

CITY OF WESTMINSTER
REQUEST FOR PROPOSALS
FOR
PROFESSIONAL AUDITING SERVICES
Proposals due by May 2, 2024 at 2:00 PM

100 E Windsor St.
Westminster, SC 29730

CITY OF WESTMINSTER

REQUEST FOR PROPOSALS

TABLE OF CONTENTS

- I. INTRODUCTION
 - A. General Information
 - B. Term of Engagement

- II. NATURE OF SERVICES REQUIRED
 - A. General
 - B. Scope of Work to be performed
 - C. Auditing Standards to be followed
 - D. Reports to be issued
 - E. Special Considerations
 - F. Working Paper Retention and Access to Working Papers

- III. DESCRIPTION OF THE GOVERNMENT
 - A. Name and Telephone Number of Contact Persons/Organizational Chart/Location of Offices
 - B. Background Information
 - C. Fund Structure
 - D. Budgetary Basis of Accounting
 - E. Federal and State Financial Assistance
 - F. Pension and OPEB Plans
 - G. Component Units
 - H. Joint Ventures
 - I. Magnitude of Finance Operations
 - J. Computer Systems
 - K. Internal Audit Function
 - L. Availability of Prior Reports and Working Papers
 - M. Special Reporting Requirement

- IV. TIME REQUIREMENTS
 - A. Proposal Calendar
 - B. Notification and Contract Dates
 - C. Date Audit May Commence
 - D. Schedule for the June 30, 2024 Fiscal Year Audit
 - 1. Interim Work
 - 2. Detail Audit Plan and Programs
 - 3. Fieldwork
 - 4. Draft Reports
 - E. Entrance Conferences, Progress Reporting and Exit Conferences
 - F. Date Final Report is due

- V. ASSISTANCE TO BE PROVIDED TO THE AUDITOR AND REPORT PREPARATION
 - A. Finance Department and Clerical Assistance
 - B. Electronic Data Processing (EDP) Assistance
 - C. Statements and Schedules to be prepared by the Staff of the City of Westminster
 - D. Work Area and Photocopying
 - E. Report Preparation

- VI. PROPOSAL REQUIREMENTS
 - A. General Requirements
 - 1. Pre-proposal Conference
 - 2. Inquiries
 - 3. Submission of Proposals

 - B. Technical Proposal
 - 1. General Requirements
 - 2. Independence
 - 3. License to Practice in South Carolina
 - 4. Firm Qualifications and Experience
 - 5. Partner, Supervisory and Staff Qualifications and Experience
 - 6. Similar Engagements with Other Government Entities
 - 7. Specific Audit Approach

 - C. Dollar Cost Bid
 - 1. Total All-Inclusive Maximum Price
 - 2. Manner of Payment

- VII. EVALUATION PROCEDURES
 - A. Evaluation Criteria
 - 1. Mandatory Elements
 - 2. Technical Qualifications
 - 3. Price

 - B. Oral Presentations
 - C. Final Selection
 - D. Right to Reject Proposals

APPENDICES

- A. Organizational Chart
- B. List of Key Personnel, Office Locations, and Telephone Numbers
- C. Proposer Guarantees
- D. Proposer Warranties
- E. Format for Schedule of Professional Fees and Expenses
- F. Terms & Conditions
- G. City of Westminster's Standard Contract for Professional Services

CITY OF WESTMINSTER
REQUEST FOR PROPOSALS

I. INTRODUCTION

A. General Information

The City of Westminster (the "City") is requesting proposals from qualified firms of certified public accountants to audit its financial statements for the fiscal year ending June 30, 2024, with the option of auditing its financial statements for each of the three subsequent fiscal years.

The audit will encompass a financial and compliance examination of the unit's Annual Comprehensive Financial Report (ACFR) in accordance with the laws and/or regulations of the State of South Carolina. The financial and compliance audit will cover federal, state, and local funding sources in accordance with generally accepted auditing standards; Government Auditing Standards, July 2011 revisions; the Single Audit Act of 1984; the Single Audit Act Amendments of 1996; the provisions of *Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance)* and all other applicable laws and regulations.

There is no expressed or implied obligation for the City to bear costs or reimburse responding firms for any expenses incurred in preparing proposals in response to this request.

A preproposal conference for all the firms interested in submitting a proposal will be held at 2:00 p.m. on April 17, 2024 in the Conference Room at City Hall, 100 E. Windsor Street, Westminster, S.C. to answer questions about the engagement. The preproposal conference will also be remotely accessible via a Microsoft Teams meeting. After this preproposal conference, any inquiries concerning the request for proposals should be addressed to the City in writing, not later than five (5) working days prior to the bid opening, April 26, by 12:00pm (These requests should be e-mailed to rosbon@westminstersc.org). If you want to be invited to the Teams meeting, please email your request rosbon@westminstersc.org at least a day prior to the meeting.

All questions will be answered, and any changes will be communicated through a written addendum and posted to the City's website. It is the responsibility of the Bidder to check the website for any of this information prior to submitting a bid. Failure to request such clarification is a waiver of any claim by the Bidder for additional expenses because its interpretation was different from the City's. To be considered, the sealed proposal must be received by Reagan Osbon at Westminster City Hall, 100 E Windsor Street, Westminster, S.C. 29693 by 2:00 p.m. May 2, 2024. The City of Westminster reserves the right to reject any or all

proposals submitted.

Proposals submitted will be evaluated by the City Administrator, Assistant to the City Administrator, Budget and Management Analyst, and Clerk, as well as any other staff as delegated by the City Administrator.

During the evaluation process, the members of this group reserve the right, where it may serve the City's best interest, to request additional information or clarifications from proposers, or to allow corrections of errors or omissions.

The City reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the firm of the conditions contained in this request for proposals, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the City and the firm selected.

It is anticipated the recommendation of a firm will be completed by May 9, 2024. Following a formal award by City Council at their meeting on May 14, 2024, the selected firm will be notified and it is expected a contract will be executed between both parties within 30 days after that date.

B. Term of Engagement

A four-year contract is contemplated, the satisfactory negotiation of terms (including a price acceptable to both the City and the selected firm), the concurrence of the City and the annual availability of an appropriation.

C. Contract

The selected firm will be required to use the **City of Westminster's standard contract for professional services**. (See Attached Appendix G)

II. NATURE OF SERVICES REQUIRED

A. General

The City of Westminster (the "City") is soliciting the services of qualified firms of certified public accountants to audit its financial statements for the fiscal year ending June 30, 2024, with the option to audit the City's financial statements for accordance with the provisions contained in this request for proposals.

B. Scope of work to be performed

The City will include its financial statements in an Annual Comprehensive Financial Report ("ACFR"). The auditor is to provide an audit report on the fair presentation of that set of financial statements sufficient to satisfy the requirements of the Government Finance Officers Association's Certificate of Achievement Program and in a form that complies with the AICPA's definition of

the appropriate form of the independent auditor's report for audits of GASB 34 governments as defined in its current edition of *Audits of State and Local Government Units*. The audit must also cover the City's Schedule of Expenditures of Federal Awards, which will be included in the ACFR.

C. Single Audit

The City may require a Single Audit to be completed in Fiscal Years during the contract period that it meets the federal assistance threshold as set by the US Office of the Inspector General (OIG). The Single Audit must meet the most up to date requirements set forth by the OIG, GAAP, and other relevant regulations as outlined in this document.

D. Auditing Standards to be followed

To meet the requirements of this request for proposals, the audit shall be performed in accordance with generally accepting auditing standards as set forth by the American Institute of Certified Public Accountants, the standards for financial audits set forth in the U.S. Comptroller General's *Government Auditing Standards*, the provisions of the Single Audit Amendments of 1996 and the provisions of U.S. Office of Management and Budget Uniform Guidance.

E. Reports to be issued

Following the completion of the audit of the fiscal year's financial statements, the auditor shall issue:

1. A report on the fair presentation of the basic financial statements in conformity with generally accepted accounting principles and on the supplementary schedule of expenditures of federal awards.
2. A report on compliance and on internal control over financial reporting based on an audit of financial statements performed in accordance with *Government Auditing Standards*.
3. A report on compliance with requirements applicable to each major federal financial assistance program and on internal control over compliance in accordance with the Uniform Guidance.
4. A schedule of findings and questioned costs.
5. A summary of prior year findings.

In the required report on internal controls, the auditor shall communicate any control deficiencies found during the audit. A control deficiency shall be defined

as a significant deficiency in the design or operation of the internal control structure, which could adversely affect the organization's ability to record, process, summarize and report financial data consistent with the assertions of management in the financial statements. Control deficiencies that are also material weaknesses shall be identified as such in the report.

The report on compliance shall include all material instances of noncompliance.

Fraud and illegal acts. Auditors shall be required to make an immediate, written report of all fraud and illegal acts or indications of illegal acts of which they become aware to the Mayor and City Administrator.

Reporting to the City Council. Auditors shall assure themselves that the City's Mayor and Council and City Administrator are informed of each of the following:

1. The auditor's responsibility under generally accepted auditing standards
2. Significant accounting policies
3. Management judgments and accounting estimates
4. Significant audit adjustments
5. Other information in documents containing audited financial statements
6. Disagreements with management
7. Management consultation with other accountants
8. Major issues discussed with management prior to retention
9. Difficulties encountered in performing the audit

F. Special Considerations

1. The Schedule of Expenditures of Federal Awards and related auditor's report, as well as the reports on the internal controls and compliance are to be issued as part of the annual comprehensive financial report.

G. Working Paper Retention and Access to Working Papers

All working papers and reports must be retained, at the auditor's expense, for a minimum of three (3) years, unless the firm is notified in writing by the City of the need to extend the retention period. The auditor will be required to make working papers available, upon request, to the following parties or their designees:

City of Westminster

U.S. Department of Housing and Urban Development

U.S. General Accounting Office (GAO)

Parties designated by the federal or state governments or by the City as part of an audit quality review process.

Auditors of entities of which the City is a subrecipient of grant funds (the State of South Carolina)

In addition, the firm shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

III. DESCRIPTION OF THE GOVERNMENT

A. Name and Telephone Number of Contact Persons/Organizational Chart/Location of Offices

The auditor's principal contact with the City will be Kevin Bronson, City Administrator (phone (864) 647-3200, or a designated representative, who will coordinate the assistance to be provided by the City to the auditor.

An organizational chart (Appendix A) and a list of key personnel (Appendix B) are attached.

B. Background Information

The City serves an area of approximately 3.5 square miles with a population of 2,353 (2020). The City's fiscal year begins on July 1 and ends on June 30.

The City provides the following services to its citizens:

1. Residential and commercial sanitation
2. Water, sewer, electric, and limited storm water management service
3. Police and fire protection
4. Parks, recreation, and tourism services

The City has a total payroll of approximately \$2.5 million covering approximately 50 full time employees.

The City is organized into seven departments. The accounting and financial reporting functions of the City are centralized in the Administration Department.

More detailed information on the government and its finances can be found in annual budgets, annual comprehensive financial reports and official statements available online at www.westminstersc.org/government/.

C. Fund Structure

The City uses the following fund types and account groups in its financial reporting:

<u>Fund Type/Account Group</u>	<u>Number of Individual Funds</u>
General fund	1
Special revenue funds	4
Enterprise funds (including bond construction funds)	2
Permanent fund	1
Custodial finds	2

D. Budgetary Basis of Accounting

The City prepares both the general fund and utility enterprise fund budgets on the modified accrual basis, which is consistent with the basis of accounting for its general fund, but not for its utility enterprise fund, for which the full accrual basis of accounting is used. The City Council does routinely adopt budget amendments, usually in January or February of each year.

E. Federal and State Financial Assistance

During the fiscal year to be audited, the City will likely receive over \$6 million in federal or state financial assistance from eight to ten federal agencies (some of which federal funding passes through various State agencies). Typically, one or more grant programs will qualify as Major Federal Financial Assistance Programs.

F. Pension and OPEB Plans

The City participates in the following pension plans:

South Carolina Retirement System and South Carolina Police Officers Retirement System, both of which are defined benefit cost-sharing multiple-employer public employee retirement systems. Actuarial services for these plans are provided by the State of South Carolina.

South Carolina Deferred Compensation Commission 401(k) and 457 Plans open to all employees.

The City has implemented the provisions of GASB Statement No. 68, *Accounting and Financial Reporting for Pensions*.

The City has implemented the provisions of GASB Statement No. 75, *Accounting and Financial Reporting for Postemployment Benefits other than Pensions*.

G. Component Units

The City is defined, for financial reporting purposes, in conformity with the Governmental Accounting Standards Board's Codification of Governmental Accounting and Financial Reporting Standards, Section 2100. Using these criteria, a component unit is included in the City's financial statements.

The management of the City identified the following component unit for inclusion in the City's financial statements:

This component unit is to be audited as part of the audit of the City's financial statements. Additionally, separate financial statements are issued for the component unit, and a separate audit opinion on those statements is required. All records for the organization are maintained by City staff and are kept on City premises.

H. Joint Ventures

The City does not participate in joint ventures with other governments.

I. Magnitude of Finance Operations

The Administration Department is headed by Kevin Bronson and consists of 4 employees, with additional utility billing and payment clerks. The principal functions performed, and the number of employees assigned to each function are as follows:

<u>Function</u>	<u>Number of Employees</u>
Administration	2
Accounting	2*
Utility Customer Service and Collections	2
Risk Management	2**

*Because of limited staff availability, there is redundancy in roles each staff member can perform. Accounting employees will often fill in for collections clerks when needed.

** Risk Management Staff are the same two employees as accounting.

J. Computer Systems

Most of the City's general ledger, accounts payable, payroll and fixed assets accounting presently runs in a client server environment using Financial and Utility billing software from QS1, a subsidiary of Springbrook. The systems have been in place for over 20 years and are overseen by the City Clerk, with software support from Springbrook. Further information on the City's computer systems may be obtained by contacting Rebecca Overton at the City's regular mailing address or by calling (864) 647-3202.

The City retains Jason White, CPA/PFS, CFP, ABV, CFE, CKA, of Payne, White, and Schmutz Certified Public Accountants, PA, who can be reached at 864-882-1937.

K. Internal Audit Function

The City does not, at present, maintain an internal audit function.

L. Availability of Prior Audit Reports and Working Papers

Interested proposers who wish to review prior years' audit reports can view several prior year ACFR's on the City's website, www.westminstersc.org/government/ under "financial transparency." The City will use its best efforts to make prior audit reports and supporting working papers available to proposers to aid their response to this request for proposals.

M. Special State Reporting Requirements

SC Code of Laws Section 14-1-208 requires that the annual audit include a review of accounting controls over court assessments and further requires the City to include, in its audited financial statements, a supplementary schedule detailing the disposition of court assessments and amounts required to be used for victim services activities. The law requires that the schedule be included in the external auditor's report by an "in relation to" paragraph as required by generally accepted auditing standards when information accompanies the basic financial statements in auditor-submitted documents. The law allows up to \$1,000 to be paid from fines and assessments to the auditor for the actual cost of preparing the schedule after the audit is submitted to the State Treasurer along with a statement of the actual cost incurred.

IV. TIME REQUIREMENTS

A. Proposal Calendar

The following is a list of key dates up to and including the date proposals are due to be submitted:

Request for proposal issued	04/02/2024
Pre-proposal conference	04/17/2024
Due date for proposals	05/02/2024

Recommendation and City Council action 05/14/2024

B. Notification and Contract Dates

Selected firm notified 05/17/2024

Contract date not later than (unless otherwise agreed to by both parties) 05/31/2024

C. Date Audit May Commence

The City will be available for an entrance conference and interim work, at the discretion of the auditor at any time on or after June 3, 2024.

D. Schedule for the June 30, 2024 Fiscal Year Audit (A similar time schedule will be developed for audits of future fiscal years).

Each of the following should be completed by the auditor no later than the dates indicated.

1. Interim Work

The auditor shall complete any interim work by June 30, 2024.

2. Detailed Audit Plan

The auditor shall provide the City by June 30, 2024, both a detailed audit plan and a list of all schedules to be prepared by the City's staff.

3. Fieldwork

City staff will have the books closed and all schedules prepared for final fieldwork to begin by September 20, 2024. The auditor can begin field work on or after that date but should complete all fieldwork by October 25, 2024.

4. Reports

The auditor shall have drafts of the audit reports and recommendations to management available for review by the City Administrator by November 27, 2024.

5. The auditor shall present the final report to City Council on December 10, 2024.

E. Entrance Conferences, Progress Reporting and Exit Conferences (A similar time schedule will be developed for audits of future fiscal years).

These conferences should be held periodically to update the City Administrator with the progress of the work, the nature of any problems encountered, and the projected completion date of the audit. Entrance and exit conferences should be held annually.

F. Date Final Report is due

The auditor shall provide all recommendations, revisions, and suggestions for improvement to the City Administrator by November 27, 2024. A revised report, including draft auditor's reports shall be delivered to the City Administrator by December 8, 2024.

The City Administrator will complete their review of the draft report as expeditiously as possible. Once any issues for discussion are resolved, the final signed report shall be delivered to the City within three working days. It is anticipated that this process will be completed, and the final auditors' reports delivered by December 8, 2024.

A signed copy of the final report suitable for insertion into the ACFR should be delivered electronically to the City Administrator at City Hall, and printed copies should be made available to City Council, the City Administrator, and Staff as requested.

The auditor shall present the completed 2024 Audit to City Council at its December 10, 2024 meeting.

V. ASSISTANCE TO BE PROVIDED TO THE AUDITOR AND REPORT PREPARATION

A. Clerical Assistance

The City staff will be available during the audit to assist the firm by providing information, documentation, and explanations.

B. Electronic Data Processing (EDP) Assistance

EDP personnel will be available to provide systems documentation and explanations. The auditor will not be provided computer time and the use of the City's computer hardware and software, except for routine testing of controls.

C. Statements and Schedules to be prepared by the Staff of the City

The staff of the City or the City's contracted accountant will prepare any statements and schedules for the auditor which its level of expertise and available time allows. The City prepares a full set of financial statements to be audited (including notes).

D. Work Area and Photocopying

The City will provide the auditor with reasonable work space, desks and chairs. The auditor will also be provided with access to photocopying facilities.

E. Report Preparation

It is anticipated that the auditor will be integrally involved in substantive review and editing throughout the report preparation process.

VI. PROPOSAL REQUIREMENTS

A. General Requirements

1. Pre-proposal Conference and On-site Inspections

A conference for firms interested in submitting proposals will be held at 10:30 a.m. on April 17, 2024 in the Conference Room at City Hall, 100 E Windsor Street, Westminster, South Carolina. Both verbal and written questions will be accepted during the conference. The preproposal conference will also be remotely accessible via a Microsoft Teams meeting. If you want to be invited to the Teams meeting, please email your request to rosbon@westminstersc.org at least a day prior to the meeting.

2. Inquiries

Inquiries concerning the request for proposals and the subject of the request for proposals should be made to:

Reagan Osbon, Assistant to the City Administrator
rosbon@westminstersc.org

3. Submission of Proposals

The following material is required to be received by May 2, 2024 by 2:00pm for a proposing firm to be considered:

a. A Technical Proposal to include the following:

I. Title Page

Title page showing the request for proposals subject; the firm's name; the name, address, and telephone number of the contact person; and the date of the proposal.

ii. Table of Contents

iii. Transmittal Letter

A signed letter of transmittal briefly stating the proposer's understanding of the work to be done, the commitment to perform the work within the time period, a statement why the firm believes itself to be best qualified to perform the engagement and a statement that the proposal is a firm and irrevocable offer for 60 days.

iv. Detailed Proposal

The detailed proposal should follow the order set forth in Section VI B of this request for proposals.

v. Executed copies of Proposer Guarantees and Proposer Warranties, attached to this request for proposal (Appendix D and Appendix E)

- b. Proposers should send the completed proposal to the following address:

Kevin Bronson, City Administrator
P.O . Box 399
Westminster, SC 29693

Hand Delivery to:
Kevin Bronson, City Administrator
100 E Windsor Street
Westminster, SC 29693

The City will not be responsible for late submissions caused by the postal service or any other delivery problems.

B. Technical Proposal

1. General Requirements

The purpose of the Technical Proposal is to demonstrate the qualifications, competence and capacity of the firms seeking to undertake an independent audit of the City in conformity with the requirements of this request for proposals. As such, the substance of proposals will carry more weight

The Technical Proposal should address all the points outlined in the request for proposals. The Proposal should be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to satisfy the requirements of the request for proposals. While additional data may be presented, the following subjects, items Nos. 2 through 7, must be included. They represent the criteria against which the proposal will be evaluated.

2. Independence

The firm should provide an affirmative statement that is independent of the City as defined by generally accepted auditing standards / the U.S. General Accounting Office's *Government Auditing Standards*. The firm also should provide an affirmative statement that it is independent of all of the component units of the City as defined by those same standards.

3. License to Practice in South Carolina.

An affirmative statement should be included that the firm and all assigned key professional staff are properly registered or licensed to practice in South Carolina.

The firm is required to have a current City of Westminster business license during the time it is conducting the audit in Westminster.

4. Firm Qualifications and Experience

The proposer should state the size of the firm, the location of the office from which the work on this engagement is to be performed and the number and nature of the professional staff to be employed in this engagement on a full-time basis and the number and nature of the staff to be so employed on a part-time basis.

If the proposer is a joint venture or consortium, the qualifications of each firm comprising the joint venture or consortium should be separately identified and the firm that is to serve as the principal auditor should be noted, if applicable.

The firm shall also provide information on the results of any federal or

state desk reviews or field reviews of audits performed by its office during the past three (3) years. In addition, the firm shall provide information on the circumstances and status of any disciplinary action taken or pending against its office during the past three (3) years with state regulatory bodies or professional organizations.

5. Partner, Supervisory and Staff Qualifications and Experience

Identify the principal supervisory and management staff, including engagement partners, managers, other supervisors and specialists, who would be assigned to the engagement. Indicate whether each such person is registered or licensed to practice as a certified public accountant in South Carolina. Provide information on the government auditing experience of each person.

Engagement partners, managers, other supervisory staff and specialists may be changed if those personnel leave the firm, are promoted or are assigned to another office. However, in any case, the City retains the right to approve or reject replacements.

Consultants and firm specialists mentioned in response to this request for proposal can only be changed with the express prior written permission of the City, which retains the right to approve or reject replacements.

Other audit personnel may be changed at the discretion of the proposer provided that replacements have substantially the same or better qualifications or experience.

6. Similar Engagements with Other Government Entities

List the most significant engagements (minimum – 3) performed in the last five years that are similar to the engagement described in this request for proposal. Note any experience with utility enterprise fund accounting and auditing. Indicate the scope of work, date, engagement partners and the name and telephone number of the principal client contact.

7. Specific Audit Approach

The proposal should briefly set forth a work plan, including an explanation of the audit methodology to be followed, to perform the services required in Section II of this request for proposal including the level of staff and number of hours to be assigned to the major segments of the engagement.

C. Dollar Cost Bid

1. Total All-Inclusive Maximum Price

The dollar cost bid should contain all pricing information relative to performing the audit engagement as described in this request for proposal. The total all-inclusive maximum price to be bid is to contain all direct and indirect costs including all out-of-pocket expenses.

The City will not be responsible for expenses incurred in preparing and submitting the proposal. Such costs should not be included in the proposal.

The dollar cost bid should include the following information:

- a. Name of Firm
- b. Certification that the person signing the proposal is entitled to represent the firm, empowered to submit the bid, and authorized to sign a contract with the City.
- c. A Total All-Inclusive Maximum Price for each of the 2024-2027 engagements.

2. Manner of Payment

Progress payments will be made on the basis of hours of work completed during the course of the engagement and out-of-pocket expenses incurred in accordance with the firm's dollar cost bid proposal. Interim billing shall cover a period of not less than a calendar month. Final payment of as much as 10% of the annual fee will be made only after delivery of all final reports.

VII. EVALUATION PROCEDURES

A. Evaluation Criteria

Proposals will be evaluated using three sets of criteria. Firms meeting the mandatory criteria will have their proposals evaluated for both technical qualifications and price. The following represent the principal selection criteria which will be considered during the evaluation process.

1. Mandatory Elements

- a. The audit firm is independent and licensed to practice in South Carolina.
- b. The firm has no conflict of interest with regard to any other work performed by the firm for the City.
- c. The firm adheres to the instructions in this request for proposal on

preparing and submitting the proposal.

- d. The firm submits a copy of its last external quality control review report and the firm has a record of quality audit work.

2. Technical Quality

a. Expertise and Experience

- (1) The firm's past experience and performance on comparable government engagements
- (2) The quality of the firm's professional personnel to be assigned to the engagement and the quality of the firm's management support personnel to be available for technical consultation

b. Audit Approach

Adequacy of proposed staffing plan for various segments of the engagement

3. Price

Cost will not be the only factor in the selection of an audit firm.

B. Oral Presentations

During the evaluation process, the City Administrator, may, at their discretion, request any one or all firms to make oral presentations. Such presentations will provide firms with an opportunity to answer any questions administration may have on a firm's proposal. Not all firms may be asked to make such oral presentations.

C. Final Selection

The City Council will select a firm after receiving the recommendation of the City Administrator.

It is anticipated that a firm will be selected by May 14, 2024. Following notification of the firm selected, it is expected a contract will be executed between both parties by May 17, 2024.

D. Right to Reject Proposals

Submission of a proposal indicates acceptance by the firm of the conditions contained in this request for proposal unless clearly and specifically noted in the

proposal submitted and confirmed in the contract between the City and the firm selected.

The City reserves the right without prejudice to reject any or all proposals.

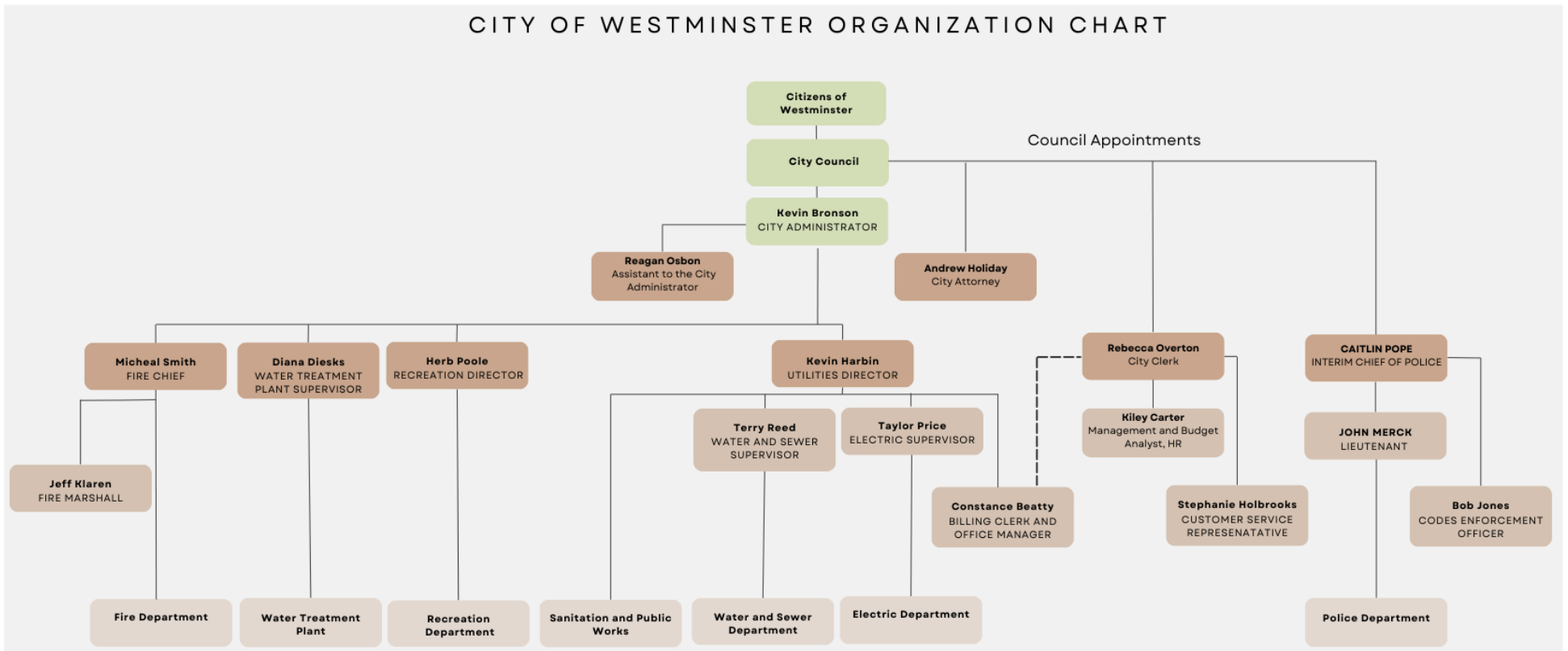
E. Right to Waive Technicalities

The City reserves the right to waive technicalities in its evaluation of all proposals.

APPENDICES

- A. Organizational Chart
- B. List of Key Officials and Office Locations
- C. Proposer Guarantees
- D. Proposer Warranties
- E. Format for Schedule of Professional Fees and Expenses
- F. Format for Schedule of Additional Professional Fees
- G. City of Westminster's Standard Contract for Professional Service

Appendix A: City of Westminster Organization Chart



APPENDIX B

LIST OF KEY PERSONNEL, OFFICE LOCATIONS AND
TELEPHONE NUMBERS

<u>Name and Title</u>	<u>Location of Office</u>
Brian Ramey, Mayor	City Hall Conference Room (Meeting only)
Kevin Bronson, City Administrator	City Hall
Rebecca Overton, City Clerk	City Hall
Kiley Carter, Management and Budget Analyst	City Hall
Reagan Osbon, Assistant to the City Administrator	City Hall
Constance Baty, Billing Clerk	Utility Shop
Andrew Holiday, City Attorney (Derrick, Ritter, Williams, and Morris P.A.)	
Jason White, CPA/PFS, CFP (Payne, White, and Schmutz Certified Public Accountants, PA)	

PROPOSER GUARANTEES

Note: Proposer may use any word processor, spreadsheet, or other formatting tool to provide this information rather than typing amounts into this schedule as long as all requested information is provided

The proposer certifies it can and will provide and make available, as a minimum, all services set forth in Section II, Nature of Services Required.

Signature of Official:

Name (typed):

Title:

Firm:

Date:

PROPOSER WARRANTIES

Note: Proposer may use any word processor, spreadsheet or other formatting tool to provide this information rather than typing amounts into this schedule as long as all requested information is provided

- A. Proposer warrants that it is willing and able to comply with State of South Carolina laws with respect to foreign (non-state of South Carolina) corporations.
- B. Proposer warrants that it is willing and able to obtain an errors and omissions insurance policy providing a prudent amount of coverage for the willful or negligent acts, or omissions of any officers, employees or agents thereof.
- C. Proposer warrants that it will not delegate or subcontract its responsibilities under an agreement without the prior written permission of the City of Westminster.
- D. Proposer warrants that all information provided by it in connection with this proposal is true and accurate.

Signature of Official:

Name (typed):

Title:

Firm:

Date: _____

**SCHEDULE OF PROFESSIONAL FEES AND EXPENSES
FOR THE AUDITS OF THE 2024-2027 FINANCIAL STATEMENTS**

Note: Proposer may use any word processor, spreadsheet or other formatting tool to provide this information rather than typing amounts into this schedule as long as all requested information is provided.

Separate fee for actual cost of audit of Supplementary
schedule of Court Assessments, not to exceed \$1000 per year
if firm is proposing to bill this separately (see III N.) _____

Out-of-pocket expenses, meals and lodging, transportation and any other expenses should be included in the total all-inclusive maximum prices below.

Firms may propose total all-inclusive maximum prices below.

Total all-inclusive maximum price for June 30, 2024 audit _____

Total all-inclusive maximum price for June 30, 2025 audit _____

Total all-inclusive maximum price for June 30, 2026 audit _____

Total all-inclusive maximum price for June 30, 2027 audit _____

Total all-inclusive maximum price for June 30, 2024 single audit _____

Total all-inclusive maximum price for June 30, 2025 single audit _____

Total all-inclusive maximum price for June 30, 2026 single audit _____

Total all-inclusive maximum price for June 30, 2027 single audit _____

1.0 Terms & Conditions

1.1 Insurance: Company agrees that Company shall keep and maintain general automobile liability insurance in the amount of \$ 1,000,000 per occurrence for each vehicle and \$1,000,000 in aggregate for all vehicles which Company brings onto City property or use in any manner in the provision of services, including transportation to and from the site (s) where the services are rendered; and Company further agrees that Company shall maintain general liability insurance in the amount of at least \$2,000,000 per incident/occurrence and \$2,000,000 in aggregate for all incidents/occurrence during the policy period; and Company agrees that Company shall maintain Worker's Compensation Insurance on all of the Company's employees. In no event shall Company serve as self-insurer for the purpose of Workers Compensation Insurance.

Company also agrees that Company shall provide, in a form acceptable to City, certificates of Worker's Compensation Insurance, Automobile Liability Insurance, and General Liability Insurance.

Company must also hold and maintain Professional Liability Insurance in the following amounts: -\$2,000,000.00 per claim, \$2,000,000.00 aggregate

1.2 Illegal Immigration Reform Act Compliance: The bidder certifies that it will comply with South Carolina Code of Laws Sections 8-14-10 through 8-4-90 (as amended) titled, "Unauthorized Aliens and Public Employment," and agrees to provide to the City any documentation required to establish, as applicable, (i) the inapplicability of such laws to the bidder, its subcontractor(s) and its sub-subcontractor(s); and (ii) the compliance with these laws by the bidder, its subcontractors and its sub-subcontractors.

1.3 Indemnification: Contractor shall indemnify and hold harmless the City from and against all liability, loss, damages, or injury, and all costs and expenses (including attorneys' fees and costs of any suit related thereto), suffered or incurred by the City, to the extent arising from Contractor's or its subcontractors' (i) negligent performance of the Work under the Final Contract; (ii) intentional misconduct, negligent acts, or omissions during performance of the Work; and (iii) breach of any term, covenant, representation, or warranty of the Final Contract.

1.4 Freedom of Information Act: All proposals will be public information, per FOIA guidelines.

1.5 Iran Divestment Act: By signing its Bid, the Bidder certifies that it:

- (i) is not identified on the list of persons determined by the Executive Director of the State Fiscal Accountability Authority to engage in investment activities in the country of Iran as described in South Carolina Code of Laws Section 11-57-310 (as amended), or any other list of prohibited investments created by the State legislature;
- (ii) will not take any action causing it to appear on any such list during the term of the Final Contract; and

- (iii) will not utilize any subcontractor that is identified on any such list to provide goods or services thereunder.

1.6 Agreement: The selected companies will be required to use the City of Westminster's standard agreement.

1.7 Non-appropriation of Funds: This Agreement shall be subject to the availability and appropriation of funds by City Council. City Council appropriates funding on an annual basis during each fiscal year. If City Council does not appropriate the funding under this agreement, the City will not be obligated to pay amounts due beyond the fiscal year for which funds were appropriated. No act or omission by the City, which is attributable to non-appropriation of funds, shall constitute a breach of or default under this Agreement.

1.8 Statement on Disadvantaged Business Enterprises (DBE)

- (i) The City recognizes that business firms owned and operated by minority persons and women have been historically restricted from full participation in our free enterprise system to a degree disproportionate to other businesses.
- (ii) The City believes that it should work to ameliorate past discrimination by facilitating the participation of underrepresented groups in the City's economic community, and that such participation is in its best interests and the best interests of its citizens.
- (iii) The City will work to ensure that such underrepresented groups, and the businesses they own and lead, are afforded the maximum practicable opportunity—in balance with financially safe and sound business practices—to compete for and perform contracts when the City is procuring construction services, supplies, equipment contracts, lease agreements, or consultant and other services, within the laws of the State of South Carolina.
- (iv) The City endeavors to develop, establish, implement, and administer its policies, programs, and procedures to promote balanced economic growth throughout its community.

Accordingly, the City shall not discriminate and shall prohibit discrimination in its selection and retention of contractors, subcontractors, and suppliers, against any person or business on the basis of race, color, national origin, religion, sex, sexual orientation, gender identity, marital status, status as a parent, age, disability, genetic information, or military status. The City recognizes that disparate treatment on any such basis in the pursuit of economic opportunities is intolerable discrimination.

1.9 City Business License: The Winning Bidder, prior to execution of the Final Contract, must possess or obtain a City of Westminster Business License. Such license must be maintained throughout the duration of the Work. If the Contractor is not currently doing other business inside the City limits, the fee for such license is based on the amount of the Final Contract. If the Winning Bidder is currently doing other business within the City limits and does not possess a business license, then the fee for the license is based on the total gross receipts from customers within the City limits. You may contact the City

Clerk's Office at 864-647-3202 to determine the exact amount of the fee or ask other pertinent questions regarding doing business in the City of Westminster.

1.10 Excluded Companies: Proposals from companies may be excluded for any of the following reasons:

- (i) Reason to believe collusion exists among the companies
- (ii) The company is involved in any litigation against the City
- (iii) The company is in arrears on any existing contract or has defaulted on a previous contract with the City
- (iv) Lack of financial stability
- (v) Failure to perform under previous or present contracts with the City
- (vi) Is currently debarred by the State of South Carolina Procurement Services

Excluded vendors/contractors can resubmit complete company information with references for City review after a minimum of one (1) year from the last excluded bid. City will contact the submitting vendor/contractor with its decision within thirty (30) days of company information submittal. City reserves the right to include or exclude said vendor/contractor based on findings.

1.11 Local Purchasing: It is the City of Westminster's intent to promote the use of local businesses and hiring citizens living within the local Westminster/Oconee County area when possible.

1.11.1 To qualify for a local vendor preference the following requirements must be certified by the vendor:

- (a) The vendor must maintain an office within the legally defined boundaries of the City, the County of Oconee, the County of Anderson, the County of Pickens, the County of Greenville, the County of Abbeville, the County of Laurens, the County of Spartanburg, or the State of South Carolina;
- (b) The vendor must have a majority of full-time employees, chief officers and managers regularly conducting work and business from the office listed in subsection (1)(a) above. If located in the City, the vendor must have held a valid city business license for a consecutive period of at least two years prior to the date of the application for certification. If not located in the City, the vendor must have maintained the eligible office for at least three consecutive years in addition to the qualifications under subsection (1)(a) above; and

1.11.2 Use of the local vendor preferences during the bid evaluation process:

- (a) For comparing bids, a vendor who meets certification criteria established in subsection (1) above and is otherwise a qualified vendor shall qualify for local vendor preference based on the location of the eligible office as follows:
 - (i) Eligible office located within the City limits will be entitled to a bid price reduction of seven percent, not to exceed a maximum of \$10,000.00.

(ii) Eligible office located within the County of Oconee (but not within the City limits) will be entitled to a bid price reduction of five percent, not to exceed a maximum reduction of \$8,000.00.

(iii) Eligible office located in the County of Anderson, the County of Pickens, the County of Greenville, the County of Abbeville, the County of Laurens, or the County of Spartanburg will be entitled to a bid price reduction by three percent, not to exceed a maximum reduction of \$4,000.00.

(iv) Eligible office located in the State of South Carolina that does not qualify for one of the higher percentage preferences will be entitled to a bid price reduction of two percent, not to exceed a maximum reduction of \$2,500.00.

- (b) A vendor may claim only one preference based upon the location of the eligible office.
- (c) A vendor with no eligible office may claim a local vendor preference in instances where subcontractors are proposed that would be eligible under subsection (1) above. In order to claim a preference based upon eligible subcontractors, the proposer must certify the value of the subcontractor award compared to the total contract amount. The subcontractor must submit a certified application as required in subsection (1)(c) and be fully qualified under the provisions of this section. The preference will be the product of the percentage of the contract price certified to eligible subcontractors applied to the preference percentage for which the subcontractors would be eligible.
- (d) A subcontractor preference may not exceed the dollar limits imposed in subsection (2)(a) based upon the eligible offices of the respective subcontractors.
- (e) The final contract price will reflect the original bid amount before the local vendor preference was applied.

1.11.3 All requests for qualifications for professional services shall be excluded from the local vendor preference.

1.11.4 [RESERVED]

1.11.5 In instances where a contract price is anticipated to exceed \$100,000.00, and the use of subcontractors is reasonably anticipated, the City Administrator shall require documentation by proposers of attempts to include local vendors/contractors. At minimum, the documentation shall substantiate attempts to include subcontractors eligible for a preference of three percent or greater to equal a goal amount of 15 percent or more of the proposed contract price. A proposer should provide an explanation of reasons that the local preference goals were not achieved. Documentary requirements shall be included in the bid specifications and only

apply when the requirements are so documented. There shall be no penalty for failure to meet the 15 percent goal. However, failure to include required documentation shall be considered an informality in the bid.

STATE OF SOUTH CAROLINA)
)
) **AGREEMENT FOR**
) **PROFESSIONAL SERVICES**
 COUNTY OF OCONEE)

THIS AGREEMENT FOR PROFESSIONAL SERVICES (“Agreement”) is made and entered into as of the latest date of execution set forth on the signature page hereto (the “Effective Date”), by and between **CITY OF WESTMINSTER**, a South Carolina municipal corporation (“City”), whose address is P.O. Box 399, 100 E Windsor Street, Westminster, South Carolina 29693, Facsimile: (864) 647-3229, Attention: City Administrator, and _____, a _____ (“Company”), whose address is _____, Facsimile: _____, Attention: _____ (City and Company are hereinafter collectively referred to as the “Parties”).

WHEREAS, City has need of professional services from Company as such services are described in more detail on Exhibit A attached hereto and incorporated herein by this reference (collectively, “Services”);

WHEREAS, Company wishes to provide the Services to City in accordance with the terms set forth on Exhibit A hereto.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and the foregoing recitals, which are incorporated herein by this reference, the Parties hereby agree as follows:

1. **Provision of Services.** Company shall provide the Services in accordance with the terms and timelines more fully set forth in Exhibit A hereto. Each particular task set forth in Exhibit A shall not be deemed completed until approved by City. Company shall, at its sole cost, take necessary steps to modify the work product constituting the Services to ensure satisfaction by City. Company acknowledges that the Services shall not be complete until City is satisfied with the results of the Services. All final work products resulting from the Services must be in form and content satisfactory to City. Time is of the essence with respect to Company’s completion of the Services.

2. **Term.** This Agreement shall terminate upon completion of the Services in accordance with the timelines set forth in Exhibit A hereto, unless terminated earlier as provided herein. If no deadline for completion of the Services is set forth on Exhibit A, Company shall complete the Services in accordance with this Agreement no later than _____.

3. **Payment.** Subject to the terms of this Agreement, City shall pay Company up to an amount not to exceed \$ _____ for the Services as set forth on the attached Exhibit C (collectively, “Fees”). The Fees includes all of Company’s fees, costs and expenses in performing the Services, including, without limitation, fees, travel expenses, overhead, manpower, telephone,

facsimile, computer copy, and delivery costs and charges. The Fees will be invoiced on a monthly basis by Company for Services performed as of the date of the invoice. City agrees to pay the Fees within 30 days of receipt of each monthly invoice, subject to the terms of this Agreement. Notwithstanding the foregoing, (i) the total amount of Fees to be paid by City will not exceed \$ _____, unless mutually agreed to in writing by the Parties, and (ii) City shall only be responsible for paying for those Services as are rendered promptly, properly and completely in accordance with all of the terms and conditions of this Agreement. Prior to final payment of the Fees by the City, the Company shall deliver or otherwise make available to the City all documents, data (including electronic data in its original form), drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated or created by the Company or any third party acting by or under the direction of the Company in performing the Services under this Agreement, whether completed or in process. After receipt of such information, the City shall make final payment for the Fees.

4. **Independent Contractor Status.** Company is an independent contractor of City. Nothing in this Agreement shall be deemed to place the Parties in the relationship of employer/employee, partners, or joint venturers. No Party shall have the right to obligate or bind the other in any manner. Company agrees and acknowledges that it will not hold itself out as an authorized agent with the power to bind City in any manner. Each Party shall only be responsible for any withholding taxes, payroll taxes, disability insurance payments, unemployment taxes, or other similar taxes or charges with respect to its activities in relation to performance of its obligations under this Agreement.

5. **No Subcontractors.** Company shall not delegate, subcontract or assign all or any portion of the Services to any third party (collectively, “Contractors”), other than those third parties listed on Exhibit E attached hereto and incorporated by this reference, without the express prior written consent of City. Company shall cause any Contractor to comply with all of the terms of this Agreement.

6. **Assignment and Assumption; Change in Control.** Company shall not sell, convey, assign, transfer, hypothecate, encumber or permit or suffer any encumbrance of all or any portion of its interest in this Agreement unless approved in writing in advance by City. Any attempt to so transfer or encumber any such interest in contravention hereof shall be void. In the event of a change in “Control” of Company (as defined below), City shall have the option of terminating this Agreement by written notice to Company. Company shall notify City within 10 days of the occurrence of a change in Control. As used in this Agreement, the term “Control” shall mean the possession, direct or indirect, of either (i) the ownership of or ability to direct the voting of, as the case may be, fifty-one percent (51%) or more of the equity interests, value or voting power in a Company or (ii) the power to direct or cause the direction of the management and policies of a Company whether through the ownership of voting securities, by contract or otherwise.

7. **Termination; Provision of Documents to City.** In addition to its other rights under this Agreement, City may terminate this Agreement if City determines, in its sole discretion, that the Services are no longer needed or desired by City, by providing Company ten (10) days advance notice of such termination and paying Company for the applicable portion of the Fees due to Company for work completed as of the date of termination in accordance with this Agreement; provided Company shall not be entitled to such payment if City terminates this Agreement

pursuant to a default by Company as provided in Section 9 of this Agreement. In addition, upon receipt of a termination notice from the City, but prior to final payment by the City, the Company shall: (1) promptly discontinue all Services affected (unless a termination notice from the City directs otherwise); and (2) deliver or otherwise make available to the City all documents, data (including electronic data in its original form), drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated or created by the Company or any third party acting by or under the direction of the Company in performing the Services under this Agreement, whether completed or in process. After receipt of such information, the City shall make final payment for the applicable portion of the Fees due to Company for work completed as of the date of termination in accordance with this Agreement.

8. **Representations and Warranties of Company.** Company represents and warrants to City as follows:

(a) In providing the Services, Company and its Contractors shall utilize the care and skill ordinarily used by members of Company's or a Contractor's profession practicing under similar circumstances at the same time and in the same locality. All Services (including, without limitation, all work products resulting from the Services) shall be performed in a good and workmanlike manner, shall be fit for the purposes for which they are intended, and shall be free from all defects in design and/or construction, as applicable.

(b) All employees provided by Company or a Contractor to City shall have the qualifications, skills and experience necessary to perform his or her job in accordance with the requirements of this Agreement. City may request the removal of any Contractor or an employee of Company from the project for good cause.

(c) Company is a _____ validly existing and in good standing under the laws of the State of _____, and is duly qualified to transact business in the State of South Carolina to the extent required by law. Each Contractor, if an entity, shall be validly existing and in good standing under the laws of the jurisdiction of its organization, and shall be duly qualified to transact business in the State of South Carolina to the extent required by law.

(d) The execution, delivery, and performance of this Agreement have been duly authorized by Company by all appropriate Company action. Company shall deliver evidence of such authorization to City upon request.

(e) No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for Company to enter into and perform its obligations under this Agreement.

(f) Company shall comply with, and Company shall cause its Contractors to comply with, all applicable federal, state and local laws and regulations applicable to the Services or Company. Company and its Contractors shall obtain all applicable permits and licenses, including a City of Westminster Business License a copy of which shall be attached hereto as Exhibit F.

(g) The performance of this Agreement by Company will not violate any contracts or agreements with third parties or any third party rights, including but not limited to non-compete agreements, non-disclosure agreements, patents, trademarks or intellectual property rights.

9. **Default.** The following events shall constitute a default of this Agreement:

(a) Failure of Company or its Contractors to perform the Services at any time in accordance with this Agreement;

(b) Defects in materials and/or documents provided by Company or its Contractors pursuant to this Agreement which are recurring or substantial, in the sole opinion of City;

(c) Defects or deficiencies in the provision of the Services which are recurring or substantial in nature, in the sole opinion of City;

(d) Failure of Company, upon receiving written notice from City, to promptly remedy any defects in materials or workmanship which are provided by Company or its Contractors pursuant to this Agreement;

(e) Failure by Company, within five (5) days upon receiving written notice from City, to correct any defects or deficiencies in the provision of the Services by Company or its Contractors pursuant to this Agreement;

(f) Any affirmative act of insolvency by Company, or the filing by Company of any petition under any bankruptcy, reorganization, insolvency, or moratorium law, or any law for the relief of, or relating to, debtors;

(g) Any assignment by Company for the benefit of creditors;

(h) The filing of any involuntary petition under any bankruptcy statute against Company;
or

(i) The nonperformance by Company or its Contractors of any other term, covenant, or condition of this Agreement which is not cured within five (5) days after written notice thereof from City to Company.

10. **Remedies on Default.** Company's sole remedy against City for any City breach or default hereunder shall be limited to the Company bringing an action against the City for the amount due and owing to the Company for Services completed by Company as provided under this Agreement. However, in no event shall City be liable to Company for any consequential damages, incidental damages or lost profits.

Except as otherwise provided by this Agreement, City may without notice to or demand on Company, on occurrence of any of the foregoing events of default:

(a) Terminate this Agreement, such termination to be effective five days following written notice by City to Company of City's election to terminate this Agreement;

- (b) Sue for and collect all sums or amounts due City as a result of defaults of this Agreement by Company or its Contractors, including incidental damages resulting therefrom;
- (c) Exercise any remedy provided for by this Agreement; and/or
- (d) Exercise any applicable legal or equitable remedy.

11. **Attorneys' Fees.** If any Company defaults on its obligations under this Agreement, the City shall be entitled to recover from Company the costs and attorneys' fees incurred in the enforcement or interpretation of any provision of this Agreement.

12. **Indemnification.** Company shall indemnify and hold City harmless from and against all liability, loss, damages or injury, and all costs and expenses (including attorneys' fees and costs of any suit related thereto), suffered or incurred by City, to the extent arising from Company's or its Contractors' negligent performance of the Services under this Agreement, intentional misconduct, negligent acts or omissions, or breach of any term, covenant, representation or warranty of this Agreement.

13. **Insurance.** During the term of this Agreement, Company shall maintain insurances as required and set forth on the attached Exhibit D which is attached hereto and incorporated by this reference. Company's certificates of insurance are attached hereto as part of Exhibit D.

Any insurance provider of Company shall be admitted and authorized to do business in the State of South Carolina and shall carry a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A" Overall and a Financial Size Category of "X" (i.e., a size of \$500,000,000 to \$750,000,000 based on capital, surplus, and conditional reserves). Insurance policies and certificates issued by non-admitted insurance companies are not acceptable. Company shall not self-insure.

Company shall cause each of its Contractors to maintain the insurance coverages set forth in this section.

14. **City's Condition Precedent; Non-Appropriation of Funds.** This Agreement shall be subject annually to the availability and appropriation of funds by City Council. If City Council does not appropriate the funding needed by City to make payments under this Agreement for a given fiscal year, City will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, City will promptly notify Company of the non-appropriation and this Agreement will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by City, which is attributable to non-appropriation of funds, shall constitute a breach of or default under this Agreement.

15. **Ownership of Information.** All of the reports, information, plans, sketches and data prepared or assembled by City and delivered to Company or its Contractors pursuant to the terms of this Agreement are considered "Confidential Information" as defined in Paragraph 16 of this Agreement. Company agrees that such Confidential Information shall not be made available to any individual, organization, corporate entity or other third party, other than its Contractors or

employees as provided below in Paragraph 16, or used in any way to further the interest of Company or any client of Company, or any third party, without the prior written permission of City. Subject to the provisions of this Paragraph, all of the reports, information, plans, sketches and data prepared or assembled by City pursuant to the terms of this Agreement are instruments of service in respect to the Services, and City shall retain the sole ownership and property interest therein. All of the reports, information, plans, sketches, data and regulations prepared or assembled by Company or its Contractors pursuant to the terms of this Agreement shall become the property of City immediately upon delivery thereof to City. Company assigns to City all materials prepared, developed or created pursuant to this Agreement including, but not limited to the right to: (i) reproduce the work; and (ii) prepare derivative works.

16. **Nondisclosure of Confidential Information.** Company hereby acknowledges that it may be furnished with, or may otherwise receive or have access to, information or materials which relate to past, present or future products, software, research and development, inventions, processes, techniques, designs, or technical information and data of City, including all information protected by the Trade Secret Act, S.C. Code Ann § 39-8-10 et seq., as well as any information which City identifies to a Company in writing as Confidential (“Confidential Information”). Company shall preserve in confidence and protect from disclosure all Confidential Information, whether disclosed before or after the Effective Date of this Agreement, unless (1) the Confidential Information is already in the public domain; (2) City consents to the disclosure of such Confidential Information in writing; or (3) Company discloses the Confidential Information in accordance with the terms of any written agreement between City and Company, or in accordance with the order of any competent court or government agency; provided, however, that prior to such disclosure, Company shall inform City of the order and permit City to seek a protective order or other appropriate relief.

If Company is advised by the City that this is a confidential project, Company agrees to keep and maintain confidentiality regarding its undertaking of this project. Company shall coordinate its services only through the City representative(s) designated by City from time to time, and shall provide information regarding this project only to those persons approved by City, including, without limitation, Contractors, and with whom Company has a binding and enforceable non-disclosure agreement. Company shall not share any information regarding this project, including, without limitation, Confidential Information, with any third party unless Company and each such third party (including any Contractors) have entered into a legally enforceable and binding non-disclosure agreement. Notwithstanding the foregoing, Company may, without City’s prior consent, disclose Confidential Information to its employees who have a need to know such information, who are informed of the confidential nature of such information, and who have legally enforceable nondisclosure obligations to Company.

17. **Caption Sections.** Paragraphs, titles, headings and captions contained in this Agreement are inserted only for convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

18. **Waiver and Severability.** If any part of this Agreement, for any reason, is declared invalid or void, such declaration shall not affect the remaining portions of the Agreement which shall remain in full force and effect as if this Agreement had been executed with the invalid portion eliminated. However, if any provision which has been declared invalid or unenforceable shall be

a provision that would prevent the continued and complete performance of this Agreement by Company and City, then Company and City hereby agree that they will renegotiate that term or provision in order to otherwise render the Agreement valid and enforceable. If Company or City decides not to enforce a provision of this Agreement, such decision in favor of non-enforcement shall not constitute a complete and full waiver of the right of that person or entity in the future to enforce that provision of the Agreement in the event of any subsequent breach or failure to comply in full with that provision of the Agreement.

19. **Governing Law.** Except to the extent that this Agreement may be governed by any federal law, including federal bankruptcy law, this Agreement shall be governed by, construed and interpreted under, and enforced exclusively in accordance with the laws of the state of South Carolina, and the courts in the state of South Carolina shall have jurisdiction with respect to any dispute arising hereunder.

20. **Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed received when delivered by hand, mailed by certified or registered mail, postage prepaid, or mailed by overnight mail, or sent by facsimile with confirmation of receipt, and addressed to the Parties at their respective addresses set forth on the first page of this Agreement. Notices may be delivered to (or given on behalf of the applicable Party by) each Party's respective attorney.

21. **Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same instrument. Electronic, PDF and facsimile signatures shall be deemed to be original signatures. Any such counterpart may be signed by one or more of City and Company as long as each of them has signed one or more of such counterparts.”

22. **No Construction Against Drafter.** City and Company hereby acknowledge that they have reviewed this Agreement and have been afforded an opportunity to consult with an attorney. City and Company concur that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of any provision of this Agreement.

23. **Covenant to Sign Other Documents.** City and Company acknowledge that consummation of the transaction contemplated hereby may require the execution prior hereto, contemporaneously herewith and/or sometime hereafter of certain documents in addition to this Agreement which each of them, by their signatures herein below, covenants, represents and warrants that they will promptly do, provided such documents (and the other parties thereto, as applicable), are reasonably satisfactory to Company and City.

24. **Modification and Amendment.** No change, amendment or modification of this Agreement shall be made unless agreed to in writing by Company and City.

25. **Warranty of Authority.** The terms of this Agreement are contractual and not a mere recital, and all signatory parties hereto represent and warrant that they have the full and complete authority to execute and enter into this Agreement.

26. **Equal Opportunity Employer; Compliance with Federal, State and Local Law.**

Company agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Services. Company further agrees that it will at all times during the term of this Agreement be in compliance with, and Company shall cause its Contractors to comply with, all applicable federal, state and/or local laws regarding employment practices. Such laws include, but shall not be limited to, workers' compensation, Title 7 of the Civil Rights Act of 1964 (Title 7), the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all OSHA regulations applicable to the provision of the Services. Specifically, Company asserts that it has adopted and will maintain and enforce a policy of non-discrimination on the basis of race, color, religion, sex, age, national origin, or disability. Company certifies to City that it will comply with the provisions of Title 8, Chapter 14 of the South Carolina Code of Laws regarding the employment of unauthorized aliens. Company agree to provide to City, upon request, any documentation regarding (i) the applicability of Title 8, Chapter 14 of the South Carolina Code of Laws to the Company or any subcontractor or sub-subcontractor; or (ii) the compliance with Title 8, Chapter 14 of the South Carolina Code of Laws to the Company or any subcontractor or sub-subcontractor.

27. **Terms of this Agreement Controlling.** In the event of any inconsistency or conflict between any term, covenant or condition of this Agreement and any other document pertaining to this Agreement, including but not limited to any exhibits, RFPs, responses to RFPs, bids, letters, memoranda, correspondence or any amendments or modifications thereof (collectively, "Documents"), all terms, covenants and conditions of this Agreement shall in all respects be controlling. Any contrary term, covenant or condition in the Documents, or any amendment or modification thereof, is hereby superseded by the applicable provision of this Agreement. The term "Agreement" as used in this Agreement shall include this Agreement and the exhibits and schedules attached hereto including, without limitation, Exhibits A-F.

28. **Survival.** All of Company's representations, warranties and covenants under this Agreement shall survive completion of performance of the Services and/or termination of this Agreement.

29. **Entire Agreement.** Except as otherwise provided herein, this Agreement shall constitute the entire and full agreement and understanding between Company and City, and shall supersede all prior and/or contemporaneous agreements, understandings and discussions between them, written and/or oral, all of which shall be deemed merged into this Agreement and shall be of no further force and effect.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Company and City have executed and delivered this Agreement as of the Effective Date.

Witnesses:

CITY OF WESTMINSTER

By: _____

Name: _____

Title: _____

Date: _____, 20

Witnesses:

By: _____

Name: _____

Title: _____

Date: _____, 20