termination for an Event of Default (as hereinafter defined) as provided for in Article 13 below.

- 6.2 Termination for Convenience. Either party may terminate this Agreement for convenience, without penalty or further liability, by providing thirty (30) days written notice to the non-terminating party. Upon receipt of notice of termination from the Town, the Town, at its election, can direct Vendor to complete any Services Vendor is currently performing or is contracted to perform and Vendor may complete the delivery of goods already in process prior to the date notice was given, provided that stopping said process is not feasible or practicable.
- 6.3 Termination For Convenience and Payments. If any payments are outstanding on the date of a termination for convenience, the Town will pay Vendor for any Services performed and Deliverables provided up to the date of notice of termination, and Vendor shall deliver to the Town any and all results of such Services and Deliverables.
- 6.4 Termination due to Event of Default and Payments. In the event of a termination due to an Event of Default by Vendor, Vendor shall be paid for any Services performed and Deliverables provided up to the date of notice of termination, less any costs or expenses incurred or anticipated to be incurred by the Town due to any errors or omissions of Vendor or by reason of Vendor's breach of this Agreement.

7 OWNERSHIP OF DOCUMENTS AND DELIVERABLES

- 7.1 Ownership of Documents and Deliverables. Town shall be granted, at no additional cost, ownership of all documents and Deliverables, including any reports, memorandum, drawings, specifications, plans, or other documents or goods which are, by their nature, designed to be delivered to the Town under this Agreement. Vendor shall deliver such documents or Deliverables prior to final payment, if not delivered earlier, or within 7 days after termination of this Agreement if this Agreement is terminated for any reason.
- 7.2 Other Projects. The Town may use such documents or Deliverables for any reason not related to this project without additional compensation to the Vendor. Such use by the Town for other projects shall be at the full risk of the Town.
- 7.3 Copyrightable Materials and Inventions. To the extent permitted by law, any copyrightable material or patentable inventions, including but not limited to drawings, photographs and videos, (herein the "Work Product"), shall be deemed a work for hire and all copyrights in such Work Product shall be the property of the Town. In the event it is determined by that any Work Product is not a work for hire under applicable law, the Vendor hereby assigns to the Town all copyrights, intellectual property rights, and any common law, statutory and other reserved rights to such works constituting the Work Product when and as created with the royalty-free, non-exclusive, worldwide, irrevocable right to reproduce, publish or otherwise use and to authorize others to use, the Work Product for Town purposes. Vendor agrees to execute any documents the Town requests to formalize this transfer and assignment of rights.

8 PUBLIC RECORDS

- 8.1 Vendor acknowledges and agrees that the Town is subject to the Public Records Act, as codified in Chapter 132 of the North Carolina General Statutes. By executing this Agreement, Vendor acknowledges that the Town is obligated to comply with the Public Records Act, which may be amended from time-to-time, and in so complying, the Town may disclose any and all information Vendor has

provided to the Town, including but not limited to, this Agreement and any correspondence from or to Vendor. Pursuant to G.S. 132-1.2(1), the Vendor may designate confidential information as a “trade secret” or “confidential” and upon the request of Vendor, the Town will not disclose such records that would otherwise be entitled to protection under G.S. 132-1.2(1). The Town will determine in its sole discretion whether such information is entitled to such protection under the Public Records Act. Should the Town withhold such information from any public records request at the request of Vendor, the Vendor shall indemnify and hold the Town harmless from any action or claim brought against the Town that such records are public. The Town shall not be liable to Vendor for disclosing this Agreement, or any documents or communications made or received in relation thereto, to any third party or the public at large, if such disclosure is made by Town in a good faith effort, within its sole discretion, to comply with any public records request or other applicable laws.

9 REPRESENTATIONS AND WARRANTIES

- 9.1 Mutual Representations and Warranties. Each of the parties represents and warrants to the other that (i) it has the full corporate power and authority to enter into this Agreement and to perform its obligations hereunder; (ii) the person executing this Agreement on behalf of such party has been authorized to do so; (iii) this Agreement does not conflict with or breach any Agreement between such party and a third party; (iv) in performing this Agreement, it will comply with all applicable laws, rules, and regulations, whether local, state or federal and that (v) it will obtain and maintain at its own expense all approvals, permissions, permits, licenses, and other forms of documentation or certification required for its performance under this Agreement, except to the extent expressly stated elsewhere herein.
- 9.2 Limitation on Contractual Authority. Notwithstanding anything in this Agreement to the contrary, for Agreements in amounts of Ninety Thousand Dollars (\$90,000.00) or more, only the Mayor on behalf of the Town Board of Commissioners or another specifically designated in writing by said person(s) to exercise their respective authority related to the Agreement shall be authorized to enter into, modify or otherwise bind the Town to the Agreement in any way. For any Agreement in an amount under Ninety Thousand Dollars (\$90,000.00), the Town Manager shall be authorized to enter into, modify or otherwise bind the Town to the Agreement; provided, however, that such authority has been granted and may be withdrawn at any time by the Town Board of Commissioners. Furthermore, the Town Manager shall have the authority to designate in writing Assistant Town Managers to enter into, modify or otherwise bind the Town to an Agreement not exceeding Thirty Thousand Dollars (\$30,000.00) and to authorize in writing other Town employees to enter into, modify or otherwise bind the Town to an Agreement not exceeding Ten Thousand Dollars (\$10,000.00); provided, however, that such authority has been granted and may be withdrawn at any time by the Town Board or the Town Manager as the case may be. Any such action shall be taken only by the signed written consent thereof, and no party shall rely upon any verbal communications or otherwise upon the authority of any other agent of the Town in lieu thereof. This provision shall apply to prevent any inadvertent or passive modification to the terms of the Agreement through communications between the parties as may otherwise be allowed by law, including but not limited to any such provision of the North Carolina Uniform Commercial Code, if applicable.
- 9.3 Services Warranty. Vendor represents and warrants that, subject to Vendor’s professional and ethical obligations, (i) the Services will be provided in a timely, professional, and workmanlike manner; (ii) Vendor personnel will have the requisite experience, skills, knowledge, training, licensure (as applicable) and education to perform the Services in accordance with this Agreement; and (iii) any goods, products, or work product which resulted from the Services will comply with all specifications contained in the SOW and be free from material defects for a period of one (1) year from the date the SOW is completed

as evidenced by final payment and a formal written acceptance from the Town, if required, unless a longer period is specified in the SOW or a longer period is necessitated due to a reported defect. Vendor shall, at its sole expense, obtain any and all licenses, permissions, approvals or similar consents required to perform this Agreement unless otherwise noted. Should there be any deficiency in the Deliverables noted by the Town for cure, even if final payment has been made, then said warranty period shall not begin until said deficiency is cured to the Town's satisfaction and a formal written acceptance is provided.

- 9.4 Intellectual Property. Vendor represents and warrants that all Deliverables provided shall be original and shall not infringe any copyright or violate any rights of any persons or entities whatsoever, except that Vendor shall not be responsible for any claim arising solely from Vendor's adherence to Town's written instructions or directions which do not involve items of Vendor's origin, design or selection. Should any Deliverable not be an original, Vendor warrants that it has obtained all necessary licenses and has the rights to use the copyright, trademark or other intellectual property rights regarding the Deliverable and to assign the same to Town if necessary. Vendor shall indemnify and hold harmless Town for any breach by Vendor of this warranty.
- 9.5 Goods and Materials. Vendor represents and warrants that all Deliverables, materials, supplies and/or goods provided or obtained by Vendor shall be free from defects, be of merchantable quality and appropriate for the use made thereof.
- 9.6 Applicable Law. Vendor shall have the sole responsibility to comply and to ensure compliance by any subcontractors with all local, state and federal laws pertaining to its performance under this Agreement and any SOW, including adherence to all applicable building or safety codes, life safety requirements, and the acquisition and expense of any required permits, licenses, approvals or similar consents. By way of example and not limitation, Vendor and all subcontractors Vendor hires shall comply, when applicable, with the Occupational Safety and Health Act of 1970 ("OSHA") and regulations relating thereto, The Occupational Safety and Health Act of North Carolina in Chapter 95 of Article 16 in the North Carolina General Statutes and any regulations relating thereto, the Americans with Disabilities Act of 1990 ("ADA"), the 2010 Americans with Disabilities Act Standards for Accessible Design and other laws or regulations relating thereto., the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendment and Reauthorization Act of 1986 (SARA) and related regulations of the Environmental Protection Agency ("EPA"). Town, in its sole discretion, may require Vendor or its subcontractors to submit a safety plan. Additionally, Vendor shall comply with any Town standards of conduct while on Town property or while performing work on behalf of the Town. Failure to comply with applicable law or other standards shall be grounds for immediate termination.

10 CONFLICTS OF INTEREST, GIFTS AND FAVORS

- 10.1 Vendor certifies that it is aware of and shall comply with all laws related to conflicts of interest, gifts, favors and the like, specifically including but not limited to G.S. §133-31, G.S. §133-32, and G.S. §14-234. Vendor hereby certifies it has no undisclosed conflicts of interest with respect to this Agreement, including but not limited to conflicts that may be due to representation of other clients, customer or vendees, other contractual relationships of Vendor, or any interest in property that Vendor may have. Furthermore, Vendor asserts it will not engage in any action that would create a conflict of interest for any Town employee or other person during performance of, or otherwise related to, this Agreement.

Should a conflict of interest arise during the term of this Agreement, Vendor shall immediately disclose said conflict in writing to Town. Violation of this section shall justify immediate termination of this Agreement.

11 INSURANCE

- 11.1 Town requires and Vendor agrees to obtain and provide proof of applicable insurance of the types and in the amounts as noted in **Exhibit B**, attached hereto and incorporated herein by reference, which is entitled Insurance Requirements. Vendor further agrees to provide proof of insurance by any subcontractor hired by Vendor upon the request of the Town. **Exhibit B** lists the basic requirements for all insurance policies, as well as the base insurance types and amounts required for all projects by Town. Additional coverages may be required based on job type, special risks, or high hazards. Any such additional coverages required shall be noted in **Exhibit C**, entitled Special Insurance Requirements, which is attached hereto and incorporated herein by reference. All coverages, whether base or special in nature, must be evidenced and confirmed by a COI provided to the Town prior to execution of this Agreement.

12 LIMITATION OF LIABILITY AND INDEMNIFICATION

- 12.1 Limitation of Liability. The Town shall not have any liability to Vendor for any lost profits, loss of business, loss of use, lost savings, or other consequential, special, incidental, indirect, exemplary, or punitive damages, even if the Vendor has been advised of the possibility of such damages.
- 12.2 Indemnification. Vendor shall hold harmless and indemnify the Town, and its officers and employees from any claim, expense, liability, loss, or damages, including reasonable attorneys' fees, by whomsoever brought or alleged, resulting from (a) any breach by Vendor of any term or condition of this Agreement or an amendment thereto, (b) any breach or violation by Vendor of any applicable federal, state, or local law, (c) any third party injury or death to any person; (d) any injury or death of Vendor or any employee, agent, or subcontractor working at the direction of the Vendor; or (e) any loss, damage, or destruction to any property, except to the extent such claims, expenses, loss, or other damage results from the negligence or intentional acts or omissions of the Town, its officers and employees, or any third party not under control or working at the direction of Vendor. The Town agrees to give the Vendor prompt written notice of any indemnifiable claim.
- 12.3 Intellectual Property Indemnification. Vendor shall indemnify and hold harmless Town against all loss, liability and damage, including costs and expenses (including reasonable attorneys' fees), by whomsoever brought or alleged, resulting from any action or claim brought or threatened alleging that the manufacture, use, sale, or resale of any goods or the Services supplied under this Agreement infringes any patent or patent rights, trademark, trade secret, copyright, or other intellectual property right of a third party and Vendor shall when notified, defend any action or claim of such infringement at its own expense. Vendor shall, at its expense, and upon approval of the Town, either (i) obtain for the Town the right to continue to use the goods or work product which resulted from the Services as intended, (ii) modify the goods or work product which resulted from the Services so that it becomes non-infringing, without materially altering the functionality, or (iii) replace the goods or work product which resulted from the Services with a functionally equivalent non-infringing good or Work Product.
- 12.4 Constitutional Limitation on Indemnification. The parties acknowledge and understand that an unlimited indemnification by Town constitutes a violation of the North Carolina Constitution and is void and

unenforceable by operation of law. Any indemnification given by Town to Vendor under the Agreement shall be deemed to be given only to the fullest extent allowed by law.

13 EVENT OF DEFAULT AND SURVIVAL

- 13.1 Default. An “Event of Default” hereunder means either party's failure to perform any of its obligations hereunder or to make adequate progress toward completion, which failure is not cured within ten (10) days after written notice from the non-defaulting party, or, in the event such failure cannot be reasonably cured within such ten (10) day period, such time period as is reasonable under the circumstances, not to exceed a total of thirty (30) days, provided the defaulting party shall promptly commence to cure and diligently prosecute same to completion. Additionally, the filing of bankruptcy by a party, any act of assignment or the appointment of a receiver for the benefit of creditors shall immediately be considered an Event of Default without any requirement for notice or opportunity to cure.
- 13.2 Rights upon Default. If an Event of Default occurs, either party will have all rights and remedies available to it at law or in equity, subject to any limitations of liability contained in this Agreement. In addition to such rights and remedies, the non-defaulting party also may declare this Agreement immediately terminated upon written notice.
- 13.3 Other Rights. In addition to any other remedies available by law, the Town shall have the right to deduct from payments to the Vendor any costs, damages, and expenses that have been or may be incurred by the Town as a result of an Event of Default of the Vendor under this Agreement.
- 13.4 Surviving Provisions. Upon the expiration of this Agreement, or if this Agreement is terminated for any reason whatsoever, the terms in the following provisions will survive: Articles 9, 11, 12, and 13.

14 CHOICE OF LAW AND VENUE.

- 14.1 Governing Law. This Agreement shall be governed by and interpreted according to the laws of the State of North Carolina, without regard to conflict of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.
- 14.2 Choice of Venue. The parties designate the state court of Iredell County, North Carolina exclusively as the proper venue for any dispute arising out of or related to this Agreement. Notwithstanding the foregoing, any dispute or controversy arising out of or relating to this Agreement, with the exception of any dispute as to the validity or binding effect of this Agreement, which is conclusively presumed, shall be first submitted to non-binding mediation in Iredell County, North Carolina under the rules governing court-ordered mediation in North Carolina. No services shall be delayed or postponed pending resolution of any dispute unless the Town otherwise agrees in writing. Non-binding mediation shall occur within 60 days after the dispute arises, unless an extension of time has been agreed to in writing by both parties.

15 MISCELLANEOUS.

- 15.1 Assignment. Vendor shall not assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of the Town. The Town’s consent to any assignment shall not relieve Vendor of any obligation under this Agreement. Any attempted assignment in violation of this Section 15.1 will be void and of no effect; and the non-assigning party may choose to treat the attempted assignment as an Event of Default under Section 13.1. This Agreement will be binding upon, and shall

inure to the benefit of, the parties hereto and their respective successors, permitted assigns, and legal representatives.

- 15.2 Independence of Parties. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent. Vendor is solely responsible for its Services and the supervision of its employees and permitted subcontractors. All persons assigned by Vendor to provide Services pursuant to this Agreement, shall, for all purposes of this Agreement, be considered employees of Vendor only. Vendor shall assume sole and exclusive responsibility for the payment of wages to individuals for services performed under this Agreement and the withholding of all applicable Federal, State, and local taxes, unemployment insurance, and maintaining workers compensation coverage in an amount and under such terms required by law. Should Vendor, any of its employees, subcontractors or subcontractors' employees be injured while performing under this Agreement, Vendor shall remain liable for the same and indemnify and hold Town harmless from any liability therefor, regardless of whether Vendor carries workers' compensation insurance coverage or not.
- 15.3 Integration. Each party acknowledges that this Agreement and the Statement of Work together constitute the entire Agreement and complete and exclusive statement of the terms and conditions between the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to the subject matter of this Agreement. This Agreement may not be modified or altered except by written instrument duly executed by both parties.
- 15.4 Force Majeure. Neither party will be responsible for any failure to perform due to causes beyond its reasonable control (each a "Force Majeure"), including, but not limited to, acts of God, war, riot, embargoes, acts of civil or military authorities, denial of or delays in processing of export license applications, fire, floods, earthquakes, accidents, strikes, or fuel crises, provided that the party claiming a delay or adverse effect due to Force Majeure gives prompt written notice thereof to the other party. The time for performance will be extended for a period equal to the duration of the Force Majeure, but in no event longer than thirty (30) days.
- 15.5 Notices. Unless otherwise specified in this Agreement, all notices and other communications hereunder shall be in writing and shall be sent by nationally recognized overnight courier (delivery confirmation requested) to the relevant party at the address listed on the front (or at such other address a party shall specify).

A copy of any notices to Town shall be addressed as follows:

To: Town of Mooresville
c/o Town Manager
P.O. Box 878
Mooresville, NC 28115

With copy to: Town of Mooresville
c/o Town Attorney
413 N. Main Street
Mooresville, NC 28115

A copy of any notices to Vendor shall also be sent to:

Notices and communications may also be sent by electronic mail, but such method shall not be a substitute for providing written notice as required by this Section 15.5.

- 15.6 No Waiver. No failure or delay by either party in exercising any right, power, or remedy will operate as a waiver of such right, power, or remedy, and no waiver will be effective unless it is in writing and signed by the waiving party. If either party waives any right, power, or remedy, such waiver will not be effective to waive any successive or other right, power, or remedy the party may have under this Agreement.
- 15.7 Captions. The captions used in this Agreement are for convenience of reference only, are not part of this Agreement, and will not be deemed to define, limit, describe, or modify the meaning of any provision of this Agreement.
- 15.8 Severability. The provisions of this Agreement will be deemed severable, and the unenforceability of one or more provisions will not affect the enforceability of any other provisions. In addition, if any provision of this Agreement is declared to be unenforceable, the parties will substitute an enforceable provision that, to the maximum extent possible under applicable law, preserves the original intentions and economic positions of the parties.
- 15.9 Counterpart Execution. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart to this Agreement by electronic mail in “.pdf” or other non-editable format shall be as effective as delivery of a manually signed original. Manually executed signatures are permitted but not required. Execution by other electronic signatures (including, without limitation, DocuSign, AdobeSign, and/or via stylus) are expressly permitted by the parties.
- 15.10 Contingent Funding/Non-Appropriations Clause. Notwithstanding anything to the contrary within the Agreement, all financial obligations of the Town under the Agreement are dependent upon, and subject to, the continuing allocation of funds by the Town Board of Commissioners for such purpose. The Agreement shall automatically terminate if such funds cease to be allocated or available for any reason.
- 15.11 Pre-Audit Requirement. Per NCGS § 159-28, no contract with a local government including the Town requiring the payment of any public funds is valid unless properly pre-audited in the manner required by said statute. This Agreement must contain a Pre-audit Certificate signed by the Town Finance Officer or their Deputy which shall take substantially the following form “This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.” Failure to obtain a pre-audit upon the contract makes the contract invalid and unenforceable per state law. Additionally, pursuant to Town purchasing policies, no obligation of \$1,000.00 or more for any goods sold or services rendered to Town is validly enforceable without a valid signed contract, or a signed Purchase Order, for such goods or services.
- 15.12 Construction Project Sales Tax. If applicable, the Vendor shall furnish the Town certified statements setting forth the cost of all materials purchased from each vendor and the amount of North Carolina sales and use taxes paid thereon. In the event the vendor makes several purchases from the same vendor, the

Vendor's certified statement shall indicate the invoice number, the inclusive dates of the invoices, the total amount of the invoices and the NC sales and use taxes paid thereon. The Vendor's certified statement shall also include the cost of any tangible personal property withdrawn from the Vendor's warehouse stock and the amount of NC sales or use tax paid thereon by the Vendor. The Vendor shall furnish such additional information as the Commissioner of Revenue of the State of NC may require to substantiate the refund claim by the Town for sales or use taxes. The Vendor shall obtain and furnish to the Town similar certified statements by the subcontractors. The certified statements to be furnished shall be in the form of the standard Vendor's State Sales Tax Report and shall be submitted with each request for payment. The Town will not make payment to the Vendor until the Vendor's State Sales Tax Reports are submitted. Any and all refunds received by the Town of said taxes shall remain with the Town and the Vendor shall provide Town with executed copies of all subcontracts.

15.13 Non-discrimination. During the performance of the Agreement, all parties agree not to discriminate against any employee or applicant for employment in terms of initial employment, tenure, terms of employment or otherwise because of race, color, religion, sex, national origin, political affiliation or belief, age, sexual orientation, ancestry, or disability that is unrelated to the individual's ability to perform the duties of a particular job or position, height, weight, or marital status. All parties will post, when appropriate, all notices related to nondiscrimination as may be required by applicable law. Vendor shall insert a non-discrimination clause in all subcontracts and require the same in any lower tier subcontracts. Vendor shall be responsible for compliance with this provision for Vendor, Vendor's employees, and all subcontractors of any tier.

15.14 E-verify. At all times during performance of this Agreement, all parties shall fully comply with Article 2 of Chapter 64 of the North Carolina General Statutes and shall ensure compliance by any subcontractors utilized. All parties shall execute an affidavit verifying such compliance upon request by Town. Vendor shall not knowingly employ unauthorized alien workers in violation of 8 U.S.C. §1324a or Section 274A of the Immigration and Nationality Act (INA). Evidence of any such violation by Vendor will be cause for immediate termination of this Agreement by Town. Vendor shall insert an E-verify clause of substantial similarity to this provision in all subcontracts and require the same in any lower tier subcontracts. Vendor shall be responsible for compliance with this provision for Vendor, Vendor's employees, and all subcontractors of any tier.

15.15 Contractual Conflict and Precedence. Notwithstanding any statement or provision in any later amendment or modification to this Agreement, the terms and conditions contained in this Agreement shall supersede, control over, and prevail in the event of any conflict with any differing or contrary terms or conditions of any related document unless the same is reduced in writing, signed separately by all parties, and attached to the Agreement labeled as "Additional Terms & Conditions" clearly referencing this provision and this Agreement, and specifically stating that it shall take precedence over and control in the event of a conflict with this Agreement.

15.16 No Waiver of Immunity. Nothing in this Agreement shall be construed to mandate purchase of insurance by the Town pursuant to G.S. § 160A-485 or to in any way waive the Town's defense of governmental immunity from any cause of action alleged or brought against any Party for any reason if otherwise available as a matter of law. No officer, agent, or employee of the Town shall be subject to any personal liability by reason of execution of this Agreement or any other documents related to the transactions contemplated hereunder. Such officers, agents, or employees shall be deemed to execute this Agreement in their official capacities only, and not in their individual capacities.

15.17 Performance of Governmental Functions. Nothing contained in this Agreement shall be deemed or construed to restrict or inhibit the Town’s police powers or regulatory authority.

15.18 No Third-Party Beneficiaries. This Agreement is intended for the benefit of the parties and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other person.

15.19 Federal Uniform Guidance Requirements and Funds. Vendor shall make all necessary inquiries to correctly identify the source of funding for this Agreement. If the source of funds for this Agreement is federal funds, the following federal provisions apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as applicable), unless a more stringent local or state law or regulation is applicable: Equal Employment Opportunity (41 C.F.R. Part 60); Davis-Bacon Act (40 U.S.C. §§3141-3148); Copeland “Anti-Kickback” Act (40 USC § 3145); Contract Work Hours and Safety Standards Act (40 USC §§3701-3708); Clean Air Act (42 USC §§ 7401-7671q.) and the Federal Water Pollution Control Act 33 U.S.C. §§ 1251-1387); Debarment and Suspension (Executive Orders 12549 and 12689); Byrd Anti-Lobbying Amendment (31 USC § 1352); Procurement of Recovered Materials (2 CFR §200.322); Record Retention Requirements (2 CFR §200.324); Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (2 C.F.R. § 200.216); and Domestic Preferences for Procurements (2 C.F.R. § 200.323). Should federal law require Vendor’s compliance with any of the foregoing federal provisions, then Vendor shall likewise insert such requirement in any contract with a subcontractor and be responsible for compliance with the same.

15.20 Divestment Acts. The Vendor hereby certifies that as of the date listed below, it is not on any of the Final Divestment Lists as created by the state Treasurer pursuant to The Sudan (Darfur) Divestment Act of 2007, as amended, The Iran Divestment Act of 2015, as amended, or the Divestment from Companies Boycotting Israel Act of 2017, as amended, respectively codified in NCGS §147-86.41 et seq., NCGS §147-86.55 et seq. and NCGS §147-86.80 et seq. Vendor shall not utilize in the performance of this Agreement any subcontractor that is identified on any Final Divestment List.

Each party has caused its duly authorized representative to execute and deliver this Agreement as of the Effective Date.

TOWN OF MOORESVILLE

VENDOR NAME

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

ATTEST: _____

ATTEST: _____

Date: _____

Date: _____

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

Date: _____

_____, Finance Director

EXHIBIT A
STATEMENT OF WORK

[Attached]

1. Purpose: [State your intended goals of the project in straight forward terms and complete sentences. No legal language required.]
2. Scope of work: [Typically this would be provided by the vendor, however, if the vendor provides you with marketing materials, this is a great place to add reference to those materials as part of the scope of work to be performed so long as those materials do not contain “terms and conditions” akin to a contract. Should you need to draft this yourself, please include all aspects of a project or service to be completed, both typical and incidental/occasional. For instance, instead of “Mow grass.” or “Lawn care” it would be preferable and more descriptive to say, “Mow grass on a weekly basis; edge all flower gardens & next to sidewalks and driveways; spray weeds as needed, collect and dispose of leaves in season and trim all bushes twice per year.”]
3. Payment Amounts/Rates & Milestones: [Please list all dates or milestones at which a payment is due and the applicable amount or rate (e.g., \$10,000 at commencement of work, balance at completion).]
4. Completion Date: [If there is a required time for completion of the work, insert the date here. If there are specific dates or a schedule for tracking milestones, insert the dates or schedule here.]
5. Location of Work: [Where will the services be provided?]
6. Required Personnel: [Contact name of project manager and key personnel working on project, etc.]
7. Miscellaneous: [Are there any unique items that would be important to you for this project not covered in the previous questions or unique concerns the service raises? This could include items such as restrictions to be imposed on either party during the agreement; specialized products or materials to be provided; alternate services based on an independent outcome; or the need for waivers if the service deals with minors or dangerous activities.]

**EXHIBIT B
INSURANCE REQUIREMENTS**

REQUIREMENTS FOR ALL INSURANCE POLICIES:

1. Insurers. All insurance shall be obtained from a licensed insurer, approved to do business in the State of North Carolina with an A.M. Best's Insurance Guide rating of A-VII or better, and the insurer must maintain said rating for the duration of this Agreement.
2. Occurrence and Claims Made Policies. Insurance must be written on an "occurrence" basis whenever possible. Certain policies may be written on a "claims made" basis with the approval of the Town's Risk Manager or his/her designee.
3. Required Notice. The Vendor's insurer must agree to provide a minimum thirty (30) days advance written notice of cancellation, material change or nonrenewal of policies required under the contract to the Town of Mooresville. Upon notice of such cancellation, material change or nonrenewal, Vendor shall procure substitute insurance so as to assure the Town that the minimum limits of coverage are maintained continuously during the term of this Agreement.
4. Certificate of Insurance. Prior to the execution of this Agreement, Vendor must provide Town a valid Certificate of Insurance ("COI") acceptable to Town to be retained in its records. The COI must reflect the required insurance coverages for the project contemplated in this Agreement, including all Services and Deliverables, as required. The description section of the COI must include the following statement: "The Town of Mooresville, its officers, officials, employees and volunteers are to be covered as additional insureds on the CGL policy with respect to liability."
5. Workers Compensation Insurance. Vendor must carry Workers' Compensation Insurance with statutory limits and Employers Liability Insurance as noted below.
6. Primary Coverage. Vendor's insurance shall be the primary coverage for any claims related to this Agreement, and the insurer shall have no right of recovery or subrogation against the Town, or its agents, it being the intention of the parties that the insurance policies shall protect the Town and be primary coverage for any and all losses covered by the policies.

BASE INSURANCE REQUIREMENTS

This section lists the base insurance amounts required for all projects by Town. Additional coverages may be required based on job type, special risks or high hazards. Any such additional coverages required shall be noted in **Exhibit C** entitled Special Insurance Requirements. All coverages must be evidenced and confirmed by a COI provided to the Town prior to execution of this Agreement.

- A. Commercial General Liability ("CGL"): The base CGL policy shall include the following coverages and be written on an Insurance Services Office ("ISO") industry form CG0001 2010 or newer:
 - a. \$500,000.00 Each Occurrence
 - b. \$500,000.00 Personal & Advertising Injury
 - c. \$500,000.00 Damages to Premises/Fire Legal
 - d. \$1,000,000.00 Product & Completed Operations Aggregate
 - e. \$1,000,000.00 General Aggregate

- B. Commercial Automobile Insurance Coverage: If the work or services provided hereunder include ANY of the following, then Vendor must provide Commercial Automobile Insurance Coverage:
- a. construction or remodeling work;
 - b. tree trimming, cutting or similar services;
 - c. landscaping services of any kind;
 - d. the use of vehicles to transport material, or complete work on the job site;
 - e. job sites and projects that are conducted on or near roadways or that would alter traffic to conduct the work; or
 - f. work that requires the use of one or more motor vehicles.

Coverage, if needed, shall be either (a) in the minimum amount of \$1,000,000.00, combined single limit or (b) \$500,000.00 per person, \$500,000.00 per occurrence, \$100,000.00 property damage, and \$1,000.00 medical payments.

- C. Workers' Compensation Insurance. If the Vendor employs three (3) or more employees at any one time, then the Vendor shall maintain Workers' Compensation affording protection under the Workers Compensation Law in an amount not less than the statutory limit at the time of the work. Additionally, Vendor shall obtain Employer Liability Insurance with the following minimum coverages: \$500,000.00 for bodily injury by accident –each accident; \$1,000,000.00 bodily injury by disease – each disease; and \$500,000.00 bodily injury by disease – each employee.

Workers' Compensation Certification. The North Carolina Workers' Compensation Act (the "Act") requires that all businesses which employ three or more employees (N.C.G.S. §97-2), including those operating as corporations, sole proprietorships, limited liability companies and partnerships, obtain workers' compensation insurance or qualify as self-insured employers for purposes of paying worker's compensation benefits to their employees. An employer is not relieved of its liability under the Act by calling its employees "independent contractors." Even if the employer refers to its workers as independent contractors and issues a Form 1099 for tax purposes, the Industrial Commission may still find that the workers were in fact employees, based upon its analysis of several factors, including but not limited to the degree of control exercised by the employer over the details of the work.

The Town of Mooresville requires all vendors and contractors working for the Town to provide evidence of worker's compensation insurance coverage unless excluded from coverage under North Carolina law. **By execution of this agreement, the Vendor is certifying compliance with the Act.**

EXHIBIT C
SPECIAL INSURANCE REQUIREMENTS

No additional insurance coverage is required beyond the base insurance requirements.

OR

The work or Services provided hereunder involve special risks or hazards in the opinion of the Town's Risk Department, then additional insurance coverage shall be required. This Agreement shall require the following additional insurance coverages:

Professional Liability Insurance

ADA Plan Compliance

Builder's Risk Insurance

Commercial General Liability (Level 2)

Commercial General Liability (Level 3)

Contractor's Pollution Liability ("CPL") Policy

Cyber Liability Insurance

Environmental, Health and Safety ("EHS") Plan

Traffic Control Plan ("TCP")_

Umbrella Liability Policy (Level 1)

Umbrella Liability Policy (Level 2)

Minimum coverage amounts and other applicable requirements will be noted below:

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