

This Agreement hereinafter "Agreement," is made and entered into this 13th day of February, 2019, by and between Richland County, 2020 Hampton Street, Columbia, South Carolina, 29204-1002, hereinafter referred to as the OWNER and **Woolpert Inc.**, whose address is **2000 Center Point Drive, Suite 200, Columbia, SC 29210**, hereinafter referred to as CONSULTANT.

WITNESSETH

WHEREAS, the OWNER intends to conduct several types of professional services that may require consulting services of CONSULTANT;

WHEREAS, the OWNER may require other general consulting services in the conduct of its business over the period of this Agreement, which will be described in future Notice To Proceed (NTP); and,

WHEREAS, CONSULTANT has represented to the OWNER that it is qualified to perform various services, tasks and work, and based upon CONSULTANT'S representations, the OWNER is retaining the services of CONSULTANT.

NOW THEREFORE, for and in consideration of their mutual benefit, the parties hereto agree as follows:

CONSULTANT shall, upon receipt of each duly executed (by both Parties) Work Authorization and Notice to Proceed, perform the agreed on work described in the Scope of Service/Work.

1. DEFINITIONS

Richland County Government, South Carolina hereinafter will be referred to as "OWNER", "COUNTY" or COUNTY.

"Contracting Officer (CO)" shall be the person occupying the position of the Procurement Manager and who have authority to act on the behalf of the OWNER to make binding decisions with respect to this Agreement.

"Contracting Officer's Representative (COR)" is an individual, appointed in writing, to monitor and administer the contract and Consultant performance during the life of this specific Agreement.

"**Woolpert Inc.**" hereinafter will be referred to as "CONSULTANT" or Prime Consultant.

All references to days in this Agreement mean calendar days.

All references to "shall", "must", and "will" are to be interpreted as mandatory language.

"Person," as used in this Agreement, means a firm, company, entity, corporation, partnership, or business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this Agreement, means the Agreement between OWNER and CONSULTANT.

"Consultant's Employee," as used in this clause, means any officer, partner, employee, or agent of the CONSULTANT.

"Confidential Information" as used in this Agreement shall mean any and all technical and non-technical information and proprietary information of the OWNER (whether oral or written), scientific, trade, or business information possessed, obtained by, developed for, or given to CONSULTANT which is treated by OWNER as confidential or proprietary including, without limitation, research material, formulations, techniques, methodology, assay systems, formula, procedures, tests, equipment, data, reports, know-how, sources of supply, patent positioning, relationships with CONSULTANTS and employees, business plans and business developments, information concerning the existence, scope or activities of any research, development, manufacturing, marketing, or other projects of OWNER, and any other confidential information about or belonging to OWNER'S suppliers, licensors, licensees, partners, affiliates, customers, potential customers, or others.

"Confidential Information" does not include information which (a) was known to CONSULTANT at the time it was disclosed, other than by previous disclosure by OWNER, as evidenced by CONSULTANT'S written records at the time of disclosure; (b) is lawfully and in good faith made available to CONSULTANT by a third party who did not derive it, directly or indirectly, from OWNER.

"Subcontract," as used in this clause, means an Agreement or contractual action entered into by the CONSULTANT with sub-consultant or any third party for the purpose of obtaining services as agreed under this Agreement.

"Subcontractor," as used in this Agreement, (1) means any third party, person, firm, company, entity, corporation, partnership, or business association of any kind, trust, joint-stock company, or individual other than the CONSULTANT, who offers to furnish or furnishes any supplies, materials, equipment, construction or services of any kind under this Agreement or a subcontract entered into in connection with CONSULTANT and the Agreement with the OWNER and (2) includes any third party, person, firm, company, entity, corporation, partnership, or business association of any kind, trust, joint-stock company, or individual who offers to furnish or furnishes services to the CONSULTANT or a higher tier Subcontractor.

2. ACTS, LAWS, AND REGULATIONS

CONSULTANT will comply with "all applicable federal, state and local acts, laws, and regulations" and at a minimum comply with the acts and standards listed below as they relate to architectural and engineering services provided under this Agreement:

- (a) Americans with Disabilities Act (ADA);
- (b) Community Development Block Grant Program;
- (c) Contract Work Hours and Safety Standards Act;
- (d) Davis – Bacon Wage Requirements (When required for federal grant projects)
- (e) Department of Health and Environmental Control (DHEC)
- (f) Disabled and Vietnam veteran employment;

- (g) Drug Free Workplace Act;
- (h) Eligibility for employment under United States immigration laws;
- (i) Employment Eligibility Verification: prescribes policies and procedures requiring contractors to utilize the Department of Homeland Security (DHS), United States Citizenship and Immigration Service's employment eligibility verification program (E-Verify) as the means for verifying employment eligibility of certain employees.
- (j) Employment of the handicapped;
- (k) Employment of Workers with Disabilities;
- (l) Equal Employment Opportunity;
- (m) Environmental Protection Agency (EPA) regulations;
- (n) Fair Labor Standards (FLSA) Act;
- (o) Governmental price regulations/orders (as required by law, CONSULTANT will deliver proof that materials sold or installed and services rendered comply with price regulations) if a federal grant project.
- (p) Maximum hours and minimum wages;
- (q) Miller Act;
- (r) Nondiscrimination Because of Age;
- (s) Occupational Safety and Health Administration (OSHA), (e.g., all materials and services furnished meet or exceed OSHA safety standards);
- (t) Prompt Payment Required Richland County Code of Ordinances- Chapter 2, Article X, Division 9 Sec. 2-648.
- (u) Statutes regarding qualification to do business;
- (v) Statutes prohibiting employment discrimination;
- (w) TITLE 24—Housing and Urban Development, Part 50-Protection and Enhancement of Environmental Quality, Part 58-Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities.
- (x) Walsh-Healey Public Contracts Act;
- (y) 49 CFR PART 26 & 23 DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM AND PART 21-NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF TRANSPORTATION-EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964.

3. AFFIRMATIVE ACTION:

CONSULTANT shall take affirmative action in complying with all Federal, State and OWNER requirements concerning fair employment, of the handicapped, and concerning the treatment of all employees, without regard or discrimination by reasons of race, color, sex, religion, national origin and/or physical handicap.

4. AMENDMENTS

The County, without invalidating the Agreement, may order changes in the services within the general scope of the Agreement consisting of additions, deletions or other revisions, including the addition or deletion of Projects. All such changes in the services shall be authorized by amendment or change order, and shall be performed under the applicable conditions of the Contract Documents. All amendments to and interpretations of this Agreement shall be signed with the mutual written acceptance by both parties. Scope, costs and fees for additional services shall be determined prior to the CONSULTANT starting such additional services and shall be in writing as an amendment or change order to this Agreement. Any amendments or interpretations that are not in writing and signed by each party shall not legally bind the OWNER and or its agents.

It is CONSULTANT'S responsibility to acknowledge receipt of amendments by signing and returning one (1) original of the amendment by certified mail.

5. ANTI-KICKBACK PROCEDURES

a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind, which is provided, directly or indirectly, to any Consultant, Employee, Subcontractor, or Subcontractor's Employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with an Agreement or in connection with a subcontract relating to an Agreement.

"Person," as used in this clause, means a corporation, partnership, or business association of any kind, trust, joint-stock company, or individual.

"Prime contact," as used in this clause, means an Agreement or contractual action entered into by the OWNER for the purpose of obtaining supplies, materials, equipment, construction or services of any kind.

"CONSULTANT" as used in this clause, means a person, firm, company or entity that has entered into an Agreement with the OWNER.

"Consultant's Employee," as used in this clause, means any officer, partner, employee, or agent of a CONSULTANT.

"Subcontract," as used in this clause, means an Agreement or contractual action entered into by the CONSULTANT or Subcontractor for the purpose of obtaining services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any third party, person, firm, company, or entity other than the CONSULTANT, who offers to furnish or furnishes any

services under this Agreement or a subcontract entered into in connection with CONSULTANT and the Agreement with the OWNER and (2) includes any third party, person, firm, company or entity who offers to furnish or furnishes services to the CONSULTANT or a higher tier Subcontractor.

b) The Anti-kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from:

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the Agreement price/cost charged by CONSULTANT to the OWNER or in the Agreement price/cost charged by a Subcontractor to the CONSULTANT or higher tier Subcontractor.

c) (1) CONSULTANT shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When CONSULTANT has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, CONSULTANT shall promptly report in writing the possible violation. Such reports shall be made to the Contracting officer and the OWNER'S Attorney.

(3) CONSULTANT shall cooperate fully with any federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may:

(i) Offset the amount of the kickback against any monies owed by the OWNER under the prime contract and/or

(ii) Direct that CONSULTANT withhold from sums owed a Subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c) (4) (ii) of this clause be paid over to the OWNER unless the OWNER has already offset those monies under subdivision (c) (4) (i) of this clause. In either case, CONSULTANT shall notify the Contracting Officer and the OWNER'S attorney when the monies are withheld.

(5) CONSULTANT agrees to incorporate the substance of this clause, including paragraph (c) (5) but except paragraph (c) (1), in all subcontracts under this Agreement which exceed \$50,000.

6. AUDIT

CONSULTANT shall keep accurate records and books of account showing all charges, disbursements or expenses made or incurred by CONSULTANT in the performance of the service herein. OWNER shall have the right, upon thirty days' notice, to audit at any time up to three years after payment of its final invoice, the direct costs, expenses, and disbursements made or incurred in connection with the services to be performed herein as well as for the validity of the representations made and in the compensation provisions of this Agreement, and

may examine CONSULTANT'S books and records relating to these several areas. OWNER may execute a technical audit of project progress at any time during the duration of the Agreement. OWNER will allow a minimum of 72 hours of notice of a pending onsite inspection of project materials. All materials are subject to be inspected and may include, but are not limited to, equipment, records, files, reports, correspondence, medication, logs, acquisition, procedure manuals, and QA/QC procedures manual.

7. CONTRACT ADMINISTRATION

The Contracting Officer shall have the authority to act on the behalf of the OWNER to make binding decision with respect to this Agreement. Questions or problems arising after award of this Agreement shall be directed to the Procurement Manager, 2020 Hampton Street, Suite 3064, Third Floor, Columbia, South Carolina 29204-1002.

Contractual engagement and designation shall remain in force for the period based on the requirements of each mutually agreed on task and executed Notice to Proceed. The Agreement will not be for more than the required timeframe to complete the project, with the parties having the right to extend by mutual Agreement to complete each project; provided, however, this Agreement shall not exceed five (5) years.

8. COVENANTS AGAINST CONTINGENT FEES

(a) The CONSULTANT warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an Agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the OWNER shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency which is being utilized by the CONSULTANT for the purpose of securing business that neither exerts nor proposes to exert improper influence to solicit or obtain County contracts nor holds itself out as being able to obtain any county contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by the CONSULTANT and subject to the CONSULTANT'S supervision and control as to time, place, and manner of performance, which neither exerts nor proposes to exert improper influence to solicit or obtain County contracts nor holds out as being able to obtain any County contract or contracts through improper influence.

9. DIRECT NON-SALARY EXPENSES

These generally include items of expense directly chargeable to the services and substantiated by appropriate documentation.

Owner approved reimbursable expenses to CONSULTANT will be invoiced as separate times and may include the following:

- i. Travel

- ii. Postage
- iii. Lodging
- iv. Meals (for stays eight hours are more)
- v. Long Distance Telephone and fax
- vi. Copying
- vii. Shipping/overnight delivery
- viii. Prints
- ix. Other expenses as may be approved in writing by OWNER

Company Vehicle Mileage at federal rate per mile (mileage will be paid for the most direct route from point A to point B on a straight line).

OWNER must pre-approve in writing all reimbursable expenses for travel, lodging, and meals; all other approved expenses require a detailed written explanation.

10. DISCLOSURE

CONSULTANT will use only Confidential Information solely during the term of this Agreement to perform Project Assignment(s) for the benefit of OWNER. CONSULTANT agrees to use its best efforts to protect and preserve the confidentiality of all Information of the OWNER and not to permit or authorize access to, or disclosure of, any Confidential Information of OWNER to any person.

CONSULTANT agrees that if it is necessary to disclose Confidential Information to those who need to know such information to assist in the performance of Project Assignments for the benefit of the OWNER, the CONSULTANT shall communicate in writing the confidential nature of the information and use its best efforts to require that those who need to know such information maintain the same level of confidentiality required by this Agreement.

CONSULTANT agrees not to communicate any information in violation of the proprietary rights of any third party. CONSULTANT will immediately give notice to OWNER of any unauthorized use or disclosure of the Confidential Information. CONSULTANT agrees to assist OWNER in remedying any such unauthorized use or disclosure of the Confidential Information.

If CONSULTANT is required to disclose Confidential Information in response to a valid order by a court or other, government body, or as otherwise required by law, CONSULTANT agrees to provide OWNER with immediate written electronic notice within two (2) hours so as to provide OWNER with a reasonable opportunity to protect such Confidential Information.

Neither party shall communicate any information to the other in violation of the proprietary rights of any third party.

11. DRUG FREE WORKPLACE ACT

CONSULTANT and the OWNER agree to comply with the requirements set forth in Title 44, Code of laws of South Carolina, 1976, Chapter 107, and that it shall apply to all procurement actions involving an award for FIFTY THOUSAND dollars, (\$50,000.00) or more. CONSULTANT understands and is in full compliance with the *Drug Free Workplace Act* and has executed the *Drug-Free Workplace Certification* attached hereto as exhibit "H" and incorporated herein by reference. Failure to comply with *Drug Free Workplace Act* shall result in termination of this Agreement.

12. EQUAL EMPLOYMENT OPPORTUNITY

CONSULTANT agrees not to discriminate against any employee or applicant on the basis of age, race, color, religion, sex, or national origin, and to take affirmative action to employ and treat employees without regard to such factors. CONSULTANT will provide information and submit reports on employment at OWNER'S requests.

13. FORCE MAJEURE

CONSULTANT shall not be liable for any excess costs above agreed on amount if failure to perform the Agreement arises out of a cause or causes beyond the control and without the fault or negligence of CONSULTANT, unless services to be furnished were obtainable from other sources in sufficient time and within budget to permit, within a reasonable time, the CONSULTANT to meet required delivery schedule. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather.

In every case the failure to perform must be beyond the control and without the fault or negligence of CONSULTANT.

14. GEOGRAPHIC INFORMATION SYSTEM (GIS) DATA

CONSULTANT'S use of Richland County geographic information systems (GIS) data:

Within ten calendar days after execution of Agreement, CONSULTANT must identify any and all existing OWNER'S GIS data to be used in work identified within the project scope.

Available data are listed on RichlandMaps.com ("Data" Section). Justification of project need for GIS data must be identified on departmental form GIS-0285 RC GIS Data Request. CONSULTANT must arrange delivery of GIS data with the OWNER'S IT/GIS.

15. GOVERNING LAWS/DISPUTES

Notwithstanding any other provision of this Agreement, any dispute concerning any question of fact or law arising under this Agreement that is not disposed of by Agreement between CONSULTANT and the OWNER shall be decided in accordance with the then current ordinances of Richland County, the laws of the State of South Carolina and Federal law.

16. GRATUITIES

OWNER prohibits its employees from using their official position for personal financial gain, or from accepting any personal advantage from anyone under circumstances which might reasonably be interpreted as an attempt to influence the employees of the OWNER in the conduct of their official duties. CONSULTANT and its employees shall not, under circumstances which might reasonably be interpreted as an attempt to influence the employees in the conduct of their duties, extend any gratuity or special favor to employees of OWNER.

17. IMPROPER INFLUENCE

Soliciting of special interest groups or appointed and elected officials with the intent to influence the Agreement or to overturn decisions of the Contracting Officer is hereby prohibited. Violation of this provision may result in cancellation or termination of the Agreement and suspension or debarment from conducting business with the OWNER.

18. INDEMNIFICATION

CONSULTANT shall indemnify and hold harmless the OWNER, its officials, employees, temporary and leased workers and volunteers from and against any and all damages, losses and expenses, including but not limited to attorney's fees, arising out of, or resulting from negligent performance of the Work defined herein, but only to the extent caused or contributed to by the negligent acts or omissions of CONSULTANT, its subcontractors and consultants, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damages, loss or expense is caused in part by a party indemnified hereunder.

19. INDEPENDENT CONTRACTOR RELATIONSHIP

CONSULTANT'S relationship with the OWNER for the purpose of this Agreement is that of an Independent CONTRACTOR, and nothing in this Agreement is intended to or should be construed to create a legal partnership, agency, joint venture or active employment relationship with the OWNER.

CONSULTANT will not be entitled to benefits which the OWNER may make available to its employees. CONSULTANT is solely responsible for, and will file, in a timely basis, all tax returns and payments required to be filed with or made to, any federal, state or local tax authority with respect to the performance of services and receipt of fees under this Agreement.

CONSULTANT is solely responsible for, and must maintain adequate records of expenses incurred in the course of performing services under this Agreement. No part of CONSULTANT'S compensation will be subject to withholding by OWNER for the payment of any social security, federal, state or any other employee payroll taxes. OWNER will regularly report to the Internal Revenue Service amounts paid to CONSULTANT and file Form 1099 with the Internal Revenue Service as required by law.

20. INSURANCE

CONSULTANT shall be responsible for any damages resulting from its activities. Prior to commencing work hereunder, CONSULTANT, at its own expense, shall obtain and maintain, throughout the duration of this Agreement, all such insurance as required by the laws of the State of South Carolina, and minimally the below listed coverage's. A breach of the insurance requirements shall be considered material.

Such insurance shall be issued by a company or companies authorized to do business in the State of South Carolina and Richland County, and must have a Best Rating of A VII or higher and a best Rating of A V or higher for its Professional Liability carrier.

Failure of CONSULTANT to maintain insurance coverage shall not relieve CONSULTANT of its contractual obligation or responsibility hereunder. The information described herein sets forth-minimum coverage's and limits and is not to be construed in any way as a limitation of liability on CONSULTANT.

CONSULTANT shall obtain, maintain and provide the OWNER with proof of such Public Liability and Property Damage insurance as shall protect CONSULTANT from claims for damages for personal injury, including accidental death, as well as for claims for property damage which might arise from operations under this Agreement, whether such operations be by CONSULTANT, or its Subcontractors, or by any one directly employed by CONSULTANT.

The OWNER shall be named as Certificate Holder.

CONSULTANT must require these same insurance provisions of its Subcontractors. CONSULTANT shall furnish the OWNER with copies of certificates of insurance within ten (10) calendar days of date of the notice to proceed. The OWNER shall have the right to refuse or approve carriers.

CONSULTANT'S contractual liability insurance need not cover bodily injury or property damage resulting from the negligence of the OWNER.

Commercial General Liability Insurance

CONSULTANT shall provide within ten (10) calendar days of execution of the Agreement, evidence of liability policy written under Commercial General Liability Form GC 00 01 with limits of a minimum of one million (\$1,000,000.00) per occurrence on a location basis for each coverage. The required basic coverages are for bodily injury and property damage and for personal injury. The policy shall also include:

1. Contractual liability;
2. A waiver of subrogation against the OWNER, its officials, employees, leased and temporary employees and volunteers;
3. A provision that policy is primary to all other insurance or self-insurance even if The policy asserts it is secondary, excess or contingent;
4. The OWNER, its officials, employees, temporary and leased workers and volunteers endorsed as additional insured;
5. Severability of interest;

A.1. Professional Liability Insurance:

CONSULTANT shall purchase a professional liability policy with claims made coverage.

Prior to commencing work hereunder, CONSULTANT, at its own expense, shall obtain and maintain, throughout the duration of this Agreement, the following insurance coverage's:

Professional Liability (covering errors and omissions and with five-year discovery period) with a minimum of the following requirements:

Per Claim: \$1,000,000.00 (One Million Dollars)
Aggregate: \$1,000,000.00 (One Million Dollars); and

A.2. Certificate of Liability Coverage:

The certificate of liability coverage shall verify compliance with the proceeding requirements under "INSURANCE" and, in addition, for professional liability and state the retroactive date for claims-made coverage. If the retroactive date has been advanced it must supply satisfactory evidence of an extended reporting period for the prior policy.

B. Business Auto Coverage:

CONSULTANT shall provide OWNER with proof of a business auto policy within ten (10) calendar days of the Notice to Proceed with limits per occurrence required by SC law. Physical damage coverage is at the option of CONSULTANT. The policy shall also include:

1. Contractual liability;
2. A waiver of subrogation against the OWNER, its officials, employees, leased and temporary employees and volunteers.

Certificate of Business Auto Coverage:

The business auto certificate shall verify compliance with the preceding requirements listed in Business Auto Coverage and in Cancellation.

C. Workers Compensation and Employers Liability insurance:

Consultant should obtain a workers compensation policy that specifies South Carolina coverage ("Other States" only is unacceptable); including employer's liability coverage with limits of per accident/per disease is required. The policy shall waive subrogation against the Owner, its officials, employees, temporary and leased workers and volunteers.

D. Cancellation, Non-renewal, Reduction in Coverage and Material Change:

CONSULTANT shall provide the OWNER thirty (30) calendar days' notice in writing of cancellation.

Each certificate must state that insurance applies to work performed by or on behalf of the CONSULTANT.

E. Certificate Recipient:

Certificates of insurance shall be provided to: Richland County Government sent to: Richland County Government, Procurement and Contracting, 2020 Hampton Street, Suite 3064, Third Floor, Columbia, SC 29204-1002

21. INTELLECTUAL PROPERTY

In this Agreement, "Intellectual Property" means all works, including literary works, pictorial, graphic and sculptural works, architectural works, works of visual art, and any other work that may be the subject matter of copyright protection; advertising and marketing concepts; information; data; formulas; designs; models; drawings; computer programs; including all documentation, related listings, design specifications, and flowcharts, trade secrets, and any inventions including all processes, machines, manufactures and compositions of matter and any

other invention that may be the subject matter of patent protection; and all statutory protection obtained or obtainable thereon.

CONSULTANT hereby agrees to provide to OWNER all worldwide right, title and interest in and to any and all Intellectual Property created, made, conceived, reduced to practice or authored by CONSULTANT, or any persons provided by CONSULTANT either solely or jointly with others, during the performance of this Agreement or with the use of information, materials or facilities of the OWNER received by CONSULTANT during the term of this Agreement.

CONSULTANT shall promptly disclose and provide to OWNER prior to application of final payment all Intellectual Property created by CONSULTANT for the project and any assigned task during the term of this Agreement.

CONSULTANT shall execute or cause to be executed at least *thirty calendar days prior to final completion of the project* all documents and perform such acts as may be necessary, useful or convenient to secure or enforce for OWNER statutory protection including patent, trademark, trade secret or copyright protection throughout the world for all Intellectual Property assigned to OWNER pursuant to this section.

In addition, any Intellectual Property which qualifies as a work made for hire under the U.S. copyright laws shall be a work made for hire and shall be owned by OWNER.

22. NON-APPROPRIATIONS

This Agreement shall be subject to cancellation without damages or further obligations if funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period or appropriated year.

23. NOTICES

Unless otherwise provided herein, all notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally by hand and signed for by the CO or COR or sent by certified mail, return receipt requested, postage prepaid, and addressed to the address shown below or to any other person at any other address as may be designated in writing by the parties:

- (a) All notices must be acknowledged in writing;
- (b) Date of notice shall be the date of delivery or date signed for on certified Registered mail by the U.S. mail; and
- (c) Either party may change its address by written notice within ten (10) calendar days to the other.

OWNER: Richland County Government, Procurement and Contracting, 2020 Hampton Street, Suite 3064, Third Floor, Columbia, South Carolina, 29204-1002, Attn: Procurement Manager

CONSULTANT: Crystal Muller, Project Manager, Woolpert Inc

24. PATENT

The CONSULTANT shall indemnify the OWNER and its officers, agents, and employees against liability, including cost, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the performance of services of this Agreement.

25. PACKAGING AND DELIVERY

All shipments shall be FOB to the OWNER'S location. CONSULTANT shall have the address and POC clearly displayed on the shipping container. Furthermore, CONSULTANT agrees, that delivery by a common carrier does not constitute delivery to the OWNER, Any claims for loss or damage, shall be between CONSULTANT and the carriers for all shipments addressed from CONSULTANT.

26. PAYMENT

The OWNER, in consideration of the performance of CONSULTANT'S undertakings under this Agreement, pursuant to the NTP fully executed by both parties, shall pay CONSULTANT a fee for the work determined to be of an acceptable quality by OWNER in each authorized task, after written acceptance by OWNER.

CONSULTANT will be paid as authorized by a Notice to Proceed and as approved by the Contracting Officer according to the mutually agreed upon fee. Additional work requirements will be at the agreed upon amount which may from time to time be modified upon mutual written Agreement of the parties. The OWNER is not required to pay CONSULTANT for training and/or orientation sessions.

On any undisputed portion of the invoice the OWNER shall pay interest to CONSULTANT at a rate equal to one percent per month on sums, which the OWNER fails to remit to CONSULTANT after thirty calendar days of receipt of invoice.

Invoices submitted for payment for services provided under this Agreement, shall contain at a minimum:

- (a) Name of business concern;
- (b) Project number;
- (c) Cost/price of services actually delivered;
- (d) Name; title; telephone number and complete mailing address of responsible official to whom payment is to be sent;
- (e) Invoices shall be sent at least two weeks prior to desired payment date by electronic mail at Payable.Accounts@richlandcountysc.gov and hardcopy originals to attention COR whose contact information will be provided in the notice to proceed;
- (f) With the submission of any application for payment, CONSULTANT must submit a schedule (detailed information and breakdown by percentages of services for which it is invoicing) for the various parts of the work accomplished;

(g) Payment does not constitute acceptance of defective or nonconforming work or work with errors or omissions or otherwise relieve CONSULTANT of any obligation by rule or law and/or under the Agreement;

(h) The OWNER may dispute the value and quality of the work in question;

(i) The OWNER shall have the right to withhold payments from CONSULTANT due to incomplete invoicing, services inconsistent with architectural and engineering professional standards of care or with the requirements of the scope of services required by this Agreement, until such time as such issues are resolved.

27. PERMITS

CONSULTANT shall obtain all permits or licenses required in connection with the work, give all notices, pay all fees, etc., to ensure compliance with law (unless County elects to procure and pay for same), and shall deliver all proof of compliance to County within ten (10) calendar days of the OWNER'S final acceptance of the work.

CONSULTANT shall report to the County any aspect of noncompliance with specifications, drawings and other contract documents with the law.

If CONSULTANT cannot procure necessary permits, the County may cancel the contract or may procure the permits and deduct the cost thereof from the contract price (only at the discretion of the Procurement Manager/Contracting Officer).

28. PUBLICITY RELEASES

CONSULTANT agrees not to refer to award of this Agreement in commercial advertising in such a manner as to imply that the products or services provided are endorsed or preferred by the OWNER.

29. QUALIFICATIONS

CONSULTANT must be regularly established in the business called for, and by executing this Agreement certifies that it is financially capable and responsible; is reliable and has the resources, ability and experience, to include, the facility and personnel directly employed or supervised by them to complete assignments awarded under this Agreement.

CONSULTANT certifies that it is able to render prompt and satisfactory service in the volume call for under this Agreement.

OWNER may make such investigation, as deems necessary to determine the ability of CONSULTANT to perform the work.

CONSULTANT shall furnish to the OWNER within ten (10) calendar days a detailed list of personnel which CONSULTANT proposes to use, and a detailed description of the method and program of the work CONSULTANT proposes to follow.

The OWNER reserves the right to terminate if at any time throughout the term of this Agreement the evidence submitted by, or investigation of, CONSULTANT fails to meet the requirements of

the Agreement or satisfy the OWNER that CONSULTANT is properly qualified to carry out the obligations of the Agreement and to complete the work.

30. QUALITY OF PRODUCT:

Work shall be provided in compliance with all statutes, acts, ordinances, laws, rules, regulations, and codes.

Upon notice by OWNER to CONSULTANT of unacceptable Work, CONSULTANT shall, at a minimum, correct or revise any errors or deficiencies within ten (10) calendar days at no cost and without additional compensation from OWNER and shall reimburse OWNER prior to release of final payment for any additional costs that may be incurred by OWNER as a result of reliance by OWNER or any of its contractors or subcontractors on such Work. If CONSULTANT should fail to correct or revise errors or deficiencies before the time specified for completion, OWNER may perform work itself or use a third party and Consultant will pay for costs incurred.

The rights and remedies of OWNER provided for under this Article are in addition to remedies provided by law.

31. RESPONSIBILITY

CONSULTANT certifies that they have fully acquainted themselves with conditions relating to the scope and restrictions attending the execution of the work under the conditions of this Agreement. The failure or omission of CONSULTANT to acquaint themselves with existing conditions shall in no way relieve CONSULTANT of any obligation with respect to this Agreement.

CONSULTANT must at a minimum have the follow:

- (a) adequate financial resources to perform the contract, or the ability to obtain them;
- (b) be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
- (c) satisfactory performance record;
- (d) the necessary organization, experience, accounting and operational controls, Professional and technical skills, (including, as appropriate, such elements as production control procedures, property control systems, quality control and assurance measures, and safety programs applicable to materials to be produced or services to be performed by the CONSULTANT and its subcontractors).
- (e) latest and most current professional, technological and electronic process in the profession for which they are providing services.

32. SEVERABILITY

If any term and provision resulting from this Agreement shall be found to be illegal or unenforceable, notwithstanding any such legality or enforceability, the remainder of said

Agreement shall remain in full force and effect, and such term or provision shall be deemed to be deleted and severable there from.

33. STATEMENT OF COMPLIANCES AND ASSURANCES:

CONSULTANT agrees and certifies its compliance with all applicable federal and state laws/regulations and OWNER ordinances to include:

- a. Assurance of non-collusion and understanding and acceptance of any and all provisions stated in this Agreement.
- b. The statement of Compliance and Assurance, along with other statements and certification shall be part of this Agreement.

34. SOUTH CAROLINA LAW CLAUSE:

CONSULTANT will comply with the statutes, regulation, codes, laws, jurisdiction and process of the courts of the State of South Carolina.

35. STAFFING

Consideration of alternative use of personnel must first be approved in writing by the Contracting Officer within ten (10) calendar days prior to utilizing on the project.

Subject area experts who are unable to actively and adequately engage in the project shall be replaced on the project within ten calendar days of notification by the CONSULTANT; replacement will be made with an expert that is suitable to the OWNER and with prior approval of the OWNER.

36. SUBCONTRACT

CONSULTANT shall not subcontract work hereunder without the prior written consent of the OWNER, and any such subcontract without prior written consent of the OWNER shall be null and void.

If CONSULTANT proposes to subcontract any of the work hereunder, it shall submit to the OWNER no later than ten (10) calendar days (prior to execution of a subcontract) the name of each proposed subcontractor, with the proposed scope of work which its subcontractor is to undertake.

The OWNER shall have the right to reject any subcontractor, which it considers unable or unsuitable to satisfactorily perform. CONSULTANT shall not enter into any cost reimbursable Agreements with any proposed subcontractor without OWNER'S prior written authorization.

Notwithstanding any consent by the OWNER to a proposed subcontract, CONSULTANT shall remain responsible for all subcontracted work and services.

CONSULTANT agrees it shall be as fully responsible to the OWNER for the negligent acts and omissions of its subcontractors, their agents, representatives, and persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by CONSULTANT.

Neither this provision, this Agreement, the OWNER'S authorization of CONSULTANT'S Agreement with subcontractor, OWNER'S inspection of a subcontractor's facilities, equipment or work, or any other action taken by the OWNER in relation to a subcontractor shall create any contractual relationship between subcontractor and the OWNER

CONSULTANT shall include in each of its subcontracts a provision embodying the substance of this article and shall provide a copy thereof to the OWNER before commencement of any work by a subcontractor. CONSULTANT'S violation of this provision shall be grounds for the OWNER'S termination of this Agreement for default, without notice or opportunity for cure.

37. TAXES

All taxes must be included in the contract price/cost, such a federal, state, and local:

- (a) sales;
- (b) use;
- (c) excise;
- (d) transportation;
- (e) privilege; and
- (f) occupational taxes; or
- (g) taxes, contributions, and premiums imposed upon or measured by CONSULTANT'S payroll;
- (h) Taxes to be paid by the OWNER must be identified and submitted with a full explanation;
- (i) The County must be indemnified against any liability for such taxes, with the right to withhold from CONSULTANT amounts sufficient to satisfy such taxes if CONSULTANT fails to indemnify County;
- (j) It is the CONSULTANT'S duty to promptly pay all sales, excise, and other taxes and to ensure that subcontractors promptly pay all applicable unemployment, social security, and workers' compensation taxes;
- (k) If the contract sum includes a tax not required to be paid, CONSULTANT will take steps to secure a refund for County.

38. TERMINATION

The OWNER shall have the right to terminate this agreement at will without cause in whole or in part for its convenience at any time during the course of performance by giving thirty – (30) calendar day's written or telegraphic notice. Upon receipt of any termination notice, CONSULTANT shall immediately discontinue services on that date.

CONSULTANT shall be paid the actual written approved costs incurred during the performance hereunder to the time specified in the termination notice, not previously reimbursed by OWNER, to the extent such costs are actual, necessary, reasonable, and verifiable costs and have been incurred by CONSULTANT prior to and in connection with discontinuing the work hereunder. In no event shall such costs include unabsorbed overhead or anticipatory profit, nor shall such costs exceed the total price of the contract.

If the CONSULTANT defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the OWNER to commence and continue correction of such default or neglect with diligence and promptness, the OWNER may, without prejudice to other remedies the OWNER may have, correct such deficiencies and deduct from payments then or thereafter due the CONSULTANT the reasonable cost of correcting such deficiencies, including OWNER's expenses and compensation for the additional services made necessary by such default, neglect or failure. If payments then or thereafter due the CONSULTANT are not sufficient to cover such amounts, the CONSULTANT shall pay the difference to the OWNER.

39. TRADE SECRETS

CONSULTANT acknowledges that this Agreement creates a confidential relationship between CONSULTANT and OWNER. That confidential relationship is the basis on which OWNER has disclosed and may in the future disclose OWNER'S governmental and commercially valuable, proprietary, confidential information pertaining to the services and equipment provided for in this Agreement. Such information shall be a trade secret of OWNER. The OWNER may also disclose information disclosed to OWNER in confidence by a third party.

CONSULTANT shall hold such information and all Intellectual Property assigned pursuant to this Agreement in strict confidence, and shall neither disclose the same to any third party nor use it for purposes other than providing services and/or equipment hereunder, without OWNER'S prior written consent.

This secrecy obligation shall not apply to information that is or becomes generally available to the public as a matter of record.

CONSULTANT shall safeguard all material, whether written or otherwise, which OWNER supplies to it and shall not copy or duplicate such materials without OWNER'S prior written consent.

In the event of a breach or threatened breach of the foregoing provisions of this Section, damages to be suffered by OWNER may not be fully compensable in money damages alone, and accordingly, OWNER or the third-party owner of the confidential information shall, in addition to other available legal or equitable remedies, may be entitled to an injunction against such breach or threatened breach without any requirement to post bond as a condition of such relief.

40. AGREEMENT DOCUMENTS

The Contract Documents which comprise the entire Agreement between OWNER and CONSULTANT concerning the Work consist of the following:

- 1) This Contract Agreement.
- 2) The OWNER's Request For Proposal: No. RC-100-P-2019 (Not attached but incorporated herein by reference thereto.) The Request for Proposal includes all documents that were part of the advertisement of the Project, including but not limited to Special Conditions, General Provisions, and General Conditions in the solicitation documents.
- 3) CONSULTANT's Response to Solicitation No. RC-100-P-2019. (Not attached but incorporated herein by reference thereto.)

- 4) Technical Submittal, Special Provisions and Addendums provided in the solicitation documents that is part of the Request for Proposal. (Not attached but incorporated herein by reference thereto.)
- 5) The following, which may be delivered or issued after the effective date of the Agreement and not attached hereto:
 - a) Notice to Proceed
 - b) Performance Bond (if required)
 - c) Payment Bond (if required)
 - d) Fully executed Written Amendments
 - e) Fully executed Work Change Directive(s)
 - f) Fully executed Change Order(s)

Additionally, if not included in the Request for Proposals, the OWNER's General Conditions that are the standard terms and conditions for doing business with Richland and found County at <http://www.richlandcountysc.gov/Businesses/Procurement-Contracting/Vendors> ("OWNER's Standard General Conditions") are part of the Contract Documents.

41. ORDER OF PRECEDENCE

This Agreement, including the Exhibits listed above, are collectively called in this Agreement "the Contract Documents," and form the entire Agreement between the parties, superseding all prior negotiations, representations, or agreements, whether written or oral. The Contract Documents are intended to supplement and complement each other and shall, where possible, be thus interpreted. If, however, any provision of the Agreement, any other Contract Document and any Exhibit irreconcilably conflicts with a provision of the Agreement, the following rules of interpretation shall control:

As between this primary Agreement document and any of the other Contract Documents (including the Request For Proposal and the contract terms and conditions included therein), this Agreement shall govern.

As between any other Contract Document (except the Consultant's Response to the Request For Proposal and the OWNER's Standard General Conditions), the other Contract Document shall govern.

Degree of Application: CONSULTANT. Should there be a conflict between any provision of any Contract Document that is not determined by the Order of Precedence section herein, the CONSULTANT will be assumed to have agreed to the more onerous obligation or duty between or among the conflicting terms.

42. ENTIRE AGREEMENT

This Agreement including any attachments, exhibits, solicitation, specification, scope of work, Proposals, negotiated results and amendments hereto represents the entire understanding and constitutes the entire Agreement between OWNER and CONSULTANT. It supersedes all prior contemporaneous communications, representations, or Agreements, whether oral or written, with respect to the subject matter thereof and has been induced by no representations, statements, or Agreements other than those herein expressed.

No Agreement hereafter made between the parties shall be binding on either party unless reduced to writing and signed by an authorized officer of the party sought to be bound thereby. CONSULTANT AND OWNER ACKNOWLEDGES THAT THEY HAVE READ THIS AGREEMENT, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS. NO MODIFICATIONS SHALL BE EFFECTIVE UNLESS IN WRITING SIGN BY BOTH PARTIES.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized and empowered officers or agents as of the date set forth above. This Agreement will be effective as of February 13, 2019

OWNER:

CONTRACTOR:

RICHLAND COUNTY

WOOLPERT, INC.

By: [Signature]
Its: County Administrator

By: [Signature]
BRIAN T. BATES
Its: SENIOR ASSOCIATE

Attest: [Signature]

Attest: [Signature]

Richland County Attorney's Office
[Signature]
Approved As To LEGAL Form Only.
No Opinion Rendered As To Content.