

**NORTH CAROLINA
CITY OF HIGH POINT**

CONSULTANT CONTRACT

THIS CONTRACT is made, and entered into this the _____ day of _____, 2019, by and between the **CITY of HIGH POINT**, a North Carolina municipal corporation, (hereinafter referred to as "CITY"), and **GOVERNMENT FINANCE OFFICERS ASSOCIATION (GFOA)**, a not for profit corporation duly authorized to do business in the State of North Carolina, (hereinafter referred to as "CONSULTANT"). CITY and CONSULTANT are hereinafter collectively referred to as the "Parties".

STATEMENT OF PURPOSE

WHEREAS, the CITY, the State and Local Government Finance Division ("SLGFD") of the North Carolina Department of State Treasurer ("DST"), and other entities and organizations, are members of a Steering Committee, under the Local Government Technology Initiative Steering Committee Memorandum of Understanding dated the ____ day of _____, 2019 (the "Steering Committee MOU"), and

WHEREAS, the purpose of the Local Government Technology Initiative ("LOGOTIN" or the "Project") is to identify a software product that could be utilized by local government units in North Carolina to meet essential financial, compliance, and reporting obligations in an efficient and transparent manner, and

WHEREAS, funding and authority for the Project have been granted by the North Carolina General Assembly in accordance with Senate Bill 257, page J8 of the conference report (Session Law 2017-57), and Project funding has been appropriated and allocated to the SLGFD Operations Budget,

NOW, THEREFORE For and in consideration of the mutual promises to each other and other good and valuable consideration, as hereinafter set forth, the Parties hereto do mutually agree as follows:

1. **SCOPE OF SERVICES AND ROLE OF CITY.** CONSULTANT hereby agrees to provide the services and/or materials under this Contract pursuant to the provisions and specifications set forth in the GFOA Proposal dated _____, 2019 prepared for the Project (hereinafter collectively referred to as "Services"). The GFOA Proposal is labelled "Attachment 1" and is hereby incorporated into this Contract by reference. Time is of the essence with respect to all provisions of this Contract that specify a time for performance.

Under the Local Government Technology Initiative Contract Administrator Memorandum of Understanding dated the ____ day of _____, 2019 (the "Contract Administrator MOU") the CITY has agreed to act as the Contract Administrator for the Steering Committee, entering into this Contract as a representative and agent of the Steering Committee, and not for the direct benefit of the CITY. The Contract Administrator MOU is attached to this Contract as "Attachment 2" and is incorporated into this Contract by reference. The CITY and CONSULTANT acknowledge that the SLGFD and the Steering Committee are third-party beneficiaries of this Contract.

2. **TERM OF CONTRACT.** The Term of this Contract for services is from the date of execution to June 30, 2020 unless sooner terminated as provided herein.
3. **PAYMENT TO CONSULTANT.** Prior to CONSULTANT'S commencement of each Task (as the Tasks are defined in Attachment 1), the Steering Committee shall guarantee to the Parties that sufficient funds are available and have been encumbered to pay CONSULTANT. CONSULTANT shall submit itemized invoices to CITY and shall receive compensation after the Services have been delivered to and accepted by the Steering Committee according to the schedule set forth in the "Pricing" section of Attachment 1.

Payment will be processed upon receipt and approval of the invoice by the Steering Committee in accordance with the procedures set forth in Attachment 2. All payments to CONSULTANT shall be dependent upon and subject to the availability of funds appropriated and allocated to DST for the Project. CITY and CONSULTANT acknowledge that (a) the sole source of funds available for payments due under this contract is the funding appropriated by the NC General Assembly and allocated and available to DST in accordance with Session Law 2017-57, and (b) all payments hereunder must be approved by the Steering Committee prior to disbursement by the CITY. No CITY funds shall be made available to pay the CONSULTANT, and CITY'S payment responsibilities under this Contract are limited to disbursing the funds appropriated to DST.

4. **INDEPENDENT CONTRACTOR.** CITY and CONSULTANT agree that CONSULTANT is an independent contractor and shall not represent itself as an agent or employee of CITY for any purpose in the performance of CONSULTANT'S duties under this Contract. Accordingly, CONSULTANT shall be responsible for payment of all federal, state and local taxes as well as business license fees arising out of CONSULTANT'S activities in accordance with this Contract. For purposes of this Contract taxes shall include, but not be limited to, Federal and State Income, Social Security and Unemployment Insurance taxes.

CONSULTANT, as an independent contractor, shall perform the Services required hereunder in a professional manner and in accordance with the standards of applicable professional organizations and licensing agencies.

5. **HOLD HARMLESS**

The City assumes no responsibility for the success of the Project or the processes established for the initiation or governance and monitoring of the same, including without limitation financial responsibility arising from any loss, damage, and expense (including legal expense) relating thereto, and the GFOA hereby irrevocably waives and releases all claims and causes of action relating thereto (collectively, the "Released Claims") to the fullest extent permitted by North Carolina Law. Furthermore, to the fullest extent permitted by North Carolina law, the GFOA agrees to indemnify, defend, compensate, and reimburse the City for, and protect and hold harmless the City from and against, all actions, proceedings and claims brought or threatened against the City, and all loss, damage, and expense (including legal expenses) relating to the Released Claims where such action, proceeding, or claim has arisen out of or is related to, this Contract, if any payment is made by the GFOA under this paragraph, GFOA will not seek recovery of that payment from the City at any time. The City shall be held harmless and made whole by the GFOA for any damages, financial, equitable, or legal exposures that the City may incur as a result of this Contract.

In the event this paragraph conflicts with any other provision of this Contract, or any agreements related to this Contract by incorporation or reference in any manner, this paragraph shall govern and control.

6. **OWNERSHIP OF WORK.** All Deliverables (as defined in Attachment 1) prepared by the CONSULTANT for this Contract shall be jointly owned by the DST SLGFD and the Steering Committee, which shall have all common law, statutory and other reserved rights, including copyright.

Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the project shall not be construed as publication in derogation of the SLGFD's and the Steering Committee's reserved rights.

7. **INSURANCE AND INDEMNITY.** To the fullest extent permitted by laws and regulations, CONSULTANT shall indemnify and hold harmless the CITY, the members of the Steering Committee and all their officials, agents, and employees from and against all claims, damages, losses, and expenses, direct, indirect, or consequential (including but not limited to fees and charges of engineers or architects, attorneys, and other professionals and costs related to court action or mediation) arising out of or resulting from CONSULTANT's performance of this Contract or the actions of the CONSULTANT or its officials, employees, or contractors under this Contract or under contracts entered into by the CONSULTANT in connection with this Contract. This indemnification shall survive the termination of this Contract.

CONSULTANT shall comply with the North Carolina Workers' Compensation Act and shall provide for the payment of workers' compensation to its employees in the manner and to the extent required by such Act, with minimum limits of \$150,000.00. Additionally, CONSULTANT shall maintain, at its expense, the following minimum insurance coverage: \$250,000/\$500,000 – Professional Liability - Error and Omissions.

CONSULTANT, upon execution of this Contract, shall furnish to the CITY a Certificate of Insurance reflecting the minimum limits stated above. The Certificate shall provide for thirty-(30) days advance written notice in the event of a decrease, termination or cancellation of coverage. Providing and maintaining adequate insurance coverage is a material obligation of the CONSULTANT. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The limits of coverage under each insurance policy maintained by the CONSULTANT shall not be interpreted as limiting the CONSULTANT's liability and obligations under the Contract. Notwithstanding the foregoing, nothing contained in this Section 6 shall be deemed to constitute a waiver of the governmental immunity of the CITY, which immunity is hereby reserved to the CITY.

8. **HEALTH AND SAFETY.** CONSULTANT shall be responsible for initiating, maintaining and supervising all safety precautions and programs required by OSHA and all other regulatory agencies while providing Services under this Contract.
9. **NON-DISCRIMINATION IN EMPLOYMENT.** The Consultant shall maintain a non-discrimination policy and shall comply with all State and Federal laws relating to equal employment opportunity.
10. **GOVERNING LAW.** This Contract shall be governed by and in accordance with the laws of the State of North Carolina. All legal proceedings relating in any way to this Contract shall be brought in federal or state courts in Wake County, North Carolina.
11. **TERMINATION.**

11.1 EVENT OF DEFAULT. Any one or more of the following acts or omissions of the CONSULTANT shall constitute an Event of Default hereunder:

- a. Failure to perform the Services satisfactorily or on schedule,
- b. Failure to submit any report required hereunder; and/or
- c. Failure to perform any other covenant, term, or condition of this Contract.

Upon the occurrence of an Event of Default, the CITY may take one, or more, or all of the following actions:

1. Give CONSULTANT written Notice of the Event of Default, specifying the Event of Default and requiring it to be remedied within, in the absence of greater or lesser specification of time, seven (7) calendar days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Contract, effective two (2) days after giving the CONSULTANT written Notice of Termination; and/or
2. Deduct all expenses incurred by the CITY for damages caused by the CONSULTANT's Event of Default; and/or
3. Treat this Contract as breached and pursue any of its remedies at law or in equity, or both, including damages and specific performance.

11.2 TERMINATION FOR CONVENIENCE. This Contract may be terminated, without cause, by either party upon thirty (30) days written notice to the other party. This termination notice period shall begin upon receipt of the Notice of Termination.

Termination of this Contract, under either section 10.1 or 10.2, shall not form the basis of any claim for loss of anticipated profits by either party.

12. **SUCCESSORS AND ASSIGNS.** CONSULTANT shall not assign its interest in this Contract without the written consent of CITY. CONSULTANT has no authority to enter into contracts on behalf of CITY.
13. **COMPLIANCE WITH LAWS.** CONSULTANT represents that it is in compliance with all Federal, State, and local laws, regulations or orders, as amended or supplemented. The implementation of this Contract shall be carried out in strict compliance with all Federal, State, or local laws.
14. **NOTICES.** All required Notices shall be in writing and sent by (i) hand delivery; (ii) United States registered or certified mail, return receipt requested; (iii) a national third-party courier who provides signature receipts of delivery; or (iv) email. Notices are effective as of the date of actual receipt. If a Notice is sent by email and there exists an e-mail acknowledgement confirming receipt, then the Notice is effective as of the time of the e-mail transmission.

CITY OF HIGH POINT:

Greg Demko, or successor
P.O. Box 230
HIGH POINT, NC 27261
Email: greg.demko@highpointnc.gov

CONSULTANT:

[Name of contact], or successor
[Address Line 1]
[Address Line 2]
Email: _____

With Copy to:

State and Local Government Finance Division
Greg C. Gaskins, Deputy Treasurer
3200 Atlantic Ave.
Raleigh, NC 27604
Email: greg.gaskins@nctreasurer.com

15. **AUDIT RIGHTS.** For all Services being provided hereunder, CITY shall have the right to inspect, examine, and make copies of all books, accounts, invoices, records and other writings relating to the performance of the Services. Audits shall take place at times and locations mutually agreed upon by both

parties. Notwithstanding the foregoing, CONSULTANT must make the materials to be audited available within one (1) week of the request for them.

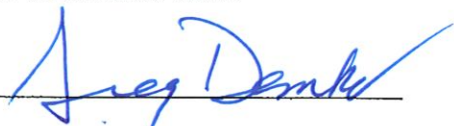
16. **EQUIPMENT.** CONSULTANT shall supply, at its sole expense, all equipment, tools, materials, and/or supplies required to provide Services hereunder, unless otherwise agreed in writing.
17. **ENTIRE CONTRACT.** Except as set forth herein, this Contract, including all Attachments, shall constitute the entire understanding between CITY and CONSULTANT and shall supersede all prior understandings and agreements relating to the subject matter hereof and may be amended only by written mutual agreement of the parties.
18. **HEADINGS.** The subject headings of the sections are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Contract shall be deemed to have been drafted by both parties and no interpretation shall be made to the contrary.
19. **EXISTENCE.** CONSULTANT warrants that it is a not for profit corporation duly organized, validly existing, and in good standing under the laws of the State _____ and is duly qualified to do business in the State of North Carolina and has full power and authority to enter into and fulfill all the terms and conditions of this contract.
20. **CORPORATE AUTHORITY.** By execution hereof, the person signing for CONSULTANT below certifies that he/she has read this Contract and that he/she is duly authorized to execute this Contract on behalf of the CONSULTANT.
21. **E-VERIFY.** As a condition of payment for services rendered under this Contract, CONSULTANT shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. If CONSULTANT provides the services to the CITY utilizing a subcontractor, CONSULTANT shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes as well. CONSULTANT shall verify, by affidavit, compliance of the terms of this section upon request by the CITY.
22. **INELIGIBLE VENDORS.** As provided in §147-86.60 and §147-86.82 of the General Statutes, the following companies are ineligible to contract with the State of North Carolina or any political subdivision of the State: a) any company identified as engaging in investment activities in Iran, as determined by appearing on the Final Divestment List created by the State Treasurer pursuant to G.S. 147-86.58, and b) any company identified as engaged in a boycott of Israel as determined by appearing on the List of restricted companies created by the State Treasurer pursuant to G.S. 147-86.81. A contract with the State or any of its political subdivisions by any company identified in a) or b) above shall be void *ab initio*.

SIGNATURE WARRANTY. Each undersigned individual warrants that he or she is duly authorized by the respective Party to sign this Contract on behalf of and to bind their respective Party to the terms and conditions herein. Each Party to this Contract represents and warrants that the execution, delivery and performance of this Contract and the consummation of the transactions provided in this Contract have been duly authorized by all necessary actions of the respective person or entity, including receipt of approvals from any governing board and/or agencies, and that the person executing this Contract on its behalf, if applicable, has the full capacity to bind that entity.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be executed by their respective duly authorized representatives as of the date first above written.

CITY OF HIGH POINT

By: _____



Print Name: Greg Demko

Print Title: City Manager

GOVERNMENT FINANCE OFFICERS ASSOCIATION

By: _____

Authorized Representative

Print Name: _____

Print Title: _____

ATTACHMENTS 1 and 2 to follow