



REQUEST FOR QUALIFICATIONS (RFQ) 2026 ENGINEER-ON-CALL SERVICES

CONTACTS:

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DATE ISSUED

March 31, 2026

QUESTIONS AND CLARIFICATIONS DUE DATE

Wednesday, April 15, 2026

3:00 PM EST

SUBMITTAL DUE DATE

Friday, June 5, 2026

12:00 PM EST

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Section 1: Purpose

Town of Liberty, North Carolina (“Town”)

The Town is soliciting SOQs from competent and qualified professional engineering firms to provide Engineer-on-Call Services to support municipal infrastructure needs. The Town intends to establish a multi-year, task-order-based relationship with one or more firms whose combination of experience and expertise will be capable of providing timely, comprehensive engineering support across water and wastewater utilities, transportation, stormwater, and related civil infrastructure. The duration of professional services are for a duration of three (3) years from MSA completion. During this period, the Town reserves the right to bypass the selected on-call firms and advertise engineering services when it is in the best interests of the Town.

The Town of Liberty is an Equal Opportunity Employer and invites the submission of proposals from small and minority and women-owned firms, and historically underutilized businesses.

(a) Common Terms:

- **RFQ** – Request for Qualifications
- **SOQ** – Statements of Qualifications
- **MSA** – Master Service Agreement
- **SSA** – Supplemental Services Agreement
- **Town** – Town of Liberty
- **LOI** – Letter of Interest

Section 2: Scope of Services

The Town intends on selecting one or more firms that provide services outlined below. Firms are **not required** to provide all services listed to submit a SOQ, however, the SOQ should clearly identify the areas of interest:

Primary tasks	Water and Wastewater Infrastructure Grant Writing General Municipal Engineering (pre/during/post)
Secondary tasks	Roads and Transportation GIS Support Services
Tertiary tasks	Stormwater and Drainage Erosion and Sedimentation Control Surveying

The Town may use the selected firm(s) for any on-call projects related to Public Works, Planning, Parks & Recreation at its discretion. Broad tasks are identified above as importance to the Town. Any firm(s) may cover one or more of the tasks, regardless of importance to the Town. Specific tasks within each are as follows:

- Water and Wastewater Infrastructure

- Distribution and collection system evaluation and design
 - Lift station, pump station, and force main improvements
 - Treatment system upgrades and regulatory compliance support
 - Asset management, mapping, and hydraulic modeling
 - System Development Fee (SDF) analysis support and capital planning
 - Pretreatment program assistance
 - Coordination with Town staff of drafting and implementing an APFO (Adequate Public Facilities Ordinance)
- Grant Writing
 - Frequent notification of available grants applicable to the Town
 - Ability for minimal and maximum Town involvement with grant applications
 - Tracking throughout the grant process on supplemental information needed, awarding, etc.
 - Support with all potential preliminary and subsequent post-award work (funding application & administration, analytical reports such as environmental/biological/wetland, engineering design, surveying, Geotech, easements, CA/CO, studies, planning)
 - Experience in a variety of funding sources including, but not limited to; SDA, Golden Leaf, NC Commerce, ND DWI, EDA, ARPA, FEMA, and any other funding sources
- General Municipal Engineering
 - Cost estimating and capital improvement planning
 - Grant application assistance and project justification
 - Construction administration, observation, and closeout
 - Technical review of development plans and utility extensions
 - Permitting (NCDOT, NCDEQ, USACE, FEMA, etc.)
 - Land development and planning assistance
- Roads and Transportation
 - Street design, resurfacing plans, and pavement evaluations
 - Traffic analysis, safety improvements, and intersection design
 - Sidewalk, multi-use path, and pedestrian connectivity projects
 - NCDOT, Rail Pros/Railroad coordination and encroachment permitting
 - Support with grant assistance and plan submission for a portion of a bypass to redirect the designated truck route
 - ADA Transitioning
- GIS Support Services
 - Provide supplemental GIS support for regionalization/expansion
 - Asset and records management
 - Asset conditioning

- Stormwater and Drainage
 - Stormwater system evaluation, modeling, and design
 - Culvert and channel improvements
 - Flooding mitigation and watershed analysis
 - MS4 compliance support (if applicable)
 - Drafting of a S&EC program

- Erosion and Sedimentation Control
 - Implementation of an erosion control & stormwater management plan
 - Erosion control plans and permitting
 - Construction site inspections and compliance support
 - Soil stabilization and slope remediation recommendations
 - Drafting of a S&EC program

- Surveying
 - Surveying of Town properties, when requested

Each firm selected for an on-call contract will be required to enter a MSA with the Town. Any questions or concerns about the MSA, SSA, General Contract Terms and Conditions, and General Terms and Conditions must be addressed during the time allotted for questions of this RFQ. No changes will be made to Appendices A, B, C, and D after this period (refer to Section 7 – Submission Instructions). If the Town and selected firm are unable to fully execute a MSA, the Town reserves the right to select a new firm in place. Selected by the Town for the MSA is not a guarantee that any firm will receive a project. The Town makes no guarantee of specific volume of work or a total contracted amount arising from this solicitation. The Town reserves the right to assign additional tasks to the selected firm(s), based on the Town's need, and the firm's availability, as well as past and current performance of the firm(s). This master agreement will:

- Fulfill the consultant solicitation and selection process for the work to be performed under the on-call contract; and
- Establish current hourly rates for each employee that may perform work on the contract by position class and establish a method of calculation and payment for all other direct/indirect project expenses; and
- Work performed under the MSA will be conducted through SSAs; and
- Only one (1) firm will be considered at a time for any specific project, unless selected firm has a contract with other firm(s) for completion of work. Should negotiations fail, price negotiations will be terminated with the selected firm and begin negotiations with another firm.

MSAs shall be for a three-year period, with the option to extend annually up to five-years. The scope and fee will be determined separately for each assignment prior to Notice to Proceed, with the parties entering into a SSA as needed.

Federal Uniform Guidance: If funding for any procurement is awarded from a federal source, whether in whole or in part, all provisions pursuant to 2 C.F.R. 200 will apply and will be followed by the Town and the firm.

Section 3: Submission Requirements

The qualifications package shall consist of the following information, tabbed as identified and in the order indicated. A firm who submits a package that does not follow the order or address each of the sections specified below may be deemed non-responsive.

Letter of Interest

The LOI must be addressed to Scott Kidd, Town Manager and Janie Konyek, Assistant Town Manager. The letter should contain the following elements of information:

- History of the firm including operating history, size, office locations, contact information, primary areas of practice, and contact person.
- Indicate what services you are submitting for. A minimum of one service, preferably included in the list, is required, but multiple services can be listed.
- Describe your interest in this RFQ and the unique advantage your firm and team bring.
- Acknowledgement of any RFQ Addenda (if any) posted on the Town's website.
- Identify if the firm is classified as a Disadvantaged Business Enterprise.
- State any conflicts of interest your firm or any key individuals may have with this program or with the Town.

Project Team

- Provide an organizational chart which clearly identifies the key members of the firm, relevant disciplines, and names of specific staff, including their titles and relevant certifications. This should also include any subconsultants that may be involved in a project.
- Clearly identify the project manager for each discipline and describe how services and project(s) will be successfully managed. Also, describe how quality will be controlled and ensured across all disciplines.
- Firms shall provide resumes only for key personnel proposed to work on the Town's projects. Key personnel include project managers, lead engineers, and other senior staff with primary responsibility for project oversight and delivery. Resumes for entry-level or support staff are not required.
- Please provide information on any engineering firms your organization has subcontracted with the previous five (5) years or is currently subcontracted with. Include the nature of the work performed and the duration of those partnerships.

Understanding and Approach

- Provide a comprehensive yet concise narrative, outline, and information demonstrating the firm's understanding, approach to, and qualifications for accomplishing municipal on-call projects/tasks.
- Show familiarity with local government workflows, regulatory constraints, and approval processes while also acknowledging the need for flexibility, responsiveness, and working within municipal budgeting and project management systems.
- Demonstrate understanding of the Town's current and future infrastructure, transportation network, grant assistance, and overall Town strategic goals.
- Describe how coordination will be handled with Town staff and other outside agencies during projects (i.e. regionalization efforts, NCDOT, NCDEQ, USACE, etc.)

Qualifications and Experience

- Provide three (3) municipal project examples (no more than one may be a current project with the Town) that encompass a variety of the listed services your firm is submitting for, either currently in progress or having been completed in the past five (5) years. Each of the project summaries must include the following:
 - Descriptions of municipal projects including size and scope;
 - Project schedule: initial schedule and final schedule, including explanations of delays if any;
 - Initial project budget and final project cost, including any funding support that may have been awarded from grants;
 - Date and times project services were performed;
 - Owner's representative having knowledge of the firm's work, including contact information;
 - Description of services rendered by the firm and degree of involvement;
 - Key principle and associate staff involved including their assigned responsibilities;
 - Experience should demonstrate the ability to perform similar work with municipalities of similar size and complexity.

Submittal of Qualification Package

Submissions must follow the format as defined in Section 3 Submission Requirements and are limited to a total maximum of fifteen (15) pages (8 ½" x 11", font size 12 or larger) and in PDF format. Required forms, resumes, dividers and coversheet will not count toward the page limit, however, please attached these at the end of the RFQ submittal. Packages which exceed the page limit may be rejected as non-compliant. Packages must be submitted via email or through a shareable site (Google docs, SharePoint, etc). Electronic versions must be submitted as a high quality viewable and printable PDF. Additionally, one (1) hard copy may be mailed or dropped off at the Town office.

SOQ document file name should be in the following format: **Firm Name SOQ – OnCall Engineering RFQ**. *Firm name may be abbreviated.*

Section 4: Evaluation Criteria

The firm(s) will be selected through a qualifications-based selections process. The Town expects to award the best qualified firm(s) based on the requirements in this solicitation. As part of the evaluation process, the Town reserves the right to request additional information and/or interview any or all of the firms. A selection committee comprised of Town staff will review the submittal packages. All submittals will be evaluated based on the following criteria:

Scoring Criteria	Weight (%)	Score (0-5)	Weighted Score (Weight x Score)
Letter of Interest	10		
Project Manager(s) and Project Team(s) Experience and Qualifications	10		
Understanding, Approach, and Ability to Meet On-Call Project Requirements	40		
Firm's Project Examples & Project Contact References Provided	40		
Final Score:			

The evaluation criteria are intended to be used to make a recommendation to the Town Manager or the Town Council who will award the contract, but who are not bound to use these criteria or to the award based on the recommendation.

Firms will not be considered unless the following minimum qualifications are met:

- Firm(s) must be properly registered with the North Carolina Secretary of State's Office
- Firm(s) must be properly registered with the North Carolina Board of Examiners for Engineers and Surveyors
- Firm(s) must employ at least one (1) North Carolina Registered Professional Engineer in responsible charge of the work anticipated. The Professional Engineer must have good ethical and professional standing.

Firms that submit RFQs will be notified of the selection results. The Town anticipates the initial approval of the selected firm(s) following the schedule listed in Section 7.

Section 5: Questions and Clarifications

All questions shall be submitted by email **no later than 3:00 PM EST on Wednesday, April 15, 2026**. Questions submitted later than this deadline will not be considered. An addendum with the received questions and their subsequent answers, if any, will be published on the Town website by **12:00 pm EST on Tuesday, May 19th, 2026**. *Any questions related to MSA, SSA, General Contract Terms and Conditions, and General Terms and Conditions shall be presented as required by this Section. These, as listed in Appendices A, B, C, & D, will otherwise be considered accepted as written.*

Section 6: Contract Term

The Town anticipates awarding contracts for **three-years on-call**, with the option to extend based on performance and mutual agreement. Work will be assigned through individual task orders.

Section 7: Submission Instructions

Firms shall submit **one (1) digital copy, and one (1) hard copy** of their SOQ in PDF format to:

Town of Liberty

Attn: Town Manager, townmanager@townoflibertync.org

Assistant Town Manager, jkonyek@townoflibertync.org

239 S Fayetteville St.

PO Box 1006

Liberty, NC 27298

Late submissions will not be considered. A digital file share link may also be sent, with confirmation from the above Town staff the submittal was received and capable of being saved.

Action	Date	Time
RFQ Issued	Tuesday, March 31, 2026	-
Due Date for RFQ Questions	Wednesday, April 15, 2026	12:00 PM
Town Reply to Questions/Addenda	Tuesday, May 19, 2026	12:00 PM
Submittal of Qualifications Due Date	Friday, June 5, 2026	12:00 PM
Evaluation Completion Date	Friday, June 19, 2026	-

Section 8: Rights Reserved

The Town of Liberty reserves the right to:

- Reject any or all submissions
- Request additional information
- Select the firm(s) deemed most advantageous to the Town
- Negotiate scope and fees following selection

APPENDIX A

TOWN OF LIBERTY, NORTH CAROLINA MASTER SERVICE AGREEMENT FOR ON-CALL PROFESSIONAL GENERAL ENGINEERING SERVICES

THIS AGREEMENT (“Master Service Agreement” or “MSA”) is made and entered into as of the day of _____, 20 , by the Town of Liberty (“Town”) and [INSERT NAME HERE] (“Consultant”), organized and existing under the laws of the State of North Carolina.

PROFESSIONAL GENERAL ENGINEERING SERVICES

WHEREAS, the Town desires to engage the Consultant to provide On-Call Environmental, Transportation, and General Engineering Professional Services related to municipal general engineering, construction, and inspection as set forth in and in accordance with Supplemental Services Agreements (“SSA”); and

WHEREAS, the Town issued a “Request for Qualifications for On-Call General Engineering Services dated 31st day of March 2026; and

WHEREAS, Consultant provides professional consulting services and has experience, staff, and resources to perform such Services;

NOW THEREFORE, Town and Consultant, in consideration of their mutual covenants, herein agree as follows:

SECTION I. BACKGROUND and PURPOSE

The purpose of the Town’s on-call process is to secure more than one general engineering professional to provide professional on-call engineering services. The purpose of this Agreement is to provide the basic terms and conditions by which Consultant will provide its services to the Town, as the need for Services may arise, and in accordance with the standards and requirements as described herein, and in each SSA.

SECTION II: SERVICES and SCOPE to be PERFORMED

The Consultant shall perform on-call Services as set forth in this MSA and SSA. The SSA is made a part of this Agreement as if fully set forth herein. The Town shall pay Consultant for the performance of Services in the manner set forth herein and in the SSA.

Requests for services made by the Town to Consultant are contingent upon execution of an SSA and the sufficiency of funding. No services shall commence on a particular project until an SSA has been executed by both parties, and the Town has issued a Notice to

Proceed to Consultant. Any amendments, corrections, or change orders by either party must be made in writing signed in the same manner as the original. (This form may be used for amendments and change orders.) The Town reserves the right to refuse payment for any work outside that authorized herein or pursuant to a duly approved amendment or change order.

Services to be provided shall be set forth in an SSA and amendments to that agreement. The SSA may also include additional terms and conditions regarding payment and other matters necessary for the execution of projects. SSAs shall not vary the terms of this Agreement, except where this Agreement authorizes such variance, and shall be interpreted consistently with this Agreement. If there is a conflict between this Agreement and SSAs, this Agreement shall control.

The Town has no obligation to provide Services with any work hereunder and does not guarantee the issuance of any minimum number of SSAs under this Agreement. Consultant represents and agrees that now and continuing for the term of this Agreement, Consultant:

- is experienced, qualified, skilled, and fully capable of performing Services in a competent and professional manner; and
- shall exercise reasonable care and diligence, and shall act in the best interest of Town; and
- shall act in accordance with generally accepted standards of Consultant's practice applicable to the locality; and shall comply with this Agreement, applicable SSAs, and with all applicable federal, state, and local laws, ordinances, codes, rules, and regulations (collectively "Laws and Regulations"); and
- possesses all necessary qualifications, licenses, and certifications; and
- shall perform in a timely manner and in accordance with schedules required under this Agreement or an applicable SSA, time being of the essence; and
- shall work in good faith with Town to meet requirements imposed by the federal or state government or other funding entity if grants are used to fund any portion of projects; and
- the individual(s) signing Agreement have the right and power to do so and bind Consultant to the obligations set forth herein and such individuals do so personally warrant that they have such authority.

SECTION III: AGREEMENT DURATION

This Agreement shall authorize SSAs to be executed for a three (3) year period from the date of execution of this Agreement. Any SSA executed within period of execution of this Agreement shall be binding for the period set forth therein, and this Agreement and such SSA, and amendments to such Agreements, shall be binding for the time period set forth in the SSA. Any SSA executed within this three-year period may be amended for additional scope, fee, or time. The Agreement may be extended beyond the three (3) year period, no more than five (5) years. Services shall commence upon execution of SSAs describing the

specific project and Services to be performed. A written Notice to Proceed following execution of such SSA(s) will be issued to the Consultant. Consultant will not commence Services until such notice is received.

SECTION IV: COMPLETE WORK without EXTRA COST

Unless otherwise provided, the Consultant shall obtain and provide, without additional cost to the Town, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Services.

SECTION V: COMPENSATION

The terms of payment for Services provided by Consultant shall be set forth in each SSA. Such agreement may provide for compensation in accordance with an hourly rate schedule, or a set fee for Services, paid one time or in periodic payments, or a combination of these methods of compensation.

Unless otherwise provided in the SSA, Consultant shall obtain, and provide, without additional cost to the Town, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform Services under this Agreement. In addition to hourly rates or the set fee payment set forth in the SSA, Town shall pay Consultant for expenses and costs only when reimbursement for such items is specifically provided for in an SSA. The Town shall not be obligated to pay any expenses and costs not specifically identified in an SSA.

SECTION VI: CONSULTANT'S BILLINGS to TOWN

The Consultant shall submit an invoice once Service is completed or at designated times during the course of completing a Service. Once the invoice is submitted and approved by the appropriate department the terms will be Net 30 days. The terms may only be changed by written consent of the Finance Director.

SECTION VII: INSURANCE

Consultant shall maintain insurance policies at all times with minimum limits as follows:

- Coverage Minimum Limits
- Workers' Compensation Statutory Limits
- Employers' Liability \$ 1,000,000 each accident
- General Liability \$ 2,000,000 each occurrence
- Automobile Liability \$ 1,000,000 combined single limit – any auto
- Professional Liability (E & O) \$ 2,000,000 each occurrence

Contractor shall provide the Town with a Certificate of Insurance for review prior to the issuance of any contract or Purchase Order. All Certificates of Insurance will require thirty (30) days written notice by the insurer or contractor's agent in the event of cancellation, reduction or other modifications of coverage. In addition to the notice requirement above, Contractor shall provide the Town with immediate written notice of cancellation, reduction, or other modification of coverage of insurance. Upon failure of the Contractor to provide such notice, Contractor assumes sole responsibility for all losses incurred by the Town for

which insurance would have provided coverage. The insurance certificate shall be for the initial contract period of one (1) year and shall be renewed by the contractor for each subsequent renewal period of the contract. The Town of Liberty shall be listed as certificate holder and named as an additional insured under General Liability Policy. It is required that coverage be placed with "A" rated insurance companies acceptable to the Town. Contractor's insurance shall be primary of any self-funding and/or insurance otherwise carried by the Town for all loss or damages arising from the Contractor's operations under this agreement. The Contractor and each of its subcontractors shall and does waive all rights of subrogation against the Town and each of the Indemnitees. Failure to maintain the required insurance in force may be cause for contract termination. In the event that the contractor fails to maintain and keep in force the insurance herein required, the Town has the right to cancel and terminate the contract without notice.

SECTION VIII: PERFORMANCE of WORK by TOWN

If the Consultant fails to perform the Services in accordance to Section II above, the Town may, in its discretion, in order to bring the project closer to schedule, perform or cause to be performed some or all of the Services, and doing so shall not waive any of the Town's rights and remedies. Before doing so, the Town shall give the Consultant reasonable notice of its intention. The Consultant shall reimburse the Town for all costs incurred by the Town in exercising its right to perform or cause to be performed some or all of the Services pursuant to this section.

SECTION IX: ATTACHMENTS

The following attachments are made a part of this Agreement and incorporated herein by reference:

Attachment A: Scope of Work

Attachment B: Hourly Rate

Attachment C: Title VI Appendment

SECTION X: NOTICE

All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, email, or certified United States mail, return receipt requested, addressed as follows:

To the Town: To the Consultant:

Town of Liberty

Attn: Scott Kidd and Janie Konyek

Town Manager and Assistant Town Manager

239 S Fayetteville St

PO Box 1006

Liberty, NC 27298

(336)215.2339; (336)964.5055

townmanager@townoflibertync.org; jkonyek@townoflibertync.org

Change of Address, Date Notice Deemed Given:

A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by US Mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the US Postal Service or upon actual delivery, whichever occurs first.

SECTION XI: INDEMNIFICATION

To the extent permitted by law, the Consultant agrees to pay on behalf of, indemnify, and hold-harmless the Town of Liberty, its elected and appointed officials, employees, agents, and volunteers against any and all claims, demands, fault, actual liabilities, assertions of liability, expenses, suits, or losses, including all costs connected therewith, which may be asserted, claimed, or recovered against or from the Town of Liberty, its elected or appointed officials, employees, agents, and volunteers by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof resulting from the negligence of the Consultant.

SECTION XII: ADDITIONAL PROVISIONS

Choice of Law and Forum. This contract shall be deemed made in Randolph County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the appropriate division of the North Carolina General Court of Justice, in Randolph County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

Waiver. No action or failure to act by the Town shall constitute a waiver of any of its rights or remedies that arise out this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

Performance of Government Functions: Nothing contained in this contract shall be deemed or construed so as to in any way stop, limit, or impair the Town from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

Assignment, Successors and Assigns. Without the Town's written consent, the Consultant shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out this contract. Unless the Town otherwise agrees in writing, the Consultant and all assigns shall be subject to all of the Town's defenses and

shall be liable for all of the Consultant's duties that arise out of this contract and all of the Town's claims that arise out of this contract. Without granting the Consultant the right to assign, it is agreed that the duties of the Consultant that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

Compliance with Law. In performing all of the Work, the Consultant shall comply with all applicable law.

Town Policy. THE TOWN OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONSULTANTS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONSULTANTS AND VENDORS UNDER CITY CONTRACTS.

EEO Provisions. During the performance of this Contract the Consultant agrees as follows: (1) The Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Consultant shall post in conspicuous places available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Consultant in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.

No Third Party Right Created. This contract is intended for the benefit of the Town and the Consultant and not any other person.

Principles of Interpretation. In this contract, unless the context requires otherwise: (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. Reference to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and any other legal entities.

Modifications, Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the Town unless the Town Manager or other duly authorized official signs it for the Town. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties,

or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

E-Verify. Consultant shall comply with the requirements of Article 2 of Chapter 64 of the NC General Statutes. Further, if Consultant utilizes a subconsultant, Consultant shall require the Subconsultant to comply with the requirements of Article 2 of Chapter 64 of the NC General Statutes.

Iran Divestment Act. Consultant certifies that; (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 143-6A-4; (ii) it will not take any action causing it to appear on any such list during the term of this Contract, and (iii) it will not utilize any subcontractor to provide goods or services hereunder that is identified on any list.

Divestment from Companies that Boycott Israel. Consultant represents, covenants, and certifies that it is not listed on the list of restricted companies developed and published by the North Carolina State Treasurer as required by N.C.G.S. 147-86.81.

Quality and Workmanship. All work performed and/or services rendered shall be performed to the satisfaction of the Town of Liberty. The work performed and/or services rendered shall not be considered complete, nor applicable payments rendered, until the Town is satisfied with the work performed and/or services rendered.

Standard Terms and Conditions. The Town of Liberty's Standard Terms and Conditions will govern all matters related to the goods and/or services provided by you or your company (the "Vendor") to the Town of Liberty (the "Town"). Additional Terms and Conditions stated on the face of a Town purchase order shall take precedence over any conflicting Standard Terms and Conditions stated. Any Terms and Conditions not stated, but incorporated by reference therein, shall be binding only if provided or signed by the Town and attached hereto. In the event that a binding written contract signed by both the Vendor and the Town exists, the Terms and Conditions of that contract shall supersede any conflicting Standard Terms and Conditions.

Non-appropriation clause. Contractor acknowledges that the Town of Liberty is a governmental entity, and the contract validity is based upon the availability of public funding under the authority of its statutory mandate. In the event that public funds are unavailable and not appropriated for the performance of the Town of Liberty's obligations under this contract, then this contract shall automatically expire without penalty to the Town of Liberty thirty (30) days after written notice to Contractor of the unavailability and non-appropriation of public funds. It is expressly agreed that the Town of Liberty shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this contract, but only as an emergency fiscal measure during a substantial fiscal crisis, which affects generally its governmental operations. In the event of a change in the Town of Liberty's statutory authority, mandate and mandated functions,

by state and federal legislative or regulatory action, which adversely affects the Town of Liberty's authority to continue its obligations under this contract, then this contract shall automatically terminate without penalty to the Town of Liberty upon written notice to Contractor of such limitation or change in the Town of Liberty's legal authority.

No pledge of taxing authority. The taxing power of the Town of Liberty is not pledged directly or indirectly to secure any monies due under this contract.

No waiver of governmental immunity; Violation of law. Except for waiver of governmental immunity resulting from the execution of a valid contract, the Town of Liberty makes no other waiver of governmental immunity. If any provision of the Contract or Agreement is in violation of any legal, statutory or state constitutional prohibition, then such provision(s) shall be unenforceable against the Town of Liberty.

Conflict of Interest. If this is a contract for design, engineering, contract administration or similar services, the Contractor will not enter into contracts or agreements with third parties that may present a potential for conflict of interest between the Town of Liberty and the third parties regarding the subject matter of this Contract or Agreement.

Public Record. This Contract or Agreement is subject to disclosure under the public records laws of the State of North Carolina.

Contractor shall provide proof that a Drug-Free Workplace Program is in place and that drivers meet DOT/CDL licensing requirements, if requested.

SECTION XIII: TERMINATION

Either party may terminate this Agreement upon sixty (60) day written notice; provided, however, no such termination shall discharge Consultant's obligations to complete and furnish services as previously agreed to by the parties pursuant to this Agreement or any Supplemental Service Agreement, nor shall termination discharge the Town's obligations to pay for such services as provided for in this Agreement or any Supplemental Service Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Town of Liberty and the Consultant have caused this contract to be executed under seal by their respective duly authorized agents or officers.

TOWN OF LIBERTY:

CONSULTANT:

By: _____

By: _____

Printed: _____

Printed: _____

Witnessed By:

Witnessed By:

Name: _____

Name: _____

Printed: _____

Printed: _____

(SEAL)

(SEAL)

APPENDIX B

TOWN OF LIBERTY, NORTH CAROLINA SUPPLEMENTAL SERVICES AGREEMENT FOR ON-CALL PROFESSIONAL GENERAL ENGINEERING SERVICES

SECTION I: PURPOSE

The purpose of this Supplemental Services Agreement (hereinafter “SSA”) is for, [INSERT NAME HERE], the Consultant, to provide On-Call General Engineering Professional Services, as assigned, in accordance with the Agreement titled, “TOWN OF LIBERTY, NORTH CAROLINA MASTER SERVICES AGREEMENT FOR ON-CALL PROFESSIONAL ENGINEERING SERVICES” between the Town and [CONSULTANT], dated [date] (hereinafter “Master Services Agreement” or “MSA”).

SECTION II: SCOPE

Consultant will perform On-Call General engineering Professional Services on an as-needed basis upon receipt of request and assignment from the Town representative. The Consultant shall comply with all terms of the MSA, which agreement is incorporated into this SSA as if fully set forth verbatim herein. Duties will involve [general scope of services]. Services to be provided include, but are not limited to [specific scope of services]. Consultant and the Town will mutually determine at time of assignment of individual tasks the Consultant personnel to be assigned, schedule, and deliverables.

SECTION III: SCHEDULE

Consultant shall perform tasks as expeditiously as practical and in conformance with schedules developed at the time of assignment of individual tasks and agreed upon by the Town and Consultant.

SECTION IV: PERIOD OF SERVICE

This SSA shall be for a period of from [date] to [date].

SECTION V: COMPENSATION

Consultant shall perform the services detailed in the scope described in Section II above on the basis of the hourly rate schedule contained in the MSA or set fee for services and attached hereto.

Billing shall be on a monthly basis in conformance with Section VI of the MSA, and invoices for all compensation owed in accordance with this SSA shall be submitted to the Town with sufficient detail to process the invoice for payment and for a proper pre-audit and post-audit thereof in accordance with Town standards. The total amount billed to the Town under this Supplemental Service Agreement shall not exceed [amount] nor shall the Consultant incur costs above [amount] without the written permission of the Town.

SECTION VI: INSURANCE COVERAGE

Consultant shall provide insurance coverage as provided for in Section VII of the MSA.

SECTION VII: OTHER SPECIAL TERMS

The Town will provide the Consultant all pertinent information and data available to the Town and deemed necessary to perform assigned tasks.

SECTION VIII: CONTRACT MONITORING

Staff member responsible for monitoring the contract performance requirements is:

Name and Title: _____

Department Head Initials: _____

SECTION IX: PRE-AUDIT

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

(Signature of Finance Officer)

Town of Liberty
239 S. Fayetteville St
PO Box 1006
Liberty, NC 27298

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Town of Liberty and the Consultant have caused this contract to be executed under seal by their respective duly authorized agents or officers.

TOWN OF LIBERTY:

CONSULTANT:

By: _____

By: _____

Printed: _____

Printed: _____

Witnessed By:

Witnessed By:

Name: _____

Name: _____

Printed: _____

Printed: _____

(SEAL)

(SEAL)

APPENDIX C

- I. General Contract Terms and Conditions
 - a. The selected firm will report directly to the Town of Liberty. The selected firm is to administer the contract and to ensure that all work is performed in accordance with the contract requirements. The selected firm will be responsible for providing engineers, technicians, and subconsultants with the appropriate skills and qualifications to ensure contract compliance. The firm will be directly responsible for oversight of the project for the Town.
 - b. The firm selected will be notified by the Town and will enter contract negotiations to receive this work. A master services agreement will be signed with the selected firm based on the submittal of qualification selection. The master services agreement will include the applicable Terms and Conditions contained in this Request for Qualifications, this Appendix A, and Appendix B.
 - i. *Any questions related to Terms and Conditions shall be presented as required by Section 5 of the Request for Qualifications. The Terms and Conditions will otherwise be considered accepted as written by the prospective firm.*
- II. Communication:
 - a. All communication of any nature with respect to this RFQ shall be addressed to Scott Kidd, Town Manager, and Janie Konyek, Assistant Town Manager, identified as the project managers of this RFQ. The prospective firms and their staff are otherwise prohibited from communicating with elected Town officials, Town staff, and any selection committee member regarding this RFQ or submittals from the time the RFQ was released until the selection results are publicly announced. Violation of this provision may lead to disqualification of the firm's submittal for consideration.
- III. Conflict of Interest Statement:
 - a. By submission of a response, the firm agrees that at the time of submittal, it: (1) has no interest (including financial benefit, commission, finder's fee, or any other remuneration) and shall not acquire any interest, either direct or indirect, that would conflict in any manner or degree with the performance of firm's services, and (2) will not benefit from an award resulting in a "Conflict of Interest." A "Conflict of Interest" shall include holding or retaining membership, or employment, on a board, elected office, department, division or bureau, or committee sanctioned by and/or governed by the Town. Firms shall identify any interests, and the individuals involved, on separate paper with the response and shall understand that the Town, in consultation with legal counsel, may reject their submittal.

IV. Changes in Personnel:

- a. Changes to personnel on project team(s), particularly a project manager, are to be avoided whenever possible. The selected firm must request in writing to the Town for all changes to project team members. The Town will consider requests and may accept the new personnel changes, or may deny the request and consequently, the selected firm may no longer be considered for Planning and Design Services with the Town. A change of project manager without prior written request to the Town shall be considered a material breach and cause for termination.

V. Trade Secrets and Public Records:

- a. Records received by the Town in response to the Request for Qualifications are public records and subject to public inspection and copying. The Public Records law (N.C.G.S. 132-1 et seq.) authorizes the Town to withhold from public inspection and copying legitimate and properly marked "trade secrets." Note that to protect a "trade secret" detail requirements must be met, such as:
 - i. It is a "trade secret" as defined in G.S. 66-152(3); and
 - ii. It is the property of a private "person" as defined in G.S. 66-152(2); and
 - iii. It is disclosed or furnished to the Town in connection with a bid or submittal; and
 - iv. It is marked as "confidential" or as a "trade secret" at the time of its initial disclosure to the Town and, if requested, written reason is provided why such exclusion from public disclosure is necessary and legal.
 - v. An attempt to designate an entire submittal as confidential or a "trade secret" in a manner that does not fit the statutory definitions may result in the disqualification of a submittal.

VI. Submittal Ownership/Costs:

- a. All responses, inquiries or correspondence relating to this Request for Qualifications will become property of the Town of Liberty when received. Drawings, tracings, specifications, reports, models, computer discs, renderings, copyrights, and all other documents to be prepared and furnished by the firm pursuant to specific projects undertaken by the successful submitter, are the sole property of the Town of Liberty, whether the project for which they are made is executed or not, and may be used by the Town of Liberty as they see fit. If such documents are used on another project or for another purpose by the Town of Liberty, the firm shall not be responsible for such use and shall not receive additional compensation. All costs for development of the written submittal and the oral presentation are entirely the obligation of the firm and shall not be remunerated in any manner by the Town of Liberty.

- VII. Non-Warranty of Request for Qualifications:
- a. Due care and diligence have been used in preparing this RFQ. However, the Town shall not be responsible for any error or omission in this RFQ, nor for the failure on the part of the Firms to ensure that they have all information necessary to affect their submittals.
- VIII. Acceptance/Rejection of Submittals:
- a. The Town of Liberty reserves the right to accept or reject any or all submittals in whole or in part, with or without cause; to waive technicalities; or to accept submittals or portions thereof which, in the Town's judgment, best serve the interest of the Town.
- IX. Equal Opportunity:
- a. The selected firm will ensure that employees and applicants for employment are not unfairly discriminated against because of their race, color, religion, sex, national origin, disability or veteran status.
- X. Americans with Disabilities Act (ADA) Compliance:
- a. The Town of Liberty will comply with the Americans with Disabilities Act (ADA) which prohibits discrimination on the basis of a disability. The Town of Liberty will make reasonable accommodation in all programs to enable participation by an individual with a disability who meets essential eligibility requirements. Town of Liberty programs will be available in the most integrated setting for each individual. If any accommodations are necessary for participation in any program or services, participants are encouraged to notify Town staff.
- XI. Minority/Women/Small Business Enterprise:
- a. It shall be the practice of the Town of Liberty Government to provide minority-owned, women-owned, and small business enterprises (collectively "M/W/SBE) as well as other responsible vendors with fair and reasonable opportunity to participate in Town of Liberty's business opportunities including but not limited to employment, construction development projects, and material/services, consistent with the laws of the State of North Carolina. The policy of the Town of Liberty prohibits discrimination against any person or business in pursuit of these opportunities on the basis of race, color, national origin, religion, sex, age, disability, or veteran's status. It is further the policy of the Town of Liberty to conduct its contracting and procurement programs so as to prevent such discrimination and to resolve any and all claims of such discrimination.
- XII. Title VI:

- a. The selected firm, during the performance of a contract for itself, its assignees and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:
- i. **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Town of Liberty (hereinafter, "Town") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
 - ii. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, religion, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when a contract covers a program set forth in Appendix B of the Regulations.
 - iii. **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under a contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
 - iv. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Town to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the Town as appropriate and shall set forth what efforts it has made to obtain the information.
 - v. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the non-discrimination provisions of a contract, the Town shall impose such contract sanctions as it or the Town may determine to be appropriate, including, but not limited to:
 1. withholding of payments to the contractor under a contract until the contractor complies, and/or
 2. cancellation, termination, or suspension of a contract, in whole or in part.

- vi. **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Town may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Town to enter into such litigation to protect the interests of the Town, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

XIII. Financial Capacity:

- a. The selected firm must have financial capacity to undertake the work and assume associated liability.

XIV. Familiarity and Compliance with Laws, Regulations, and Ordinances:

- a. The selected firm shall make itself aware of and comply with and shall cause each of its subcontractors to comply with all applicable federal, state, and local laws and regulations.

XV. Insurance and Indemnity Requirements:

- a. To the extent permitted by law, the selected firm agrees to defend, pay on behalf of, indemnify, and hold-harmless the Town of Liberty, its elected and appointed officials, employees, agents, and volunteers against any and all claims, demands, fault, actual liabilities, assertions of liability, expenses, suits, or losses, including all costs connected therewith, which may be asserted, claimed, or recovered against or from the Town of Liberty, its elected or appointed officials, employees, agents, and volunteers by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof resulting from the negligence of the firm.
- b. The selected firm further agrees to purchase and maintain during the life of any contracts entered into with the Town the following insurance with an insurance company acceptable to the Town of Liberty and authorized to do business in the State of North Carolina. The vendor's insurance policies shall be primary and non-contributory with respect to other available sources of insurance. The insurance requirements mandated herein are minimum requirements for contractors and in no way limit the indemnity covenants contained in the contract. The Town in no way warrants that the minimum limits contained herein are sufficient to protect the contractor from liabilities that might arise out of the performance of their work and are free to purchase additional insurance as necessary.

- i. Automobile: Bodily injury and property damage liability covering all owned, non-owned, and hired automobiles for limits of not less than \$1,000,000 combined single limit.
- ii. Comprehensive General Liability: Bodily injury and property damage liability insurance shall protect the firm from claim of bodily injury or property damage which arises from operations of a contract. The amounts of such insurance shall not be less than \$2,000,000 each occurrence and \$4,000,000 general aggregate. This insurance shall include coverage for product/completed operations and contractual liability assumed under the indemnity provision of a contract. The Town of Liberty shall be endorsed as an "Additional Insured".
- iii. Firm's Professional Liability: In a limit of not less than \$2,000,000 per occurrence. If policy is on a claims-made basis, contractor shall provide evidence of Professional Liability Insurance for the duration of the contract and for a period of five (5) years following termination of the Contract.
- iv. Workers' Compensation Insurance:
 - v. Coverage A – Worker's Compensation: in accordance with North Carolina General Statute Chapter 97.
 - vi. Coverage B – Employer's Liability: \$1,000,000 each accident / \$1,000,000 disease – each employee / \$1,000,000 disease – policy limits.
- c. Certificates of such insurance with the Town of Liberty, 239 S Fayetteville St, listed as Certificate Holder will be furnished to the Town of Liberty Purchasing Manager and shall contain the provision that the Town of Liberty be given thirty (30) days written notice of any intent to amend or terminate by either the firm or the insuring company. The Town's failure to review a certificate of insurance sent by or on behalf of the Contractor shall not relieve the Contractor of its obligation to meet the insurance requirements set forth in this Agreement.

Town of Liberty
Attn: Town Manager and/or Asst. Town Manager
239 S Fayetteville St
PO Box 1006
Liberty, NC 27298

XVI. Vendor Registration:

- a. The selected firm must be registered with the Town to receive payment for services and/or supplies provided under any Town contract.

XVII. E-Verify:

- a. The selected firm shall comply with the requirements of Article 2 of Chapter 64 of North Carolina General Statutes and shall require each of its subcontractors to do so as well.

XVIII. Iran Divestment Act:

- a. The selected firm shall certify that; (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 143-6A-4; (ii) it will not take any action causing it to appear on any such list during the term of a contract, and (iii) it will not utilize any subcontractor to provide goods or services hereunder that is identified on any list.

XIX. Divestment from Companies that Boycott Israel:

- a. The selected firm shall certify that; (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 143-6A-4; (ii) it will not take any action causing it to appear on any such list during the term of a contract, and (iii) it will not utilize any subcontractor to provide goods or services hereunder that is identified on any list.

XX. Notifications

- a. Addenda Notice:
 - i. It is the respondent's responsibility to ensure that all addenda have been received. Please visit <https://www.liberty-nc.com/> for the most current information.

APPENDIX D

The Terms and Conditions described in this Appendix are standard to Town contracts. The Town reserves the right to negotiate additional or alternative terms and conditions as may be necessary to a particular project or contract.

To the degree the Terms and Conditions in this Appendix are contrary to the Request for Qualifications or Appendix A, the order of authority shall be: 1) The Request for Qualifications, 2) the Master and Supplemental Service Agreements, 3) Appendix C, 4) Appendix D.

1. **Applicability.** These Consolidated Terms and Conditions govern purchases and contracts with the Town of Liberty. Any attached Contractor/Vendor quotes or proposals are incorporated as a binding description of goods and services to be provided but are otherwise for scope only if they contradict these Terms and Conditions. These Terms and Conditions govern agreements for goods, services, participation in Town events (food trucks and other vendors), or any combination thereof as may be required in the Contract.
2. **Definitions.** In this document, unless the context requires otherwise: "Town" means the Town of Liberty.
 - a. "Vendor" or "Contractor" means the entity providing goods or services to the Town.
 - b. "Contract" or "Agreement" or "Order" means the binding agreement between the Town and Contractor, including these Terms and Conditions and any proposal, quote, or scope of work submitted by the Contractor. If there is any discrepancy between these Terms and Conditions and a proposal, quote, scope, or other terms, these terms shall prevail.
 - c. "Purchase Order" means the Town's official document authorizing a purchase.
3. **Invoicing and Payment.**
 - a. All invoices must be sent by email to: finance@townoflibertync.org or mailed to the Town of Liberty, Finance Director, 239 S. Fayetteville St, PO Box 1006, Liberty, NC 27298.
 - b. All invoices must include a unique invoice number and the applicable Purchase Order number.
 - c. Invoices for partial deliveries must be indicated as such.
 - d. The Vendor must provide separate invoices for each Purchase Order number.
 - e. The Town of Liberty is not exempt from State or Town Sales Tax. Sales Tax will be paid from Vendor's invoice when submitted.

- f. The Town of Liberty is exempt from Federal Excise Tax. If any form of such tax is billed on the invoice, it must be shown as a separate item. Tax Exemption Certificates will be furnished upon request.
- g. Payment term discounts will be deducted as provided for in the Purchase Order or in accordance with the terms of the official quotation or bid. Net purchases will be paid 30 days from the date of the invoice, or upon acceptance of goods or services.

4. Shipping and Delivery.

- a. All packages must bear the correct Purchase Order number on the outside of each package or shipping container.
- b. The Town of Liberty will not be responsible for any goods delivered without a Purchase Order, if applicable, having been issued.
- c. All prices must be F.O.B. Destination and delivered to the destination indicated on the Purchase Order. Where specific purchase is quoted or negotiated F.O.B. Shipping Point, the vendor is to prepay the shipping charges and add them to the invoice.
- d. The risk of loss and damage to the goods which are the subject of this order shall be the Vendor's until the goods are delivered to the destination set out in the order and accepted by the purchaser or its representative.

5. Principles of Interpretation. In this contract, unless the context requires otherwise, the singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. Reference to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and any other legal entities.

6. Licensing and Certification. Contractor must possess and maintain proof of current and valid professional certifications, licenses, or other credentials necessary to perform the services mandated by the Contract. Said certification, licenses, or credentials shall be provided to the Town within five (5) days of written request by the Town. The Town reserves the right to verify all certifications or licenses and to deny or terminate this agreement if such credentials are found to be invalid or expired.

7. Contract Modification.

- a. The conditions of this order cannot be modified except by written Amendment containing the authorized signature from both parties. A modification of this contract is not valid and enforceable unless

signed by both parties and is otherwise in accordance with requirements of law.

- b. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

8. **Default and Remedies.**

- a. Any rejected materials will be returned to the Vendor at the Vendor's risk and expense.
- b. In the event of a vendor's failure to deliver or perform as specified, the Town reserves the right to cancel the order or any part thereof, without prejudice to its other rights. The Vendor agrees that the Town may return part or all of any shipment and may charge the vendor with all reasonable losses or expenses sustained as a result of such failure to deliver or perform.
- c. In case of default of the contractor, the Town may procure the articles or services from other sources and charge the Vendor damages for any excess costs or other damages caused by the default.

9. **Compliance with Laws. Hold Harmless.**

- a. It is agreed that the goods, materials, equipment, or services provided shall comply with all Federal, State or local laws, and that the Vendor shall defend actions or claims brought, and save harmless the Town, and/or its officials or employees, from loss, cost or damage by reason of actual or alleged failure to comply with such laws.
- b. In performing all the Work, the Contractor shall comply with all applicable law and Town policy.

10. **Acceptance of Terms.** The Town may, at any time, insist upon strict compliance with these terms and conditions, notwithstanding any previous custom, practice, or course of dealing to the contrary. Acceptance of the order includes acceptance of all terms, conditions, prices, delivery instructions and specifications as shown on this order or attached to and made a part of this order.

11. **Choice of Law and Forum.** This contract shall be deemed made in Liberty, Randolph County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the appropriate division of the North Carolina General Court of Justice, in Randolph County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to

subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

12. **Waiver and Severability.** No action or failure to act by the Town shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

13. **Performance of Government Functions.** Nothing contained in this contract shall be deemed or construed in any way to stop, limit, or impair the Town from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

14. **Assignment, Successors and Assigns.** Without the Town's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. Unless the Town otherwise agrees in writing, the Contractor and all assigns shall be subject to all the Town's defenses and shall be liable for all the Contractor's duties that arise out of this contract and all of the Town's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

15. **No Third Party Right Created:** This contract is intended for the benefit of the Town and the Contractor and not any other person.

16. **Public Record.**

- a. Notwithstanding any other provisions of this Contract, this Contract and all materials submitted to the Town by the Contractor are subject to the public records laws of the State of North Carolina.
- b. It is the responsibility of the Contractor to properly designate materials that may be protected from disclosure as trade secrets under North Carolina law as such and in the form required by law prior to the submission of such materials to the Town.
- c. Contractor understands and agrees that the Town may take any and all actions necessary to comply with federal, state, and local laws and/or judicial orders and such actions will not constitute a breach of the terms of this Contract, nor shall Town be liable to any party for disclosing the 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 discretion, to comply with any public records request or other applicable laws.

- d. To the extent that any other provisions of this Contract conflict with this paragraph, the provisions of this section shall control.

17. **No pledge of taxing authority.** The taxing power of the Town of Liberty is not pledged directly or indirectly to secure any monies due under this contract.

18. **No waiver of governmental immunity.** Except for waiver of governmental immunity resulting from the execution of a valid contract, the Town of Liberty makes no other waiver of governmental immunity, or any other defense or remedy available in law or equity.

19. **Violation of law.** If any provision of the Contract or Agreement is in violation of any legal, statutory, or state constitutional prohibition, then such provision(s) shall be unenforceable against the Town of Liberty.

20. **Conflict of Interest.** If this is a contract for design, engineering, contract administration or similar services, the Contractor will not enter into contracts or agreements with third parties that may present a potential for conflict of interest between the Town of Liberty and the third parties regarding the subject matter of this Contract or Agreement.

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

22. **Non-appropriation clause.**

- a. Contractor acknowledges that the Town of Liberty is a governmental entity, and the contract validity is based upon the availability of public funding under the authority of its statutory mandate.
- b. In the event that public funds are unavailable and not appropriated for the performance of the Town of Liberty's obligations under this contract, then this contract shall automatically expire without penalty to the Town of Liberty thirty (30) days after written notice to Contractor of the unavailability and non-appropriation of public funds.
- c. It is expressly agreed that the Town of Liberty shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this contract, but only as an emergency fiscal measure during a substantial fiscal crisis, which affects generally its governmental operations.

- d. In the event of a change in the Town of Liberty's statutory authority, mandate and mandated functions, by state and federal legislative or regulatory action, which adversely affects the Town of Liberty's authority to continue its obligations under this contract, then this contract shall automatically terminate without penalty to the Town of Liberty upon written notice to Contractor of such limitation or change in the Town of Liberty's legal authority.

23. **Town Policy.**

- a. THE TOWN OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER TOWN CONTRACTS.
- b. **Non-discrimination.** The Town and Contractor, for themselves, their agents, officials, employees, and servants agree not to discriminate in any manner on the basis of race, color, creed, national origin, sex, age, handicap, sexual orientation, characteristic protected by applicable federal, state, or local laws and ordinances with reference to the subject matter of this Contract, no matter how remote.
- c. **EEO Provisions.**
 - i. During the performance of this Contract the Contractor agrees as follows:
 - ii. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall post in conspicuous places available to employees and applicants for employment, notices setting forth these EEO provisions.
 - iii. The Contractor in all solicitations or advertisements for employees placed by or on behalf of the Contractor, shall state all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.
- d. **TITLE VI:** During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:
 - i. **Compliance with Regulations:** The Contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Town of Liberty Title 49, Code of Federal

Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

- ii. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, religion, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- iii. **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- iv. **Information and Reports:** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Town to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information the Contractor shall so certify to the Town as appropriate and shall set forth what efforts it has made to obtain the information.
- v. **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the Town shall impose such contract sanctions as it or the Town may determine to be appropriate, including, but not limited to:
 - a. withholding of payments to the Contractor under the contract until the Contractor complies, and/or
 - b. cancellation, termination, or suspension of the contract, in whole or in part.
- vi. **Incorporation of Provisions:** The Contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the Town may direct as a means of

enforcing such provisions including sanctions for noncompliance. Provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the Town to enter into such litigation to protect the interests of the Town, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

24. E-Verify.

- a. Contractor understands that E-Verify is the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with NCGS §64-25 et seq.
- b. Contractor is aware of and in compliance with the requirements of E-Verify and Article 2 of Chapter 64 of the North Carolina General Statutes.
- c. To the best of the Contractor's knowledge, any subcontractors employed by them as a part of this contract are in compliance with the requirements of E-Verify and Article 2 of Chapter 64 of the North Carolina General Statutes.

25. Iran Divestment Act Certification. Contractor certifies that:

- a. It is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 147-86.58, and
- b. It will not take any action causing it to appear on any such list during the term of this Contract, and
- c. It will not utilize any subcontractor to provide goods or services hereunder that is identified on any list.

26. Divestment from Companies that Boycott Israel. Contractor represents, covenants, and certifies that it is not listed on the list of restricted companies developed and published by the North Carolina State Treasurer as required by N.C.G.S. 147-86.81.

27. Quality and Workmanship. All work performed and/or services rendered shall be performed to the satisfaction of the Town of Liberty. The work performed and/or services rendered shall not be considered complete, nor applicable payments rendered, until the Town is satisfied with the work performed and/or services rendered.

28. Insurance.

a. If the provisions of this Section are not consistent with other insurance provisions in this contract the provisions with the highest coverages and most protections for the Town shall govern. If performing services under this Contract the Contractor agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Contract the following coverages and limits. The requirements contained herein, as well as Town's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Contract. The insurance requirements mandated herein are minimum requirements for contractors/vendors and in no way limit the indemnity covenants contained in the contract. The Town in no way warrants that the minimum limits contained herein are sufficient to protect the contractor/vendor from liabilities that might arise out of the performance of their work and are free to purchase additional insurance as necessary.

- a. **Workers' Compensation Insurance** - Contractor agrees to maintain Worker's Compensation Insurance in accordance with North Carolina General Statute Chapter 97.
 - i. **Employer's Liability Insurance.** Contractor agrees to maintain the minimum recommended limit is \$1,000,000 per each accident /\$1,000,000 per each occupational disease and \$1,000,000 policy limit.
 - ii. **Commercial General Liability** - Contractor agrees to maintain commercial general liability insurance with limits of no less than \$2,000,000 each occurrence and \$4,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability, Cross Liability, or Personal and Advertising Injury Liability. Town shall be named as additional insured as described below.
 - iii. **Commercial Automobile Liability** - Contractor agrees to maintain commercial automobile liability insurance with limits of no less than \$1,000,000 combined single limit – any auto. Coverage shall include liability for Owned, Non-Owned and Hired automobiles. In the event Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Auto Liability policy.

If – in the performance of this contract - a vehicle that can carry more than 12 persons (including driver) is being used by Contractor, the limits shall be increased to \$2,000,000. This \$2,000,000 limit may be achieved

by utilizing an Umbrella or Excess policy with a per occurrence limit of \$1,000,000.

- iv. **Umbrella or Excess Liability** - Contractor may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability, however, the Annual Aggregate limits shall not be less than the highest 'Each Occurrence' limit for required policies. ***Contractor agrees to endorse the Town as an 'Additional Insured' on the Umbrella or Excess Liability unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a 'Follow-Form' basis.***
- v. **Professional Liability** - Contractor agrees to maintain Professional Liability insurance with limits of no less than \$2,000,000 per occurrence or claim, \$4,000,000 aggregate. If the policy is on a claims-made basis, contractor shall provide evidence of Professional Liability Insurance for the duration of the contract and for a period of five (5) years following termination of the Contract.
- vi. **Additional Insured.** The Contractor's General Liability policy shall be endorsed, specifically or generally, to include the following as Additional Insured:

“TOWN OF LIBERTY, ITS OFFICERS, AGENTS AND EMPLOYEES ARE INCLUDED AS ADDITIONAL INSURED WITH RESPECT TO THE GENERAL LIABILITY INSURANCE POLICY.”

The Contractor shall disclose any self-insured retention and this is only allowed in lieu of coverage if pre-approved by Liberty's Safety and Risk Manager.

- vii. **Primary Coverage.** For any claims related to this Agreement, the Contractor's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the Town, its officers, officials, employees, agents or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- viii. **Waiver of Subrogation Rights.** Contractor hereby grants to Town a waiver of any right to subrogation which any insurer of said Contractor may acquire against the Town by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not

the Town has received a waiver of subrogation endorsement from the insurer.

- b. **Certificate of Insurance.** Contractor shall provide proof of the required insurance coverage(s) in the form of an original current certificate of insurance presented by the Insured's agency before the Contractor is allowed to perform any work for the Town. The Certificate Holder is the Town of Liberty, 239 S Fayetteville St, PO Box 1006, Liberty, NC 27298.
- c. **Failure to Procure Coverage.** In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, the Town has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by Town as a material breach of contract.
- d. **Claims Made Policies.** If any of the required policies provide coverage on a claims made basis:
 - i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
 - iii. If coverage is canceled or non-renewed and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
- e. **Notice of Cancellation/Changes.** Either the Contractor or its insurance agency shall provide thirty (30) days prior written notice to the Town in the event of cancellation or material changes, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Notice shall be sent directly to:

Town of Liberty
239 S Fayetteville St
PO Box 1006
Liberty, NC 27298

- f. **Town's Right to Terminate; Drug-Free Workplace Program; Driver's Licenses.** In the event that the contractor fails to maintain and keep in force the insurance herein required, the Town has the right to cancel and terminate the contract without notice. Contractor shall provide proof that a Drug-Free Workplace Program is in place and that drivers meet DOT/CDL licensing requirements, if requested.

- g. **Non-Renewal or Cancellation.** If Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify the Town within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance.

The Certificate Holder address should read:

Town of Liberty
239 S Fayetteville St
PO Box 1006
Liberty, NC 27298

- h. **Carrier Authorization.** All insurance companies must be authorized to do business in North Carolina and be acceptable to the Town of Liberty's Risk Manager. The Town may increase, decrease or waive insurance limits at its sole discretion.

- i. **Subcontractors.** Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that Town is an additional insured on insurance required from subcontractors.

- j. **Special Risks or Circumstances.** Town reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. TOWN shall give notice to CONTRACTOR of any such requirements prior to the execution of this contract, or within such reasonable time as TOWN becomes aware of the need for such additional or increased coverages.

- k. **Miscellaneous.** The failure of the Town at any time to enforce the insurance provisions, to demand such certificates of insurance, or to identify a deficiency shall not constitute a waiver of those provisions, nor reduce obligations of the Contractor to maintain such insurance or to meet its obligations under the indemnification provisions. Notwithstanding the foregoing, nothing contained herein shall be

deemed to constitute a waiver of the governmental immunity of the Town, which immunity is hereby reserved to the Town.

29. **Indemnity.** To the extent permitted by law, the Contractor agrees to defend, pay on behalf of, indemnify, and hold-harmless the Town of Liberty, its elected and appointed officials, employees, agents, and volunteers against any and all claims, demands, fault, actual liabilities, assertions of liability, expenses, suits, or losses, including all costs connected therewith, which may be asserted, claimed, or recovered against or from the Town of Liberty, its elected or appointed officials, employees, agents, and volunteers by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof resulting from the negligence of the Contractor. Regardless of any terms to the contrary on other paperwork, the Contractor agrees that the Town will not indemnify the Contractor for any damage or injury suffered by the Contractor due to activities performed pursuant to this contract nor will the Town indemnify the Contractor for any claims that arise in relation to the Contractor's activities performed pursuant to this contract.

30. **Force Majeure.**

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

31. **Intellectual Property.**

- a. Unless otherwise agreed to in writing: All intellectual property, including, but not limited to, patentable inventions, patentable plans, copyrightable works, mask works, trademarks, service marks and trade secrets invented, developed, created or discovered in performance of services under this Contract shall be the property of the Town.
- b. Copyright in and to any copyrightable work, including, but not limited to, copy, art, negatives, photographs, designs, text, software, or documentation created as part of the Contractor's performance of services under this Contract shall vest in the Town.
- c. Works of authorship and contributions to works of authorship created by the Contractor's performance of services under this Contract are hereby agreed to be 'works made for hire' within the meaning of 17 U.S.C. 201.

32. Cancellation.

- a. The Town may terminate this Contract at any time by providing written notice to the Contractor.
- b. Contractor shall cease performance immediately upon receipt of such notice.
- c. In the event of early termination, Contractor shall be entitled to receive just and equitable compensation for costs incurred prior to receipt of notice of termination and for the satisfactory work completed as of the date of termination and delivered to the Town.
- d. Notwithstanding the foregoing, in no event will the total amount due to Contractor under this section exceed the total amount due Contractor under this Contract.

33. Notices. All notices and other communications required or permitted by the Agreement shall be in writing and shall be given either by personal delivery, fax or certified United States mail, return receipt requested, addressed as follows:

To the Town:
Attn: Town Manager and/or
Assistant Town Manager
239 S Fayetteville St
PO Box 1006
Liberty, NC 27298

To Contracting Party(ies):
Attn: ____ (full name)
(address)
City, State, Zip

34. Public Communication. Advertising. Except as permitted or required by this Agreement, and except as required by the North Carolina Public Records Act or any other applicable law or policy, both Parties agree that any public statements, social media posts, or other public communications regarding this contract or its cancellation shall not be made. To the extent any such public communications or posts are necessary, said public communications or posts shall be made in a professional and diplomatic manner. The Town values open communication, professionalism, and mutual respect in its relationships with its service-providers. Organizations contracting or otherwise associating with Town operations are encouraged to address concerns or feedback about Town operations through appropriate channels, including direct communication with the relevant Town department or representative. While the Town respects the constitutional rights of individuals and organizations to publicly express their views regarding matters of public concern, including through social media, service-providers are expected to conduct themselves in a manner that supports a productive and respectful working relationship. Public statements that are not of public concern, or are knowingly false or defamatory, or that disclose confidential or proprietary information may be considered a breach of contract and subject to appropriate remedies as outlined in the agreement and in accordance with applicable law. This Section shall not be interpreted in a manner that unlawfully prohibits permissible speech. The Agreement and/or relationship among the

parties shall not be used for any advertising purposes, including referrals or testimonials, by either party without the express written consent of the other party.

35. **Signature Warranty.** Any party executing the Agreement as a corporate or other legal entity represents to the other parties hereto that such entity is duly organized, validly existing and in good standing under the laws of the State of North Carolina or otherwise under the laws of the state of its formation, and is qualified to transact the business contemplated herein within the State of North Carolina, and further that any such party executing the Agreement on behalf thereof, has the full power and authority to do so without any further authorization being required from any party, and thereby legally binds said entity to the terms and conditions of this Agreement.

36. **Other.**

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

b. The Contractor shall be considered an Independent Contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees.

c. Nothing herein is intended or will be construed to establish any agency, partnership, or joint venture.

d. Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such employees shall not be employees of or have any individual contractual relationship with the Town.

e. **Conflict in Terms or Other Documents.** In the event of any inconsistency, conflict, or ambiguity between this agreement, including these terms and conditions, and other associated contract documents, the parties agree that this contract and the terms and conditions in this document shall prevail.