Town of Morrisville
Services Contract

CONTRACT FOR: PROJECT NAME

This Services Contract (this "**Contract**") is made and entered into as of the **[ ] day of MONTH 2021**, by the Town of Morrisville (the "**Town**") and [COMPANY NAME] (the "**Contractor**"), (X) a corporation, ( ) a limited liability company ( ) a professional corporation, ( ) a professional limited liability company, ( ) a limited partnership, ( ) a sole proprietorship, or ( ) a general partnership; organized and existing under the laws of the State of [_____].

Sec. 1. **Title and Purpose**. The Contractor shall perform the following services (the "**Services**"): [DESCRIPTION OF WORK TO BE PERFORMED].

Sec. 2. **Performance**. The Contractor shall perform the Services in accordance with Attachment A. The Services shall be performed in a professional and workmanlike manner, consistent with generally accepted industry standards and the standard of care, skill, and diligence ordinarily exercised by members of the same profession under similar conditions. The Contractor represents and warrants that it holds and will maintain all permits, licenses, and certifications required to perform the Services. To the extent the Services involve commercial driving, the Contractor shall ensure its personnel hold all required commercial driver's licenses and comply with applicable motor carrier safety laws. Any modifications, corrections, or change orders must be in writing and signed by an authorized representative of each party. The Town reserves the right to refuse payment for any Services not authorized by this Contract or a duly approved amendment or change order. The Contractor shall complete the Services on or before [DATE].

Sec. 3. **Compensation**. The Town agrees to pay the Contractor for the Services performed within the scope of this Contract in an amount up to and "not to exceed" **[$AMOUNT].** As a condition of payment, the Town shall review and verify the Services, and payment shall be made only for Services approved and accepted by the Town.

Sec. 4. **Included Costs**. Unless otherwise provided in Attachment A, the Contractor shall obtain and provide, without additional cost to the Town, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Services. The Contractor is solely responsible for any travel or other out-of-pocket expenses incurred in connection with the performance of the Services.

Sec. 5. **Invoices**. The Contractor shall submit reasonably detailed and itemized invoices to the Town's project manager for Services for which payment is due, together with such supporting documentation as the Town may reasonably require to verify the charges, including a sales tax report when applicable or requested. The Town's project manager may review and verify the invoice for quantities of work completed or services performed prior to submitting it for payment to the Finance Department.

Sec. 6. **Service Warranty**. The Contractor warrants that, for a period of one (1) year following completion, the Services and any deliverables provided in connection therewith shall: (a) conform to the requirements of this Contract and applicable industry standards; and (b) be free from defects. The Contractor shall, at its sole cost and expense, promptly correct any Services or deliverables not in compliance with this warranty upon notice from the Town. This warranty is in addition to, and not in lieu of, any other warranties or remedies available under this Contract or applicable law.

Sec. 7. **Insurance**. The Contractor shall maintain, at its sole cost and at all times during the term of this Contract, insurance coverage with limits not less than those set forth below:

(a) Commercial general liability insurance (occurrence-based), naming Town as an additional insured, with limits not less than $1,000,000 per occurrence and $2,000,000 aggregate;

(b) Workers' compensation insurance as required by law, which if and as applicable will include employers' liability coverage, with limits not less than $500,000 per accident for bodily injury and disease;

(c) If the Contractor uses motor vehicles in performance of the Services, automobile liability insurance with limits not less than $1,000,000 combined single limit per occurrence, naming the Town as an additional insured;

(d) If the Services include professional or consulting services for which such coverage is customarily maintained, professional liability (errors and omissions) insurance with limits not less than $1,000,000 per occurrence and $2,000,000 aggregate; and

(e) Such other insurance as reasonably required by the Town based on the nature of the Services, including, where applicable, excess or umbrella liability coverage.

The Contractor's insurance shall be primary and non-contributory with respect to any insurance maintained by the Town and shall include a waiver of subrogation in favor of the Town to the extent permitted by law. All policies shall be endorsed to provide thirty (30) days' advance written notice to the Town of cancellation or material change and ten (10) days' notice for nonpayment of premium. The Contractor shall promptly notify the Town of any such change. Prior to commencing the Services and upon request, the Contractor shall provide certificates of insurance evidencing the required coverage and endorsements. Failure to maintain required insurance constitutes a material breach, and the Town may suspend or terminate this Contract. The insurance coverage and limits required herein shall not be construed to limit Contractor's liability relating to performance under this Contract.

Sec. 8. **Indemnification**. To the maximum extent allowed by law, and only to the extent of the Contractor's fault as a proximate cause, the Contractor shall defend, indemnify, and hold harmless the Town and its officers, officials, employees, and agents from and against all claims, demands, damages, losses, liabilities, costs, and expenses, including reasonable attorneys' fees, arising out of or relating to: (a) the performance of the Services; (b) the failure of the Contractor to pay for labor, materials, equipment, taxes, or other obligations incurred in connection with the Services; or (c) the Contractor's negligence, intentional misconduct, violation of law, or material breach of this Contract. The Contractor shall, at its sole expense, defend the Town with counsel reasonably acceptable to the Town. Nothing in this paragraph shall be construed to require the Contractor to indemnify or hold harmless the Town for the Town's own negligence.

Sec. 9. **Step-In Rights**. If the Contractor fails to perform the Services in accordance with this Contract, including the schedule set forth herein, the Town may, upon reasonable written notice to the Contractor and an opportunity to cure where appropriate, perform or cause to be performed all or any portion of the Services necessary to complete the Services in accordance with this Contract. In exercising its rights under this paragraph, the Town may take such actions as are reasonably necessary to complete the Services, including taking possession of materials, equipment, and the site, and engaging others to perform the Services. The Contractor shall cooperate with the Town and, upon request, assign or cause to be assigned to the Town any subcontracts or purchase orders necessary to complete the Services. The Contractor shall reimburse the Town for all costs, expenses, and damages reasonably incurred by the Town in completing or correcting the Services, to the extent the Town's total cost (including amounts paid to the Contractor) exceeds the amount that would have been payable to the Contractor upon full and proper performance. The Town may offset such amounts against any sums otherwise due to the Contractor. The rights and remedies set forth in this paragraph are cumulative and in addition to any other rights or remedies available to the Town under this Contract or at law or in equity.

Sec. 10. **Termination**. The Town may terminate this Contract at any time by giving notice of termination to the Contractor, without penalty or liability to the Contractor. Upon termination or expiration of this Contract, the Contractor shall: (a) take reasonable steps to wind down the Services in an orderly manner; (b) deliver to the Town all work in progress and any property or materials of the Town in the Contractor's possession; and (c) submit a final invoice for Services satisfactorily performed through the effective date of termination. The rights and obligations of the parties which by their nature are intended to survive termination or expiration, including those relating to payment, indemnification, and warranties, shall survive. The rights and remedies of the Town under this Section are cumulative and not exclusive, and the exercise of any such right shall not be deemed an election of remedies or limit any other rights or remedies available to the Town under this Contract or at law or in equity.

Sec. 11. Attachments. The following attachments are made a part of this Contract and incorporated herein by reference:

Attachment A – [LIST NAME OF ATTACHMENT]
[ADDITIONAL ATTACHMENTS]

In case of conflict between an attachment and the text of this Contract excluding the attachment, the text of this Contract shall control. Any attachment which materially alters the terms and conditions contained herein must be reviewed pursuant to the Town's Contract Review Procedure.

Sec. 12. Notice.

(a) All notices and other communications required or permitted by this Contract shall be in writing and shall be given either by personal delivery, electronic delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the Town:	To the Contractor:
[NAME], [POSITION TITLE]	Attn: [PROJECT MANAGER]
Town of Morrisville	[COMPANY NAME]
100 Town Hall Dr.	[STREET ADDRESS]
Morrisville, NC 27560	[CITY], [STATE] [ZIP]
Phone Number: (919) 463-[XXXX]	Phone Number: (XXX) XXX-XXXX
Email: [XXXX]@morrisvillenc.gov	Email: [XXXXX@XXXXXX]

(b) A change of address, fax number, email address or designated recipient for notice may be made by either party by written notice given to the other party. Any notice or other communication under this Contract shall be deemed given at the time of actual delivery if it is personally delivered or sent by fax. Notice sent by email shall be deemed given on the date of transmission, provided that no notice of delivery failure is received; however, any notice sent by email must also be promptly sent by another permitted method of delivery under this Contract. If the notice or other communication is sent by US Mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the US Postal Service or upon actual delivery, whichever first occurs.

Sec. 13. General Provisions.

(a) Choice of Law and Forum. This Contract shall be governed by and construed in accordance with the laws of North Carolina. Each party irrevocably agrees that any legal action or proceeding arising out of or relating to this Contract shall be brought exclusively in the appropriate division of the North Carolina General Court of Justice, located in Wake County, and in no other court. To the fullest extent permitted by law, each party hereby: (i) irrevocably submits to the exclusive jurisdiction of such state court; (ii) waives any objection to venue in such court, including any claim of inconvenient forum; and (iii) knowingly, voluntarily, and expressly waives any and all rights to commence, remove, or transfer any such action to any federal court, including, without limitation, any right of removal under 28 U.S.C. § 1441. This provision shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this provision.

(b) Entire Agreement. This Contract, including the attachments incorporated herein, constitutes and sets forth the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements, negotiations, or understandings.

(c) Waiver. No delay, omission, action or failure to act by a party in exercising any right or remedy under this Contract shall impair such right or remedy or be construed as a waiver thereof, or as approval of or acquiescence in any breach. Any waiver must be in writing and signed by the party granting such waiver and shall apply only to the specific instance for which it is given, and not to any future enforcement of this Contract.

SAMPLE

(d) Sovereign Immunity. Nothing herein shall be deemed a waiver of the Town's governmental or sovereign immunity, except to the extent such immunity is waived under North Carolina law for valid contractual claims.

(e) Performance of Government Functions. Nothing contained in this Contract shall be deemed or construed to in any way stop, limit, or impair the Town from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(f) Appropriation of Funds. The Town's obligations under this Contract are subject to the appropriation and availability of funds. If funds are not appropriated or are exhausted, this Contract may be terminated without constituting a breach, and the Town shall have no liability for future payments or for any termination or similar fees, provided that the Town shall pay for Services satisfactorily performed through the date of termination.

(g) Prohibited Contract Terms. Notwithstanding anything to the contrary in this Contract, including the attachments incorporated herein, any provisions herein or therein of the following nature or effect are null and void: (i) any limitation on, or disclaimer of, implied or express warranties or the liability of the Contractor; (ii) any limitation on damages recoverable by the Town, including a limitation on consequential damages; (iii) any requirement for arbitration or for mandatory mediation; and (iv) any requirement that the Town keep information confidential or any requirement that records be kept confidential by the Town, unless the requirement for confidentiality meets the requirements of the North Carolina Public Records Act law (N.C Gen. Stat. §132-1 et seq.).

(h) Severability. If any provision of this Contract is held to be invalid or unenforceable, the remaining provisions shall remain in full force and effect to the extent permitted by law.

(i) Assignment; Subcontracting; Successors. The Contractor shall not, without the Town's prior written consent, assign, transfer, or delegate any of its rights (including the right to payment) or obligations under this Contract, and shall not subcontract any portion of the Services. Any attempted assignment, delegation, or subcontracting without such consent shall be void. Any permitted assignee or subcontractor shall be subject to all terms and conditions of this Contract, and the Contractor shall remain fully responsible for the performance of all obligations and for all acts and omissions of its subcontractors and assigns. This Contract shall be binding upon the Contractor and its successors and permitted assigns.

(j) Relationship of Parties. The Town and the Contractor each acknowledge and agree that the relationship between the parties hereunder shall be that of an independent contractor, and nothing contained herein shall be construed or interpreted as creating any other relationship between the parties including, but not limited to, employer/employee, principal/agent, partnership, or joint venture.

(k) Compliance with Law. In performing the Services, the Contractor and its employees and subcontractors shall comply with all applicable federal, state, and local laws and regulations, including the Occupational Safety and Health Act (OSHA) and all regulations promulgated thereunder, as implemented and enforced by the North Carolina Department of Labor.

(l) Town Policy. THE TOWN OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER TOWN CONTRACTS.

(m) EEO Provisions. During the performance of this Contract, the Contractor agrees as follows:

1. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall post in conspicuous places available to employees and applicants for employment, notices setting forth these EEO provisions.

SAMPLE

2. The Contractor in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.

(n) Drug-Free Workplace. The Contractor shall comply with all applicable drug-free workplace requirements imposed by federal or state law, including any certification requirements.

(o) E-Verify. The Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if the Contractor utilizes a subcontractor, the Contractor shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes.

(p) No Third Party Right Created. This Contract is intended for the benefit of the Town and the Contractor and not any other person.

(q) Principles of Interpretation. In this Contract, unless the context requires otherwise the singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. The words "hereby," "herein," "hereof," "hereunder" and words of similar import refer to this Contract as a whole (including any attachments hereto) and not merely to the specific section, paragraph or clause in which such word appears, unless the context will otherwise clearly require. The words "include," "includes" and "including" will be deemed to be followed by the phrase "without limitation." Reference to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and any other legal entities.

Sec. 14. Attorney's Fees. Should either party deem it necessary to retain an attorney or other counsel to defend and/or pursue the enforcement of this Contract, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

Sec. 15. Counterparts; Electronic Signature. This Contract may be executed in separate counterparts, each of which when executed and delivered is an original, but all of which taken together constitute one and the same instrument. Each counterpart signature page may be executed electronically. By signing electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S § 66-358.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this Contract by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

[Signature Page Follows]

SAMPLE

IN WITNESS WHEREOF, the Town and the Contractor have caused this Contract to be executed under seal by their respective duly authorized agents or officers.

TOWN OF MORRISVILLE:

By: _____

Name: _____

Title: _____

Date: _____

ATTEST BY:

_____

Town Clerk

SEAL:

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

_____

Town Chief Financial Officer

Date: _____

CONTRACTOR:

By: _____

Name: _____

Title: _____

Date: _____

ATTEST BY:

_____

Authorized Company Official

SAMPLE