



We Are Columbia

MEETING DATE: August 16, 2016

DEPARTMENT: Procurement and Contracts

FROM: *Sandra Wright, Purchasing Agent*

SUBJECT: Council is asked to approve a Contract Renewal for Financial Advisory Consultant Services, as requested by the Finance Department. Award to Stifel Financial Corporation (formerly known as Merchant Capital, LLC) in an amount not to exceed \$450,000.00. This firm has a local office in Columbia, SC.

FINANCIAL IMPACT:

ORIGINAL BUDGET: \$450,000.00

CLEAN WATER 2020?: No

The Finance Department has requested to exercise the first of two options to renew the financial services contract with Stifel Financial Corporation, formally known as Merchant Capital, LLC. Stifel Financial Corporation will perform financial advisory consulting services, transaction services and money management.

I respectfully request City Council's approval to exercise the option to extend these services. The initial term was for a two (2) year period beginning on July 1, 2014 through June 30, 2016 with an option to extend for two (2) additional two (2) year periods through June 30, 2020. This is the first two (2) year option to extend period to end June 30, 2018.

Financial impact is dependent on the fund that is being served: general (fund 101), water & sewer (fund 551), parking (fund 531) and/or storm water (fund 553). The fee is paid from the proceeds of any bond issue through the bond issuance account (account code 766100) or from the professional services account (account code 636600).

Sec. 2-204 states Competitive sealed bidding required; exceptions. All city contracts shall be awarded by competitive sealed bidding except the following as

determined pursuant to definitions and standards set by regulations:

(1) Professional services where the person employed is customarily employed on a fee basis rather than by competitive bidding (examples: appraiser, architect-engineer, auditor, legal services, physician).

ATTACHMENTS:

- Stifel Financial Corporation (Merchant Capital) Contract 2016 (DOC)
- Merchant Capital Signed & Executed Agreement (ORIGINAL) (PDF)

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

CONTRACT FOR CONSULTANT SERVICES

THIS Contract entered into this ____ day of August, 2016 between The City of Columbia (hereinafter called the "City"), its successors and assigns, and Stifel Financial Corporation hereinafter called the "Consultant").

WITNESSETH:

WHEREAS, the City desires to retain the services of the Consultant.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. CONTRACT FOR SERVICES

The City hereby engages the Consultant and the Consultant hereby agrees to perform the services hereafter set forth.

2. SCOPE OF SERVICES AND TIME OF PERFORMANCE

The Consultant shall in a satisfactory and proper manner as determined by the City perform tasks necessary to complete the projects as outlined in Appendix A, attached hereto. The Consultant has specialized knowledge to complete the projects without any training from the City and shall perform the tasks in the order and in the manner that he or she determines is most effective and efficient without any City control over the details of Consultant's performance.

3. METHOD OF PAYMENT

X A. It is agreed that in no event will the total compensation to be paid hereunder exceed the maximum sum as specified in Appendix A.

X B. Payment shall be made in a manner consistent with Appendix A.

4. FINDINGS CONFIDENTIAL

All of the reports, information, data, records or documents of any kind, prepared or assembled by the Consultant under this Contract are confidential and the Consultant agrees that they shall not be made available to any individual or organization without the prior approval of the City.

5. ACCESS TO RECORDS

The Consultant shall make available for examination all of its records with respect to all matters covered by this contract and shall maintain such records for a period not less than three (3) years after receipt of final payment under this Contract.

6. COPYRIGHT AND PROPRIETARY RESOURCES

No reports or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Consultant. Upon request by the City, reports or documents produced by the Consultant under this Agreement using proprietary or specialized resources (e.g., financial models) shall be provided to the City in hard copy or .pdf/Adobe format. At the discretion of the Consultant, reports or documents produced by the Consultant using proprietary or specialized resources may also be provided to the City in alternate electronic formats.

7. AMENDMENTS

The parties may amend this Agreement at any time provided that such amendments are executed in writing, signed by a duly authorized representative of both parties, and approved, where applicable, by the City's governing body.

The City may, in its discretion, amend this Agreement to conform with federal, state, or local governmental guidelines, policies and available funding amounts, or for other reasons. If such

amendments result in a change in the funding, the scope of services, or schedule of, the activities to be undertaken as part of the Agreement, such modifications will be incorporated only by written amendment signed by both parties.

8. ASSIGNABILITY/SUBCONTRACTING

The Consultant shall not assign or subcontract any interest in this Agreement and shall not transfer any interest in the same without the prior written consent of the City. The Consultant shall be as fully responsible to the City for the acts and omissions of its sub-contractors, as it is for the acts and omissions of persons directly employed by the Consultant.

The Consultant shall furnish and cause each of its sub-contractors to furnish all information and reports required hereunder.

9. INDEPENDENT CONSULTANT

Nothing contained in this agreement 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 agreement. The City shall be exempt from payment of all unemployment compensation, FICA, retirement, life and/or medical insurance and workers' compensation insurance.

10. TERMINATION OF CONTRACT FOR CAUSE

If, through any cause, the Consultant shall fail to fulfill in a timely and proper manner these obligations under this Contract, or if the Consultant shall violate any of the covenants, agreements, or stipulations of this Contract, the City shall thereupon have the right to terminate this Contract by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data studies, surveys and reports prepared under this Contract shall become the property of the City subject to Section 6 herein.

Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Contract by the Consultant and the City may withhold any payments to the Consultant until such time as the exact amount of damages due to the City from the Consultant is determined.

11. TERMINATION FOR CONVENIENCE OF THE CITY

The City may terminate this Contract at any time by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. In that event, all finished or unfinished documents and other material as described in Section 5 herein shall, at the option of the City, become its property subject to Section 6 herein.

12. INTEREST OF CONSULTANT

The Consultant covenants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract or which is adverse to the interests of the City of Columbia. The Consultant further covenants that in the performance of this Contract no person having such interest shall be employed.

The Consultant is expected to make his/her services available to other entities but agrees to refrain from representing other entities in matters where the position of the City conflicts with that of the other entity. The City may at its discretion, waive this provision.

13. EQUAL EMPLOYMENT OPPORTUNITY

Throughout the term of the Agreement and any subsequent renewals (if any), the Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, or national origin. The Consultant shall take affirmative action to ensure equal employment opportunities for all applicants, without regard to their race, creed, color, religion, ancestry,

sex, sexual orientation, national origin, disability or other handicap, age, marital status, or status with regard to public assistance. Such action may include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the government setting forth the provisions of this nondiscrimination clause. The Consultant shall state that it will receive consideration for employment without regard to race, color, creed, religion, ancestry, sex, sexual orientation national origin, disability or other handicap, age, marital status, or status with regard to public assistance. The Consultant will incorporate these equal employment opportunity requirements in all its subcontracts for program work for the City.

14. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

15. COMPLIANCE WITH LOCAL LAWS

The Consultant shall comply with all applicable laws, ordinances, and codes of the State and local government in performing the work provided under this Contract.

16. PERSONNEL

All of the services required hereunder shall be performed by the Consultant and all personnel engaged in the work will be fully qualified and shall be authorized or permitted under State and local law to perform the services identified in Appendix A.

The Consultant represents that he/she has, or will secure at his/her own expense, all personnel required in performing the services under the Contract.

IN WITNESS WHEREOF, the City and the Consultant have entered into this Agreement as of the date first above written.

WITNESSES AS TO CITY:

CITY OF COLUMBIA

BY: _____

TITLE: City Manager

WITNESSES AS TO CONSULTANT:

CONSULTANT

BY: _____

TITLE: _____

APPENDIX A- SCOPE OF SERVICES

The City of Columbia wishes to engage in an Contract for Consultant Services with Stifel Financial Corporation to provide technical services to the Finance Department ("Department"), located at 1136 Washington Street, 4th Floor, Columbia, SC 29201, beginning on the date of execution of this Agreement and ending on June 30, 2018. The scope of services to be provided by the Consultant includes:

1. Ongoing Consulting. For ongoing financial advisory consulting services on behalf of the City, the Consultant shall be compensated at an hourly rate of \$200 with a maximum fee to be determined by the City, in its sole discretion, on a case-by-case basis. Out of pocket expenses related to ongoing consulting would be billed to the City at cost (e.g., travel, meals, fax, overnight courier, postage, etc.). The time of performance for ongoing consulting services shall be consistent with the deadlines and requirements for each project as designated by the City. Payment for ongoing consulting service shall be from any legally available funds of the City.
2. Transactions Services. For financial advisory services on any public offering (whether negotiated or competitive) or privately placed transaction, the Consultant shall be compensated on a case-by-case basis to be mutually determined by the City and the Consultant. The amount of compensation on any given transaction shall be a function of the complexity of the offering, the time required to execute the offering, and the amount of personnel and resources required and dedicated by the Consultant to complete its efforts on the City's behalf. Under no circumstance shall the Consultant be entitled more than \$450,000 in any calendar year for all of its transaction services work on behalf of the City during that period. This maximum annual fee amount may be periodically reviewed and modified at the mutual convenience of the parties hereto by separate written instrument only. Transaction services typically include (but are not limited to) structuring and cash flow modeling, millage impact analysis, bid parameter advice and independent verification of bids with respect to competitive offerings, oversight on negotiated offerings, document review, opinions with respect to transaction team and other costs of issuance, pre-pricing marketing and pricing oversight to ensure maximum primary market exposure and penetration, final pricing structuring assistance, post pricing performance analysis, and coordination of the transaction closing with the City's legal team. To ensure the highest level of integrity and objectivity while serving as the City's financial advisor, the Consultant affirms that it will not submit a bid during any competitive pricing. Out-of-pocket expenses on any transaction would be billed to the City at cost (e.g., travel, meals, fax, overnight courier, postage, etc.). The time of performance for financial advisory services on each transaction shall be consistent with the schedule of said transaction as established by the working group. Payment for financial advisory services on each transaction shall be from the proceeds of the transaction or from any legally available funds of the City.
3. Money Management Services. For assisting the City with the investment of bond proceeds and for other money management services which the City may request from time to time, the Consultant will negotiate the fee basis for such engagements on project-by- project basis. It is customary for the Consultant to competitively bid out such investments to assure the highest rate of return. Out-of-pocket expenses would be billed back to the City in the manner described above.
4. Commencement and Terms of Agreement:
The services of the Consultant contemplated by this Agreement and for which the Consultant shall be compensated will commence upon execution of this Agreement and be further subject to the terms and conditions specified in Appendix B. This is the first two (2) year option to extend through June 30, 2018. The Consultant shall abide by the terms of this Contract and any subsequent extensions and amendments/modifications thereto.

APPENDIX B- TERMS AND CONDITION

A. Commencement of Services

The Consultant shall commence the project and prepare the recommendations as soon as practical after the award of the contract.

B. Non-Discrimination

The Consultant will take affirmative action in complying with all federal, state and local requirements concerning fair employment and employment of the handicapped, and concerning the treatment of all employees, without regard or discrimination by reason of race, color, religion, sex, sexual orientation, national origin or physical handicap.

C. Indemnification

The Consultant will agree to indemnify, defend, hold harmless and reimburse the City, its agents, and employees from and against any and all losses, liabilities, expenses, and all claims for damages of any nature whatsoever relating to or arising out of any action or failure to act by the Consultant, its subcontractors, officers, agents and employees of any of the obligations under the contract. Losses, liabilities, expenses and claims for damages shall include, but will not be limited to, civil and criminal fines and penalties, loss of use or services, bodily injury, death, personal injury, or injury to real or personal property, defense costs, legal fees and costs, and attorney's fees for an appeal.

The Consultant will also agree to promptly notify the City of any civil or criminal actions filed against the Consultant or of any notice of violation from any federal or state agency, or of any claim as soon as practical as relates to the services provided. The City, upon receipt of such notice, shall have the right at its election to defend any and all actions or suits or to join in defense.

D. Bonding, Licenses, Permits and Taxes

It shall be the responsibility of the Consultant to secure all Local, State, and/or Federal License and Permits required by law, state or ordinance to perform work.

All costs for required bonding, permits, licenses and taxes shall be borne by Consultant.

E. Ownership of Data

All data and other information generated by or used by the Consultant is the property of the City and shall not be used by the Consultant for any purpose whatsoever except to perform the requested service.

F. Termination

The City may terminate the contract at any time upon any of the following grounds: 1) Failure by the City to appropriate funds in its budget to pay the Consultant for the requested service; 2) The Consultant fails to perform any of the services required in the contract, and does not correct such deficiency within fifteen (15) days after having been notified of such deficiency by the City; 3) Force majeure; 4) Upon expiration of the term of the Contract; 5) By mutual agreement; and 6) For the convenience of the City, at the City's discretion, for any reason whatsoever deemed to be in the best interests of the City.

In the event that the contract is wrongfully terminated under any of the other grounds enumerated herein, termination shall be treated as a termination for convenience. If the contract is terminated for convenience, or wrongfully terminated upon any of the other grounds enumerated herein, the Consultant

shall be entitled to payment consistent with work performed on behalf of the City prior to such termination and pursuant to the terms of Appendix A herein.

G. Whole Agreement

The Contract shall contain the entire agreement between the City and Consultant. In order to be binding, any modification thereof shall be in writing and signed by the City and the Consultant.

H. State Law Applicable

The contract shall be construed in accordance with the laws of the State of South Carolina (the "State"). The Consultant agrees to subject itself to the jurisdiction and venue of the Circuit Courts in Richland County, State of South Carolina as to all matters and disputes arising or to arise under the contract and the performance thereof.

I. Breach/Waiver

The failure of either the Consultant or the City to insist upon performance of any provisions of the contract shall not be deemed to be a waiver of the right to insist upon strict performance of such provision or of any other provision of the contract at any time. Waiver of any breach of the contract by the Consultant or the City shall not constitute a waiver of a subsequent breach.

J. Severability

In the event that any provision of the contract is determined to be void or unenforceable, all other provisions shall remain in full force and effect.

K. Successorship

The contract shall be binding upon the Consultant and upon its successors and assignees. The contract shall be binding upon the City in accordance with its terms and provisions.

L. Subcontractors

The use of subcontractors will not relieve the Consultant of any obligations and the Consultant remains liable for full and satisfactory performance per the term and conditions of the Contract.

M. Ethics

Consultant is subject to the applicable provisions of the 1991 Ethics Reform Act, specifically, §8-13-705, which section prohibits a person from offering, promising or giving anything of value to a public official or public employee with the intent to influence the public official's or public employee's actions.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

CONTRACT FOR CONSULTANT SERVICES

THIS Contract entered into this 31st day of July, 2014 between The City of Columbia (hereinafter called the "City"), its successors and assigns, and Merchant Capital, L.L.C. hereinafter called the "Consultant").

WITNESSETH:

WHEREAS, the City desires to retain the services of the Consultant.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. CONTRACT FOR SERVICES

The City hereby engages the Consultant and the Consultant hereby agrees to perform the services hereafter set forth.

2. SCOPE OF SERVICES AND TIME OF PERFORMANCE

The Consultant shall in a satisfactory and proper manner as determined by the City perform tasks necessary to complete the projects as outlined in Appendix A, attached hereto. The Consultant has specialized knowledge to complete the projects without any training from the City and shall perform the tasks in the order and in the manner that he or she determines is most effective and efficient without any City control over the details of Consultant's performance.

3. METHOD OF PAYMENT

X A. It is agreed that in no event will the total compensation to be paid hereunder exceed the maximum sum as specified in Appendix A.

X B. Payment shall be made in a manner consistent with Appendix A.

4. FINDINGS CONFIDENTIAL

All of the reports, information, data, records or documents of any kind, prepared or assembled by the Consultant under this Contract are confidential and the Consultant agrees that they shall not be made available to any individual or organization without the prior approval of the City.

5. ACCESS TO RECORDS

The Consultant shall make available for examination all of its records with respect to all matters covered by this contract and shall maintain such records for a period not less than three (3) years after receipt of final payment under this Contract.

6. COPYRIGHT AND PROPRIETARY RESOURCES

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7. AMENDMENTS

The parties may amend this Agreement at any time provided that such amendments are executed in writing, signed by a duly authorized representative of both parties, and approved, where applicable, by the City's governing body.

The City may, in its discretion, amend this Agreement to conform with federal, state, or local governmental guidelines, policies and available funding amounts, or for other reasons. If such

amendments result in a change in the funding, the scope of services, or schedule of, the activities to be undertaken as part of the Agreement, such modifications will be incorporated only by written amendment signed by both parties.

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The Consultant shall furnish and cause each of its sub-contractors to furnish all information and reports required hereunder.

9. INDEPENDENT CONSULTANT

Nothing contained in this agreement 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 agreement. The City shall be exempt from payment of all unemployment compensation, FICA, retirement, life and/or medical insurance and workers' compensation insurance.

10. TERMINATION OF CONTRACT FOR CAUSE

If, through any cause, the Consultant shall fail to fulfill in a timely and proper manner these obligations under this Contract, or if the Consultant shall violate any of the covenants, agreements, or stipulations of this Contract, the City shall thereupon have the right to terminate this Contract by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data studies, surveys and reports prepared under this Contract shall become the property of the City subject to Section 6 herein.

Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Contract by the Consultant and the City may withhold any payments to the Consultant until such time as the exact amount of damages due to the City from the Consultant is determined.

11. TERMINATION FOR CONVENIENCE OF THE CITY

The City may terminate this Contract at any time by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. In that event, all finished or unfinished documents and other material as described in Section 5 herein shall, at the option of the City, become its property subject to Section 6 herein.

12. INTEREST OF CONSULTANT

The Consultant covenants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract or which is adverse to the interests of the City of Columbia. The Consultant further covenants that in the performance of this Contract no person having such interest shall be employed.

The Consultant is expected to make his/her services available to other entities but agrees to refrain from representing other entities in matters where the position of the City conflicts with that of the other entity. The City may at its discretion, waive this provision.

13. EQUAL EMPLOYMENT OPPORTUNITY

Throughout the term of the Agreement and any subsequent renewals (if any), the Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, or national origin. The Consultant shall take affirmative action to ensure equal employment opportunities for all applicants, without regard to their race, creed, color, religion, ancestry,

sex, sexual orientation, national origin, disability or other handicap, age, marital status, or status with regard to public assistance. Such action may include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the government setting forth the provisions of this nondiscrimination clause. The Consultant shall state that it will receive consideration for employment without regard to race, color, creed, religion, ancestry, sex, sexual orientation national origin, disability or other handicap, age, marital status, or status with regard to public assistance. The Consultant will incorporate these equal employment opportunity requirements in all its subcontracts for program work for the City.

14. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

15. COMPLIANCE WITH LOCAL LAWS

The Consultant shall comply with all applicable laws, ordinances, and codes of the State and local government in performing the work provided under this Contract.

16. PERSONNEL

All of the services required hereunder shall be performed by the Consultant and all personnel engaged in the work will be fully qualified and shall be authorized or permitted under State and local law to perform the services identified in Appendix A.

The Consultant represents that he/she has, or will secure at his/her own expense, all personnel required in performing the services under the Contract.

IN WITNESS WHEREOF, the City and the Consultant have entered into this Agreement as of the date first above written.

WITNESSES AS TO CITY:

Whlyngalza

CITY OF COLUMBIA

BY: Cheresa Wilson

TITLE: City Manager

WITNESSES AS TO CONSULTANT:

Kimberly H. Schumier
Office Mgr.

CONSULTANT

BY: [Signature]

TITLE: SENIOR VICE PRESIDENT

APPROVED AS TO FORM

CJB 7/10/14
Legal Department City of Columbia, SC

APPENDIX A- SCOPE OF SERVICES

The City of Columbia wishes to engage in an Contract for Consultant Services with Merchant Capital, L.L.C. to provide technical services to the Finance Department ("Department"), located at 1136 Washington Street, 4th Floor, Columbia, SC 29201, beginning on the date of execution of this Agreement and ending on June 30, 2016. The scope of services to be provided by the Consultant includes:

1. Ongoing Consulting. For ongoing financial advisory consulting services on behalf of the City, the Consultant shall be compensated at an hourly rate of \$200 with a maximum fee to be determined by the City, in its sole discretion, on a case-by-case basis. Out of pocket expenses related to ongoing consulting would be billed to the City at cost (e.g., travel, meals, fax, overnight courier, postage, etc.). The time of performance for ongoing consulting services shall be consistent with the deadlines and requirements for each project as designated by the City. Payment for ongoing consulting service shall be from any legally available funds of the City.
2. Transactions Services. For financial advisory services on any public offering (whether negotiated or competitive) or privately placed transaction, the Consultant shall be compensated on a case-by-case basis to be mutually determined by the City and the Consultant. The amount of compensation on any given transaction shall be a function of the complexity of the offering, the time required to execute the offering, and the amount of personnel and resources required and dedicated by the Consultant to complete its efforts on the City's behalf. Under no circumstance shall the Consultant be entitled more than \$450,000 in any calendar year for all of its transaction services work on behalf of the City during that period. This maximum annual fee amount may be periodically reviewed and modified at the mutual convenience of the parties hereto by separate written instrument only. Transaction services typically include (but are not limited to) structuring and cash flow modeling, millage impact analysis, bid parameter advice and independent verification of bids with respect to competitive offerings, oversight on negotiated offerings, document review, opinions with respect to transaction team and other costs of issuance, pre-pricing marketing and pricing oversight to ensure maximum primary market exposure and penetration, final pricing structuring assistance, post pricing performance analysis, and coordination of the transaction closing with the City's legal team. To ensure the highest level of integrity and objectivity while serving as the City's financial advisor, the Consultant affirms that it will not submit a bid during any competitive pricing. Out-of-pocket expenses on any transaction would be billed to the City at cost (e.g., travel, meals, fax, overnight courier, postage, etc.). The time of performance for financial advisory services on each transaction shall be consistent with the schedule of said transaction as established by the working group. Payment for financial advisory services on each transaction shall be from the proceeds of the transaction or from any legally available funds of the City.
3. Money Management Services. For assisting the City with the investment of bond proceeds and for other money management services which the City may request from time to time, the Consultant will negotiate the fee basis for such engagements on project-by- project basis. It is customary for the Consultant to competitively bid out such investments to assure the highest rate of return. Out-of-pocket expenses would be billed back to the City in the manner described above.
4. Commencement and Terms of Agreement:
The services of the Consultant contemplated by this Agreement and for which the Consultant shall be compensated will commence upon execution of this Agreement and be further subject to the terms and conditions specified in Appendix B. This contract shall be for an initial term of two (2) years with an option to extend for two (2) additional two-year extensions. The Consultant shall abide by the terms of this Contract and any subsequent extensions and amendments/modifications thereto.

APPENDIX B- TERMS AND CONDITION

A. Commencement of Services

The Consultant shall commence the project and prepare the recommendations as soon as practical after the award of the contract.

B. Non-Discrimination

The Consultant will take affirmative action in complying with all federal, state and local requirements concerning fair employment and employment of the handicapped, and concerning the treatment of all employees, without regard or discrimination by reason of race, color, religion, sex, sexual orientation, national origin or physical handicap.

C. Indemnification

The Consultant will agree to indemnify, defend, hold harmless and reimburse the City, its agents, and employees from and against any and all losses, liabilities, expenses, and all claims for damages of any nature whatsoever relating to or arising out of any action or failure to act by the Consultant, its subcontractors, officers, agents and employees of any of the obligations under the contract. Losses, liabilities, expenses and claims for damages shall include, but will not be limited to, civil and criminal fines and penalties, loss of use or services, bodily injury, death, personal injury, or injury to real or personal property, defense costs, legal fees and costs, and attorney's fees for an appeal.

The Consultant will also agree to promptly notify the City of any civil or criminal actions filed against the Consultant or of any notice of violation from any federal or state agency, or of any claim as soon as practical as relates to the services provided. The City, upon receipt of such notice, shall have the right at its election to defend any and all actions or suits or to join in defense.

D. Bonding, Licenses, Permits and Taxes

It shall be the responsibility of the Consultant to secure all Local, State, and/or Federal License and Permits required by law, state or ordinance to perform work.

All costs for required bonding, permits, licenses and taxes shall be borne by Consultant.

E. Ownership of Data

All data and other information generated by or used by the Consultant is the property of the City and shall not be used by the Consultant for any purpose whatsoever except to perform the requested service.

F. Termination

The City may terminate the contract at any time upon any of the following grounds: 1) Failure by the City to appropriate funds in its budget to pay the Consultant for the requested service; 2) The Consultant fails to perform any of the services required in the contract, and does not correct such deficiency within fifteen (15) days after having been notified of such deficiency by the City; 3) Force majeure; 4) Upon expiration of the term of the Contract; 5) By mutual agreement; and 6) For the convenience of the City, at the City's discretion, for any reason whatsoever deemed to be in the best interests of the City.

In the event that the contract is wrongfully terminated under any of the other grounds enumerated herein, termination shall be treated as a termination for convenience. If the contract is terminated for convenience, or wrongfully terminated upon any of the other grounds enumerated herein, the Consultant shall be entitled to payment consistent with work performed on behalf of the City prior to such termination and pursuant to the terms of Appendix A herein.

G. Whole Agreement

The Contract shall contain the entire agreement between the City and Consultant. In order to be binding, any modification thereof shall be in writing and signed by the City and the Consultant.

H. State Law Applicable

The contract shall be construed in accordance with the laws of the State of South Carolina (the "State"). The Consultant agrees to subject itself to the jurisdiction and venue of the Circuit Courts in Richland County, State of South Carolina as to all matters and disputes arising or to arise under the contract and the performance thereof.

I. Breach/Waiver

The failure of either the Consultant or the City to insist upon performance of any provisions of the contract shall not be deemed to be a waiver of the right to insist upon strict performance of such provision or of any other provision of the contract at any time. Waiver of any breach of the contract by the Consultant or the City shall not constitute a waiver of a subsequent breach.

J. Severability

In the event that any provision of the contract is determined to be void or unenforceable, all other provisions shall remain in full force and effect.

K. Successorship

The contract shall be binding upon the Consultant and upon its successors and assignees. The contract shall be binding upon the City in accordance with its terms and provisions.

L. Subcontractors

The use of subcontractors will not relieve the Consultant of any obligations and the Consultant remains liable for full and satisfactory performance per the term and conditions of the Contract.

M. Ethics

Consultant is subject to the applicable provisions of the 1991 Ethics Reform Act, specifically, §8-13-705, which section prohibits a person from offering, promising or giving anything of value to a public official or public employee with the intent to influence the public official's or public employee's actions.