



Agreement for Services

Date: November 7, 2019	RFP Number: CD CP/AI 2019 - 01
Consultant: Civitas, LLC	Client: City Of Columbia, Community Development
<p style="text-align: center;">Contact: Erich Chatham, 843.573.7825 Civitas, LLC 1150 Wexford Park Mount Pleasant, South Carolina 29466</p>	<p style="text-align: center;">Contact: Dollie Bristow, 803.545.3371 City of Columbia Community Development Department 1401 Main Street 4th Floor, Attn: Community Development Columbia, SC 29201</p>
Project Information	
<p>Project Name: 5-Year Consolidated Plan & Analysis to Impediments of Fair Housing Choice Consulting Services</p> <p>Project Location: Within City of Columbia Incorporated City Limits</p>	
<p>Proposal for CD CP/AI 2019-01 is incorporated into this agreement for services as Appendix A – Accepted Proposal. This agreement for services is incorporated into the above referenced proposal (CD CP/AI-2019-01).</p>	

This Contract is entered into this _____ day of _____, 20____, by and between the City of Columbia, South Carolina, herein referred to as the "City" and Civitas, LLC, herein referred to as the "Consultant".

In consideration of the mutual covenants and promises included herein, Consultant and City agree as follows:

1. **Acceptance:** City hereby accepts this offer by Consultant to provide the services as contained in Consultants proposal and agrees that such services and any additional services authorized by the City shall be governed by the terms of this agreement. If the City directs that services commence prior to the execution of this agreement, the City agrees that the commencement of services by the Consultant is in reliance on the City having accepted the terms of this agreement and acknowledgement that the City will execute this agreement forthwith. The City may accept this agreement for services through the use of the City’s purchase order, however, all preprinted terms and conditions on the City’s purchase order are inapplicable and the terms of this Agreement shall govern. Unless this offer is previously accepted, it will be withdrawn automatically at 5:00pm EST, ninety (90) days from the date of this issue.

2. **Contract Documents:** “Contract documents” shall mean this Agreement for Services and the proposal in response to CD CP/AI-2019-01.



- 3. Payment:** The City will pay the Consultant for services and expenses in accordance with the Contract Documents. If prices for services are not specified in the Contract Documents, Consultant's current fee schedule in effect for the location providing the services shall control. Consultant will submit progress invoices to the City monthly and a final invoice upon completion of services. Payment is due upon receipt of the invoice unless otherwise agreed to in writing prior to the submittal of the invoice. Invoices are past due 30 calendar days after the date of the invoice. Attorney's fees and other costs incurred in collecting past due amounts shall be paid by the City. The City's obligation to pay under this agreement is in no way depended upon the City's ability to obtain financing, payment from third parties, approval of governmental or regulatory agencies or the City's successful completion of a project. Without incurring any liability to the City, Consultant may either suspend or terminate this agreement if the City fails to pay any undisputed invoice amounts within 60 calendar days of the invoice date, or if the City states its intention not to pay forthcoming invoices. Such suspension or termination will not waive any other claim Consultant may have against the City. Following such suspension or termination, Consultant may resume work by mutual agreement with the City after payment by the City of all outstanding invoiced amounts and collection expenses. The City waives all claims for damages or delay as a result of such suspension or termination.
- 4. Time of Performance:** The effective date of this contract shall be the date the parties sign and complete execution of the contract. The expected engagement of the contract shall be no more than one (1) year from the date of complete execution of the contract, or when the City received final HUD approval for the 2020-2024 ConPlan/Analysis of Impediments and the 2020 Annual Action Plan, whichever comes first.
- 5. Contract Duration:** The contract is expected to last until the City receives final HUD approval for the 2020-2024 ConPlan/Analysis of Impediments and the 2020 Annual Action Plan.
- 6. Standard of Care:** Consultant and its agents, employees and subcontractors shall endeavor to perform the services for the City with that degree of care and skill ordinarily exercised, under similar circumstances, by consultants practicing in the same discipline at the same time and location. In the event any portion of the services fails to substantially comply with this standard of care obligation and Consultant is promptly notified in writing prior to one year after completion of such portion of the Services, Consultant will re-perform such portion of the services, or if re-performance is impractical, Consultant will refund the amount of compensation paid to Consultant for portion of the Services.
- 7. Limitation of Liability:** Consultant's aggregate liability responsibility to the City, including that of our officers, directors, employees and agents, is limited to \$100,000, hereinafter referred to as "Limitation of Liability". This limitation of liability applies to all lawsuits, claims or actions, whether identified as arising in tort, including negligence (whether sole or concurrent), professional error or omissions, breach of warranty (expressed or implied), negligent misrepresentation and strict liability, contract, or other legal theory, including without



limitation, Consultants indemnity obligations to the City related to the services provided in this agreement and any continuation or extension of our services.

By entering into this agreement, the City acknowledges that this limitation of liability provision has been reviewed, understood and is a material part of this agreement, and that the City has had an opportunity to seek legal advice regarding this provision.

8. **Disclaimer of Consequential Damages:** In no event shall Consultant or the City be liable to the other for any special, indirect, incidental or consequential loss or damages, including, but not limited to, lost profits, damages for delay, or loss of use arising from or related to services provided by Consultant.
9. **Reports:** In connection with the performance of the services, Consultant shall deliver to the City one or more reports or other written documents reflecting services provided and results of such services. All reports and written documents delivered to the City are instruments reflecting the services provided by Consultant pursuant to this agreement and are made available for the City's use subject to the limitations of this agreement. Instruments of service provided by Consultant to the City pursuant to this agreement are provided for the exclusive use of the City, and the City's agents and employees for the project and are not to be used or relied upon by a third party or in connection with other projects. Subject to the authorized use of the City, and the City's agents, employees, all instruments of service, other written documents, all original data gathered by Consultant and work papers produced by Consultant in the performance of or intrinsic to the services included in the services are, and shall remain, the sole and exclusive property of the Consultant. Documents that may be relied upon by the City are limited to the printed copies (also known as hardcopies) that are signed or sealed by Consultant. Files in electronic media format of text, data, graphics, or of any other types that are furnished by Consultant to the City are only for the convenience of Consultant and the City. Any reliance on information obtained or derived from such electronic files will be at the City's or others use's sole risk.
10. **Safety:** Consultant is solely responsible for the safety and health of Consultants employees and lower tier subcontractors. Consultant shall take necessary precautions for the safety of its employees. Consultant specifically disclaims any authority or responsibility for general job safety and for the safety of persons who are not employed by the Consultant. Should the City, or third parties, be conducting activities on the site, then each shall have responsibility for their own safety and compliance with applicable safety standards.
11. **City Obligations:**
 - a. City warrants that all information provided to Consultant regarding the project and project location are complete and accurate to the best of the City's knowledge.
 - b. The City agrees to furnish consultant, its agents, employees, and subcontractors a right-of-entry and any authorizations needed for Consultant to enter onto the project site to perform the services included in this agreement.
 - c. Consultant will take reasonable precautions to minimize damage to the project site from Consultant's activities and from the use of equipment. City recognizes that



the performance of the services included in this agreement may cause alteration or damage to the site. City acknowledges that some site disturbance is inherent in the work for which consultant will not be responsible. Should the City not be owner of the property, then the City agrees to notify the owner of the aforementioned possibility of unavoidable alteration and damage.

- d. The City agrees to disclose the identity of all utilities serving the project site and the present and accurate location of hidden or obscured man-man objects known to the City that may be in Consultants work area.

12. Certifications: The City agrees not to require that consultant execute any certification with regard to work performed, tested or observed under this agreement unless: 1) Consultant believes that it has performed sufficient work to provide a sufficient basis to issue the certification; 2) Consultant believes that the work performed, tested or observed meets the criteria of the certification; and 3) Consultant has reviewed and approved in writing the exact form of such certification prior to execution of this agreement. Any certification by Consultant is limited to an expression of professional opinion based upon the services performed by the Consultant, and does not constitute a warranty or guarantee, either expressed or implied.

13. Failure to Follow Recommendations: The City agrees that it would be unfair to hold the Consultant liable for problems that may occur if the Consultant's recommendations are not followed. Accordingly, the City waives any claim against the Consultant and hold harmless the Consultant from any claim or liability for injury or loss that results from failure to implement the Consultant's recommendations or from implementation of the Consultant's recommendations in a manner that is not in strict accordance with them.

14. Termination:

For Convenience – Upon written notice, City or Consultant may terminate the performance of any further services included in this agreement if the terminating party determines termination is in the terminating party's interest. Upon receipt of the termination notice by either party, Consultant shall stop work on all services included in this agreement and deliver on instruments of service complete at that time to City and City shall pay Consultant within thirty (30) days for all services performed up to the dispatch or receipt of the termination notice. Upon termination for convenience, Consultant and City shall have no further rights or remedies other than those included in this paragraph.

For Cause – In the event of material breach of this agreement, the party not breaching the agreement may terminate it upon five (5) business days' written notice delivered or mailed to the other party, which notice must identify the material breach. The agreement may not be terminated for cause if the breaching party cures the breach within five (5) business days of receipt of the written notice. Upon termination for cause, Consultant shall stop work on all services included in this agreement and deliver any instruments of service complete at that time to the City and the City shall pay Consultant within thirty (30) days for all services performed up to the termination. Upon termination for cause, Consultant and City shall have no further rights or remedies other than those included in this paragraph.



- 15. Unforeseen Conditions or Occurrences:** If, during the performance of services, any unforeseen hazardous substance, material, element or constituent or other unforeseen conditions or occurrences are encountered which, in Consultants judgment, significantly affects or may affect the services, the risk involved in providing the services, or the recommended scope of services, Consultant will promptly notify the City. Subsequent to that notification, Consultant may: (a) If practical, in Consultants judgment and with approval of the City, complete the original scope of service in accordance with the procedures originally intended in the proposal; (b) Agree with City to modify the scope of services and the estimate of charges to include the previously unforeseen conditions or occurrences, such revision to be in writing and signed by the parties and incorporated into this agreement; or (c) Terminate the services effective on the date of notification pursuant to the terms of termination for convenience. The City is responsible for reporting any release of hazardous substances to appropriate government agencies as required by law. City acknowledges that Consultant also may have reporting obligations under controlling law and regulations.
- 16. Force Majeure:** Consultant shall not be deemed to be in default of this agreement to the extent that any delay or failure in the performance of the scope of work results from any causes beyond its reasonable control. For this purpose, such acts or events shall include, but are not limited to, storms, floods, unusually severe weather, epidemics, civil disturbances, war, riot, strikes, lockouts or other industrial disturbances, and the inability within reasonable diligence to supply personnel, equipment, information or material to the project. In the event that such acts or events occur, it is agreed that Consultant shall attempt to overcome all difficulties arising and to resume as soon as reasonably possible the normal pursuit of the services covered by this agreement.
- 17. Insurance:** Consultant shall maintain at its own expense, during the term of this agreement, the following insurance: (1) Workers' Compensation providing statutory coverage required by the state of South Carolina, (2) Employer's Liability within limits of \$1,000,000 each accidents, (3) Commercial General Liability with \$1,000,000 each occurrence/\$2,000,000 aggregate, (4) Commercial Automobile with limits of \$1,000,000 each accident, (5) Umbrella Excess Liability with limits of \$5,000,000 each occurrence and (6) Professional Liability with limits of \$5,000,000 each claim. Upon receipt of written request, the City shall be included as an additional insured under the General Liability and Automobile Liability policies on a primary and non-contributory basis.
- 18. Dispute Resolution:** Consultant may, in Consultant's sole discretion, pursue collection of past due invoices by litigation in a court of competent jurisdiction. Other than Consultants collection of past due invoices, in the event of a dispute between Consultant and City, with regard to any matter arising out of or related to this agreement, the parties will use their best efforts to resolve the dispute amicably within fifteen (15) calendar days.
- 19. Assignment and Subcontracts:** Neither party may assign this agreement, in whole or in part, without the prior written consent of the other party, except for an assignment of proceeds for



financing purposes. Consultant may subcontract for the services of others without obtaining City's consent if Consultant deems it necessary or desirable to have others perform services.

- 20. No Waiver:** No waiver by either party of any default by the other party in the performance of any provision of this agreement shall operate as or be construed as a waiver of any future default, whether like or difference in character.
- 21. General Compliance:** The Consultant agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (Community Development Block Grant [CDBG]), Part 92 (HOME Investment Partnership Program [HOME]), Part 574 (Housing Opportunities for Persons with AIDS [HOPWA]) and Title I of the Housing and Community Development Act of 1974 along with any relevant Federal Registrar Notices pertinent to the City allocation of CDBG-Disaster Recovery (DR) funding. The Consultant also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract and as outlined in Appendix B – Conditions of Federal Funding and Federal Labor Standards for Contractors.
- 22. Independent Contractor:** Nothing contained in this Contract is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Consultant shall at all times remain an "independent contractor" with respect to the services to be performed under this Contract. The City shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance as the Consultant is an independent contractor.
- 23. Miscellaneous:** The validity, interpretation, and performance of this agreement shall be governed by and construed in accordance with the laws of South Carolina. This agreement represents the entire understanding and agreement between the parties hereto relating to the service and supersedes any and all prior negotiations, discussions, and agreements, whether written or oral, between the parties regarding same. No amendment or modification to this agreement or any waiver of any provisions hereof shall be effective unless in writing, signed by both parties. If any part of this subcontract is found to be unenforceable, then the parties' intent is to have such part rewritten to attain as close as possible the original intents of this unenforceable provision.
- 24. Time Bar:** Notwithstanding any applicable state statute of repose or statute of limitation, the parties agree that all legal actions by either party against the other concerning the agreement or the work performed in relation to this agreement, will become barred two (2) years from the time the party knew or should have known of the claim, or two (2) years after completion of Consultants services, whichever occurs earlier.



In Witness Whereof, the Parties have caused this Agreement to be executed by their Duly Authorized Representative.

Proposal for CD CP/AI-2019-01

Cheresa Wilson
City (Signature)

[Signature]
Consultant (Signature)

Teresa Wilson / City Manager
City (Printed Name/Title)

Keil Erich Chatham, Principal Owner
Consultant (Printed Name/Title)

12/17/2019
Date

11/5/2019
Date

Appendices:

Appendix A – Accepted Proposal

Appendix B – Conditions of Federal Funding and Federal Labor Standards for Contractors

APPROVED AS TO FORM

[Signature]
Legal Department City of Columbia, SC