



# **BUNCOMBE COUNTY**

**Request for Proposal**

**Blue Horizons Project Management**

**Date of Issue: May 16, 2023**

**Proposal Submission Deadline: June 12, 2023**

**At 2:00 PM ET**

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## 1.0 PURPOSE AND BACKGROUND

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In 2016 Buncombe County established a partnership with the City of Asheville and Duke Energy Progress (DEP) to transition Western North Carolina to a cleaner, affordable, and smarter energy future. To address these goals, the Blue Horizons Project, a community campaign to advance energy efficiency and renewable energy efforts in Buncombe County, was launched. Since then, new policies, goals, program assessments, and funding opportunities with the potential to advance the mission and guide strategies for the Blue Horizons Project have been established, including:

- Buncombe County and the City of Asheville declared goals to achieve 100% renewable energy for County and City operations by 2030 and community-wide by 2042.
- Duke Energy set a goal of net-zero carbon by 2050.
- The announcement of historic federal investments in infrastructure, climate solutions, and environmental justice.
- Measurement and verification reports reviewing effectiveness of past and current Blue Horizons Project programming.

The Blue Horizons Project and the Blue Horizons Community Council will be implemented and managed by a contracted service provider. Proposals shall be submitted in accordance with the terms and conditions of this RFP and any addenda issued hereto.

## 2.0 GENERAL INFORMATION

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### 2.1 REQUEST FOR PROPOSAL DOCUMENT

The RFP consists of the base RFP document, any attachments, and any addenda released before the Contract award. All attachments and addenda released for this RFP in advance of any Contract award are incorporated herein by reference.

### 2.2 NOTICE REGARDING RFP TERMS AND CONDITIONS

It shall be the Vendor's responsibility to read the Instructions, the County's and City's terms and conditions, all relevant exhibits and attachments, and any other components made a part of this RFP and comply with all requirements and specifications herein. Vendors also are responsible for obtaining and complying with all addenda and other changes that may be issued in connection with this RFP.

If Vendors have questions, issues, or exceptions regarding any term, condition, or other component within this RFP, those must be submitted as questions in accordance with the instructions in Section 2.5 PROPOSAL QUESTIONS. If the County determines that any changes will be made as a result of the questions asked, then such decisions will be communicated in the form of an RFP addendum. The County may also elect to leave open the possibility for later negotiation and amendment of specific provisions of the Contract that have been addressed during the question and answer period. Other than through this process, the County rejects and will not be required to evaluate or consider any additional or modified terms and conditions submitted with Vendor's proposal. This applies to any language appearing in or attached to the document as part of the Vendor's proposal that purports to vary any terms and conditions or Vendors' instructions herein or to render the proposal non-binding or subject to further negotiation. Vendor's proposal shall constitute a firm offer. **By execution and delivery of this RFP Response, the Vendor agrees that any additional or modified terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect, and will be disregarded. Noncompliance with, or any attempt to alter or delete, this paragraph shall constitute sufficient grounds to reject Vendor's proposal as nonresponsive.**

### 2.3 RFP SCHEDULE

The table below shows the *intended* schedule for this RFP. The County will make every effort to adhere to this schedule.

Event	Responsibility	Date and Time
Issue RFP	County	May 15, 2023
<a href="#">Virtual info Session</a>	County	May 22, 2023, 10:00 a.m. ET
Submit Written Questions	Vendor	May 29, 2023, 5:00 p.m. ET
Provide Response to Questions	County	June 5, 2023, 5:00 p.m. ET
Submit Proposals	Vendor	June 12, 2023, 2:00 p.m. ET
Contract Award	County	June 30, 2023
Contract Effective Date	County	July 1, 2023

## 2.4 VIRTUAL INFO SESSION

A non-mandatory Virtual Info Session will be held on May 22, 2023, 10:00am. The intention of this meeting is to provide interested parties an opportunity to learn about the details of the project and to ask questions.

This will be a Virtual Teams meeting – please take the time to ensure that your computer works with Teams in advance of the meeting. The link below should take you to the meeting directly.

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 244 084 368 535

Passcode: Wns9Cj

[Download Teams](#) | [Join on the web](#)

**Or call in (audio only)**

[+1 980-729-7744](#)

Phone Conference ID: 189 049 379#

## 2.5 PROPOSAL QUESTIONS

Upon review of the RFP documents, Vendors may have questions to clarify or interpret the RFP in order to submit the best proposal possible. To accommodate the Proposal Questions process, Vendors shall submit any such questions by the above due date.

Written questions shall be emailed to [Ron.Venturella@buncombecounty.org](mailto:Ron.Venturella@buncombecounty.org) by the date and time specified above. Vendors should enter “RFP Blue Horizons Project Questions” as the subject for the email. Question submittals should include a reference to the applicable RFP section.

Questions received prior to the submission deadline date, the County’s response, and any additional terms deemed necessary by the County will be posted in the form of an addendum. No information, instruction or advice provided orally or informally by any Buncombe County personnel, whether made in response to a question or otherwise in connection with this RFP, shall be considered authoritative or binding.

## 2.6 PROPOSAL SUBMITTAL

Proposals will be received until 2:00 PM, June 12, 2023. All proposals may be electronically submitted via email and properly identified with the RFP Blue Horizons Project in the subject line.

E-mail: [Ron.Venturella@buncombecounty.org](mailto:Ron.Venturella@buncombecounty.org)

The County’s capacity for email attachments is 9mb. It is the bidder’s responsibility to ensure the proposal is received prior to the proposal acceptance time. Late proposals will not be accepted. The County reserves the right to accept or reject all or any part of any proposal, waive informalities and award the contract to best serve the interest of the County.

It is the responsibility of the applicant that their proposal is received. Receipt of proposals can be verified by calling 828-250-4154.

## **2.7 PROPOSAL CONTENTS**

Vendors shall populate all attachments of this RFP that require the Vendor to provide information and include an authorized signature where requested. Vendor RFP responses shall include the following items and those attachments should be arranged in the following order:

- a) Cover Letter
- b) Title Page: Include the company name, address, phone number and authorized representative along with the Proposal Number.
- c) Describe the background, experience, and capabilities of your firm as it relates to the Scope of Work outlined in the RFP.
- d) Identify all subcontractors you intend to use for the proposed scope of work. For each subcontractor listed, proposers shall indicate 1.) What products and/or services are to be supplied by that subcontractor; 2) What experience the subcontractor has in working for communities from underserved populations and; 3.) What percentage of the overall scope of work that subcontractor will perform.
- e) List at least 3 client references public and/or private of similar size for whom you have provided services in the past three years. Provide telephone numbers and contact names for references.
- f) Provide specific costs for each service proposed
- g) Each Vendor shall submit with its proposal the name, address, and telephone number of the person(s) with authority to bind the firm and answer questions or provide clarification concerning the firm's proposal.
- h) Any **for profit** Vendor shall provide completed applicable ABI forms, [as linked here](#), with their bid to be deemed responsive.

## **3.0 METHOD OF AWARD AND PROPOSAL EVALUATION PROCESS**

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### **3.1 METHOD OF AWARD**

All qualified proposals will be evaluated, and awards will be made to the Vendor(s) meeting the RFP requirements and best fits the needs of the County.

Buncombe County reserves the right to reject any and/or all submittals, and to waive defects, technicalities and/or irregularities in any submittal. The County reserves the right to finalize a contract with one or more firms based on all factors involved in the written qualification submittal without further discussion or interviews.

Proposals will generally be evaluated according to completeness, content, and experience with similar projects, ability of the Vendor and its staff, and cost.

Vendors are cautioned that this is a request for offers, not an offer or request to contract, and the County reserves the unqualified right to reject any and all offers at any time if such rejection is deemed to be in the best interest of the County.

### **3.2 EVALUATION CRITERIA**

Following the deadline for submittals, a selection committee will review the submitted proposals. The selection committee will review, analyze, and rank all submittals based on their response to the information requested. The selection process will include evaluation of proposals for adherence to the scope of work requested and the ability to address the scope of work with creative and cost effective solutions that will ultimately result in meeting the larger goals of the project.

## 4.0 REQUIREMENTS

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### 4.1 CONTRACT TERM

The Contract shall have an initial term of one year, beginning on the date of contract award (the “Effective Date”). The County and the Vendor may extend the contract, based on mutual agreement for up to two optional one-year terms. Execution of this Contract shall be subject to apportionment in the local government’s budget for this Contract. The failure or refusal of the Board of Commissioners of Buncombe County or the Asheville City Council to apportion funds for payment to Contractor under this Contract shall not constitute breach and shall entitle County to immediate termination of the Contract.

### 4.2 PRICING

Proposal price shall constitute the total cost to Buyer for complete performance in accordance with the requirements and specifications herein, including all applicable charges handling, administrative and other similar fees. Vendor shall not invoice for any amounts not specifically allowed for in this RFP.

### 4.3 VENDOR EXPERIENCE

In its Proposal, Vendor(s) shall:

- Demonstrate experience with public and/or private sector clients with similar or greater size and complexity to Buncombe County
- Demonstrate experience implementing a community-wide, mission driven program with technical and administrative expertise in:
  - scaleable energy efficiency or weatherization programs
  - facilitation of community engagement sessions with and programming for disadvantaged communities
  - planning and implementing robust data analysis programs that inform program scaling and planning to accomplish ambitious goals
- Possess in-depth knowledge and expertise regarding energy efficiency and renewable energy tax credits, rebates, local, state, federal and utility incentive programs that could apply to residential and commercial customers in Buncombe County
- Demonstrate experience fundraising, data collection and management, and leveraging technical expertise resource opportunities
- Provide information as to the qualifications and experience of all executive, managerial, legal, and professional personnel to be assigned to this project, including citing experience with similar projects, technical expertise, experience serving historically marginalized or underserved communities, and the responsibilities to be assigned to each person

In the event that a respondent intends to collaborate with another community agency in a joint venture in response to this RFP, please identify the partner agency and clearly define the structure of the arrangement. All such arrangements must be formalized in writing prior to execution of a contract with the City or County. The City and County reserve the right to award multiple contracts if it is deemed in the best interest of the City and County.

### 4.4 VENDOR’S REPRESENTATIONS

- a) Vendor warrants that qualified personnel shall provide Services under this Contract in a professional manner. “Professional manner” means that the personnel performing the Services will possess the skill and competence consistent with the prevailing business standards in the industry. Vendor agrees that it will not enter any agreement with a third party that may abridge any rights of the County under this Contract. Vendor will serve as the prime contractor under this Contract and shall be responsible for the performance and payment of all subcontractor(s) that

may be approved by the County. Names of any third party Vendors or subcontractors of Vendor may appear for purposes of convenience in Contract documents; and shall not limit Vendor's obligations hereunder. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).

- b) If any Services, deliverables, functions, or responsibilities not specifically described in this Contract are required for Vendor's proper performance, provision and delivery of the service and deliverables under this Contract, or are an inherent part of or necessary sub-task included within such service, they will be deemed to be implied by and included within the scope of the contract to the same extent and in the same manner as if specifically described in the contract. Unless otherwise expressly provided herein, Vendor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and Deliverables. Bidders/Vendors please note that City Policy adopted by the City Council Resolution No. 93-139, prohibits the City from entering into contracts with persons or firms who are delinquent in the payment of ad valorem taxes owed to the City of Asheville.
- c) Vendor warrants that it has the financial capacity to perform and to continue perform its obligations under the contract; that Vendor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Vendor that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

## **5.0 SCOPE OF WORK**

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The refined purpose of the Blue Horizons Project is to address the current climate crisis by leading the community in achieving its community-wide renewable energy goal of transitioning to 100% renewable energy by 2042 through community engagement, direct service programming, and collaboration with Buncombe County and the City of Asheville.

The primary deliverable to be provided through the requested services is the implementation of the Blue Horizons Project and providing staffing and management of its advisory board, the Blue Horizons Project Community Council.

### **Scope of Services**

The Blue Horizons Project provides education, programming, and resources to assist Buncombe County residents to reduce the energy use in their homes and businesses and transition to being powered by 100% renewable energy. Best practices and demonstrated impact of services across sectors were considered to select priority programs. Proposals should allocate approximately equal resources across the three priority program areas while also maintaining capacity to provide administrative support to BHPC and conduct robust program evaluation and documentation.

Priority program actions required of the service provider(s) include:

- Residential weatherization initiative(s)
  - Energy efficiency and weatherization initiative(s) and services with deep, community-wide implementation across the City and County that includes careful consideration of equitable inclusion and participation opportunities for disadvantaged communities.
  - Proposed implementation strategy and program initiatives should be data driven, prioritize high impact practices, and should develop a pipeline for providing deeper level retrofits as federal and other funding is available
  - Detailed engagement strategies which may leverage or partnership with existing service providers in Buncombe County should be included in the proposal.
- Design and implementation of ongoing educational programming for local contractors to:
  - Influence uptake and deployment of innovative, energy efficient appliances and technology (smart thermostat, EE appliances, etc)
  - Increase access to and use of rebate opportunities through a rebate campaign or other contractor-led initiative
  - Develop or strengthen contractor network to activate in support of future initiatives

- Pilot group purchase campaign development to support residents, contractors, and the community in taking steps to a clean energy technology transition.

In support of priority actions and to continue to evolve, expand, and deeper opportunities for clean energy adoption in Buncombe County, the following support services will be provided:

- Provide administrative and campaign support to Blue Horizons Project (BHP) and Blue Horizons Project Community Council (BHPCC):
  - Support BHPCC meeting logistics, agenda development and publishing of meeting materials to the Blue Horizons [website](#). While this will not be a government appointed board, in the spirit of transparency, open meeting laws will be utilized as a best practice.
  - Manage new BHPCC member recruitment and application process including a plan to recruit members from underrepresented communities
  - Provide administrative support to BHPCC working groups to provide continuity and focus to support planned activities in support of community-wide goal
  - Maintain BHP social media and [website](#)
- Identify and secure additional funding that activates local, state, federal and private funding streams. Employ state and federal climate-related tax incentives, grants, rebate programs, and/or financing opportunities to serve Buncombe County residents and businesses and leverage BHP's financial resources. It will be the responsibility of the contractor to generate income from a variety of funding sources both public and private.
- Conduct robust program impact and energy savings data analysis and utilize data to inform program modifications and recommendations for continuous improvement and to track progress toward 100% community wide renewable energy goal. These can include, but will not be limited to, number of clients served, increases in program participation, client cost savings, energy reductions and carbon impact among others. Specific metrics and reporting schedules will be established with the awarded vendor.

## GENERAL TERMS AND CONDITIONS

The Vendor(s) will enter into two separate contracts with Buncombe County and the City of Asheville.

### [Buncombe County Terms and Conditions](#)

1. **READ, REVIEW AND COMPLY:** It shall be the Vendor's responsibility to read this entire document, review all enclosures and attachments, and any addenda thereto, and comply with all requirements specified herein, regardless of whether appearing in these Instructions to Vendors or elsewhere in this RFP document.
2. **LATE PROPOSALS:** Late proposals, regardless of cause, will not be considered, and will automatically be disqualified from further consideration. It shall be the Vendor's sole responsibility to ensure the timely submission of proposals.
3. **ACCEPTANCE AND REJECTION:** Buncombe County reserves the right to reject any and all proposals, to waive any informality in proposals and, unless otherwise specified by the Vendor, to accept any item in the proposal.
4. **INFORMATION AND DESCRIPTIVE LITERATURE:** If required elsewhere in this proposal, each Vendor shall submit with its proposal any sketches, descriptive literature and/or complete specifications covering the products and Services offered. Reference to literature submitted with a previous proposal or available elsewhere will not satisfy this provision. Failure to comply with these requirements shall constitute sufficient cause to reject a proposal without further consideration.
5. **SUSTAINABILITY:** To support the sustainability efforts of the State of North Carolina we solicit your cooperation in this effort. Pursuant to Executive Order 156 (1999), it is desirable that all print responses submitted meet the following:
  - All copies of the proposal are printed double sided.
  - All submittals and copies are printed on recycled paper with a minimum post-consumer content of 30%.
  - Unless absolutely necessary, all proposals and copies should minimize or eliminate use of non-recyclable or non-reusable materials such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable.



- Materials should be submitted in a format which allows for easy removal, filing and/or recycling of paper and binder materials. Use of oversized paper is strongly discouraged unless necessary for clarity or legibility.
6. **HISTORICALLY UNDERUTILIZED BUSINESSES:** Buncombe County is committed to retaining Vendors from diverse backgrounds, and it invites and encourages participation in the procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. In particular, the County encourages participation by Vendors certified by the State Office of Historically Underutilized Businesses, as well as the use of HUB-certified vendors as subcontractors on County contracts.
  7. **INELIGIBLE VENDORS:** As provided in G.S. 147-86.59 and G.S. 147-86.82, 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 Buncombe County by any company identified in a) or b) above shall be void *ab initio*.
  8. **CONFIDENTIAL INFORMATION:** To the extent permitted by applicable statutes and rules, the County will maintain as confidential trade secrets in its proposal that the Vendor does not wish disclosed. As a condition to confidential treatment, each page containing trade secret information shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the Vendor, with specific trade secret information enclosed in boxes, marked in a distinctive color or by similar indication. Cost information shall not be deemed confidential under any circumstances. Regardless of what a Vendor may label as a trade secret, the determination whether it is or is not entitled to protection will be determined in accordance with G.S. 132-1.2. Any material labeled as confidential constitutes a representation by the Vendor that it has made a reasonable effort in good faith to determine that such material is, in fact, a trade secret under G.S. 132-1.2. Vendors are urged and cautioned to limit the marking of information as a trade secret or as confidential so far as is possible. If a legal action is brought to require the disclosure of any material so marked as confidential, the County will notify Vendor of such action and allow Vendor to defend the confidential status of its information.
  9. **MISCELLANEOUS:** Any gender-specific pronouns used herein, whether masculine or feminine, shall be read and construed as gender neutral, and the singular of any word or phrase shall be read to include the plural and vice versa.
  10. **INFORMAL COMMENTS:** Buncombe County shall not be bound by informal explanations, instructions or information given at any time by anyone on behalf of the County during the competitive process or after award. The County is bound only by information provided in writing in this RFP and in formal Addenda issued through IPS.
  11. **COST FOR PROPOSAL PREPARATION:** Any costs incurred by Vendor in preparing or submitting offers are the Vendor's sole responsibility; Buncombe County will not reimburse any Vendor for any costs incurred or associated with the preparation of proposals.
  12. **AVAILABILITY OF FUNDS:** Any and all payments to the Vendor shall be dependent upon and subject to the availability of funds to the agency for the purpose set forth in The Contract.
  13. **SITUS AND GOVERNING LAWS:** This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina, without regard to its conflict of laws rules, and within which State all matters, whether sounding in Contract or tort or otherwise, relating to its validity, construction, interpretation and enforcement shall be determined.
  14. **PAYMENT TERMS:** If a payment schedule is not part of The Contract then payment terms will be Net 30 days after receipt of a correct invoice or acceptance of goods, whichever is later.
  15. **NON-DISCRIMINATION:** The Vendor will take necessary action to comply with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination on the basis of any prohibited grounds as defined by Federal and State law.

**16. ADVERTISING:** Vendor agrees not to use the existence of The Contract or the name of Buncombe County as part of any commercial advertising or marketing of products or Services. A Vendor may inquire whether the County is willing to act as a reference by providing factual information directly to other prospective customers.

**17. INSURANCE:**

**COVERAGE** - During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. As a minimum, the Vendor shall provide and maintain the following coverage and limits:

Commercial General Liability insurance in an amount not less than \$1,000,000 each occurrence/\$2,000,000 annual aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations or Contractual Liability.

Business Automobile Liability insurance covering all owned, non-owned, and hired vehicles with a minimum combined single limit of \$1,000,000 each occurrence and shall include uninsured/underinsured motorist coverage per NC General Statute 20-279-21.

Workers Compensation coverage at the statutory limits in compliance with applicable State and Federal laws. Supplier shall ensure that any subcontractors also have workers compensation coverage at the statutory limits.

Employer's Liability coverage with minimum limits of \$500,000 each accident and \$500,000 each employee disease.

Vendor shall agree these General Conditions constitute an insured contract and shall name Buncombe County as an additional insured under the Commercial General Liability policy. Before commencing work and for any subsequent renewals, Vendor shall furnish the County with certificates of insurance evidencing the above coverages and amounts on an approved form. Vendor hereby grants the County a waiver of any right of subrogation which any insurer of said Vendor may acquire against the County by virtue of payment of any loss under such insurance. Vendor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. Each insurance policy required above shall state that coverage shall not be canceled, except with written notice to the County and delivered in accordance with the policy provisions. All insurance shall be procured from reputable insurers authorized and qualified to do business in North Carolina and in a form acceptable to the County. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Supplier's liability and obligations. Nothing in this section is intended to affect or abrogate Buncombe County's governmental immunity.

**18. GENERAL INDEMNITY:** The Vendor shall hold and save Buncombe County, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, Services, materials, or supplies in connection with the performance of The Contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Vendor in the performance of The Contract and that are attributable to the negligence or intentionally tortious acts of the Vendor provided that the Vendor is notified in writing within 30 days from the date that the County has knowledge of such claims. The Vendor represents and warrants that it shall make no claim of any kind or nature against the County's agents who are involved in the delivery or processing of Vendor deliverables or Services to the County. The representation and warranty in the preceding sentence shall survive the termination or expiration of The Contract.

**19. CONFIDENTIALITY:** Any County information, data, instruments, documents, studies or reports given to or prepared or assembled by or provided to the Vendor under The Contract shall be kept as confidential, used only for the purpose(s) required to perform The Contract and not divulged or made available to any individual or organization without the prior written approval by Buncombe County.

**20. COMPLIANCE WITH LAWS:** Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and its performance in accordance with The Contract, including those of federal, state, and local agencies having jurisdiction and/or authority.

**21. ENTIRE AGREEMENT:** This RFP and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. This RFP, any addenda hereto, and the Vendor's proposal are incorporated herein by reference as though set forth verbatim.

All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained

herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

22. **AMENDMENTS:** This Contract may be amended only by a written amendment duly executed by the County and the Vendor.
23. **NO WAIVER:** Notwithstanding any other language or provision in The Contract, nothing herein is intended nor shall be interpreted as a waiver of any right or remedy otherwise available to the County under applicable law. The waiver by the County of any right or remedy on any one occasion or instance shall not constitute or be interpreted as a waiver of that or any other right or remedy on any other occasion or instance.
24. **FORCE MAJEURE:** 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 as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
25. **SOVEREIGN IMMUNITY:** Notwithstanding any other term or provision in The Contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity or state or federal constitutional provision or principle that otherwise would be available to the County under applicable law.

#### **City of Asheville Terms and Conditions**

1. CONTRACTOR shall provide services outlined in the Scope of Work as set forth more explicitly in the contract.
2. The term of this contract shall have an initial term of one year, beginning on the date of contract award (the "Effective Date"). The City and the Vendor may extend the contract, based on mutual agreement for up to two optional one year terms.
3. The City will compensate the CONTRACTOR a maximum amount to be determined in the contract. The CONTRACTOR shall bill the City on a quarterly basis. If the contract exceeds the aforementioned threshold, the City must amend or renew the contract in accordance with all applicable City policies.
4. The CONTRACTOR shall provide required reporting of deliverables and documentation as defined in the scope of work. All documentation shall be submitted to the City's Project Manager or his or her designee for review and payment of services. The invoice and documentation shall be submitted on a quarterly basis. The City shall pay all invoices within thirty (30) days of submittal.
5. Any employees furnished by CONTRACTOR, pursuant to this contract, will be employees of CONTRACTOR, an independent contractor. CONTRACTOR will maintain complete control over the employees' conduct and will disburse all payrolls, taxes, license, insurances, uniforms and all other expenses incurred by CONTRACTOR in performing the terms of this contract.
6. **INSURANCE:** The CONTRACTOR agrees to keep and maintain for the duration of this Agreement including but not limited to commercial general liability, automobile liability, workers' compensation, employer's liability, and umbrella coverage with at least the minimum limits shown below. The CONTRACTOR shall furnish the City with certificates of insurance for each type of insurance described herein, with the City listed as Certificate Holder and as an additional insured on the CONTRACTOR's general liability policy and provide a waiver of subrogation on the CONTRACTOR's general liability and workers' compensation policies. In the event of bodily injury, property damage, or financial loss caused by CONTRACTOR's negligent acts or omissions in connection with CONTRACTOR's services performed under this Agreement, the CONTRACTOR's Liability insurance shall be primary with respect to any other insurance which may be available to the City, regardless of how the "Other Insurance" provisions may read. In the event of cancellation, substantial changes or nonrenewal, the CONTRACTOR and CONTRACTOR's insurance carrier shall give the City at least thirty (30) days prior written notice. No work shall be performed until the CONTRACTOR has furnished to the City the above referenced certificates of insurance and associated endorsements, in a form suitable to the City. Upon request, the CONTRACTOR shall provide the City copies of their insurance policies.

Commercial General Liability: \$1,000,000 per occurrence  
Commercial Auto Liability: \$1,000,000  
Excess (Umbrella) Liability: \$1,000,000  
Workers' Compensation: Statutory  
Employer's Liability: \$500,000

Certificate of Insurance lists City of Asheville, PO Box 7148, Asheville, NC 28802, as Certificate Holder.

7. **CONTRACTOR shall indemnify and hold harmless the City and its subsidiaries, divisions, officers, directors and employees from all liabilities, losses, costs, claims, damages, expenses, attorney fees, judgments and awards that are proximately caused by the negligent acts or omissions of the CONTRACTOR or any employee, agent or assign of the CONTRACTOR. The Contractor shall comply with the provisions of the Americans with Disabilities Act and all rules and regulations promulgated thereunder. The Contractor hereby agrees to indemnify the City from and against all claims, suits, damages, costs, losses and expenses in any manner arising out of or connected with the failure of the Contractor, its subcontractors, agents, successors, assigns, officers or employees to comply with provisions of the ADA or the rules and regulations promulgated thereunder. Nothing herein shall be construed as a waiver on the part of the City to any defense of any claim, including, but not limited to the defense of governmental immunity.**
  8. Nothing herein shall be construed as a waiver on the part of the City to any defense of any claim, including, but not limited to the defense of governmental immunity.
  9. The CONTRACTOR shall be properly licensed and skilled in his/her respective trade.
  10. CONTRACTOR shall comply with all state, federal or local laws, or ordinances, codes, rules or regulations governing performance of this Agreement, including but not limited to, equal opportunity employment laws, O.S.H.A., minimum wage and hour regulation, North Carolina State Building Code regulations and immigration laws.
  11. CONTRACTOR shall maintain all fiscal records relating to this Agreement in accordance with Generally Accepted Accounting Principles, and shall maintain any other records pertinent to this Agreement in a manner so as to clearly document Contractor's performance. The City shall have a right to access the fiscal and other records of CONTRACTOR that are pertinent to this Agreement to perform examinations and audits. CONTRACTOR shall retain and keep accessible all the fiscal and other records for a minimum of three (3) years following final payment and termination of this Agreement, or until the conclusion of any audit or controversy related to this Agreement, whichever is later.
- B. TERMINATION AND MODIFICATION:** This contract may be terminated by either party, with thirty (30) days prior written notice. Notice shall be served under this contract by registered mail, certified mail or by other means.
- C. ENTIRE AGREEMENT:** This agreement contains the entire agreement between the parties.
- D. SEVERABILITY:** Should any provision or provisions contained in this agreement be declared by a court of competent jurisdiction to be void, unenforceable or illegal, such provision or provisions shall be severable and the remaining provisions hereof shall remain in full force and effect.
- E. GOVERNING LAW:** This contract is entered into in North Carolina and shall be construed under the statutes and laws of North Carolina.
- F. ASSIGNABILITY:** This contract is not assignable by either party without the prior written consent of the other party.
- G. REQUIREMENTS OF CITY CONTRACTS:**
1. CONTRACTOR shall comply with the provisions of the Americans with Disabilities Act and all rules and regulations promulgated thereunder. CONTRACTOR hereby agrees to indemnify the City from and against all claims, suits, damages, costs, losses and expenses in any manner arising out of or connected with the failure of CONTRACTOR, its subcontractors, agents, successors, assigns, officers or employees to comply with the provisions of the ADA or the rules and regulations promulgated thereunder.

2. DRUG FREE WORKPLACE

The City is a drug-free workplace employer. By executing this contract, CONTRACTOR certifies that they and their subcontractors shall comply with the City's Drug Free Workplace policy. This policy may be viewed at the following: [Drug Policy](#)

3. E-VERIFY EMPLOYER COMPLIANCE

By executing this contract, the CONTRACTOR and their subcontractors with 25 or more employees as defined in Article 2 of Chapter 64 of the NC General Statutes, certify they shall comply with E-Verify requirements to contract with governmental units. E-Verify is a Federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law. E-verify can be accessed via this link: <https://www.e-verify.gov/>

4. ASHEVILLE BUSINESS INCLUSION POLICY

Asheville Business Inclusion Policy. The City enacted the Asheville Business Inclusion Policy to encourage participation by women and minority businesses in the public bidding process. The purpose of this outreach effort is to increase the likelihood of availability and utilization in the award of contracts. The Contractor is hereby notified that this Agreement is subject to the provisions of that Policy. The Contractor has an ongoing affirmative obligation to meet or exceed any subcontracting goals set in accordance with the ABI Policy for the duration of the Contract. Any modifications to the subcontracting plan provided to the City shall be submitted to City in writing in compliance with the [ABI Policy](#) specifications.

5. NON-APPROPRIATION CLAUSE:

Notwithstanding any other provisions of this Agreement, if the City does not receive said funding for this Agreement from the City Council for any fiscal year applicable to this Agreement, then the City shall have the right to terminate this Agreement without penalty by giving not less than thirty (30) days' written notice documenting the lack of funding.

6. IRAN DIVESTMENT and ISRAEL BOYCOTT:

City of Asheville staff are responsible for verifying that the bidder/contractor is not listed on the Iran Divestment List or the Companies Boycotting Israel Final Divestment List published by the NC State Treasurer pursuant to N.C.G.S. 147-86.60 and 147-86.82. The City shall not contract with any company or their affiliates listed on these divestment lists.