PREQUALIFICATION RESOLUTION FOR THE CITY OF LINCOLNTON

WHEREAS, N.C. General Statute 143-135.8 provides authorization for the prequalification of bidders on construction and repair projects.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincolnton that the City's prequalification policy be adopted as follows and included in the City's Procurement and Purchasing Policy:

Prequalification of Bidders for Construction Projects:

I. Purpose:

The purpose of this prequalification process is to impartially evaluate a contractor, and to properly determine by its responsible business practices, work experience, manpower, and equipment that it is qualified to bid on a construction project, including prime contracts awarded by construction managers pursuant to the Construction Manager at Risk ("CM at Risk") process. The award of contracts should be the result of open competition in bidding; impartiality in the selection of contractors; integrity in business practices; and skillful and safe performance of public contracts.

II. Policy:

Prequalification is not required for all construction and/or capital improvement projects. The Bid Agent shall be responsible for prequalifying individual contractors to bid on construction projects when the City believes prequalification is preferred. Prequalification is limited to construction or repair projects (regardless of cost) that are bid under the single-prime, separate-prime (multi-prime), or dual bidding methods. A bidder shall be deemed nonresponsive if it submits a bid on a construction project subject to prequalification for which it has not been accepted for prequalification in accordance with this policy.

Prequalification is prohibited for contracts for architectural, engineering, surveying, construction management at risk services, design-build services, and public-private partnership construction services.

The Construction Manager at Risk shall use the process outlined in this policy for the prequalification of contractors on CM at Risk projects. The construction manager and the City shall jointly develop the assessment tool and criteria for each CM at Risk project, including the prequalification scoring values and minimum requirement score.

Notwithstanding the fact that a contractor was prequalified, the City reserves the right to reject a contractor's bid if it is determined that the contractor has not submitted the lowest responsible and responsive bid. The prequalification of the contractor shall not preclude the City from subsequently concluding that the contractor is not a responsible bidder pursuant to G.S. 143-129. The prequalification of a contractor for a project shall only apply to the individual project. All construction and repair contracts shall be awarded to the lowest responsive and responsible bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract.

III. Organizations Affected:

All Departments/Divisions

IV. Definitions:

Bid Agent – Person assigned the responsibility to prepare the request for qualification, bid, and contract documents, advertise bids and proposals, and open bids for contracts under the direction of the Project Manager. The Bid Agent may be a professional services consultant retained by the City under an approved contract, the City's project manager or designee, or a department head responsible for the project.

Project Manager – Employee of the City designated and responsible for a construction, repair, or purchasing project requiring a contract who shall be assigned the responsibility for managing the project and representing a department in matters relating to the project.

Construction Manager at Risk – A person, corporation, or entity that provides construction management at risk services. May also be referred to as Construction Manager.

Prequalification - A process of evaluating and determining whether potential bidders have the skill, judgment, integrity, sufficient financial resources, and ability necessary to the faithful performance of a contract for construction or repair work.

Purchasing Director - Employee designated as such or their designee responsible for the overall conduct or oversight of all procurement activities of the City.

V. Prequalification Process:

1. Each prospective bidder on contracts identified for prequalification by the Bid Agent

and all CM at Risk projects shall submit an application on the approved prequalification application form in order to become prequalified.

2. The approved prequalification application form will require information to be provided on the ownership of the firm, experience of firm's personnel, any affiliations with other construction firms, bonding capacity, financial resources, the type of work performed by the firm, and other objective criteria rationally related to the particular contract to be awarded.

3. The Bid Agent shall ensure that applications prepared for the projects comply with this policy and State law. The application is to be submitted by the deadline established in the notice of prequalification. The notice must be posted on the City's website for a minimum of two weeks for any construction project estimated to be $30,000 or more. The act of submitting the application does not permit the firm to submit a bid. Incomplete applications will be rejected or returned for further detail or correction in the sole discretion of the City.

VI. Application:

1. The application shall, at a minimum, address the following items:

   a. **Organizational Structure** – The firm shall provide a list of all owners, officers, partners, or individuals authorized to represent or conduct business for or sign legal documents for the firm. This list must include the full legal name, typed or printed in a clear legible form. Firms experiencing changes in ownership, organizational structure, or material changes in assets must inform the Bid Agent prior to the award of a contract. Failure of the firm to comply with this requirement may result in the termination of any contract awarded by the City.

   b. **Classification** – The firm shall indicate the type(s) of work the firm's workforce and equipment normally perform, licensure, and other pertinent information.

   c. **Experience** – The firm shall furnish a history documenting experience with projects of similar size, scope, or complexity involving the type(s) of work for which prequalification is requested.

   d. **Financial** – Firms will be required to provide a minimum of one year of complete audited financial statements from the most current period available.

   e. **Litigation/Claims** –The firm will be required to submit information regarding its litigation history, including litigation with owners and subcontractors.

   f. **Timeliness** - Firms must provide information on its success at completing projects on time, including the payment of liquidated damages.

   g. **Capacity** – Firms shall demonstrate sufficient bonding capacity, insurance

and resources for the project. Firms must provide relevant information on the personnel that will be directly responsible for the work, including the location of the office that will be primarily responsible for work.

h. **Safety** - Firms shall also demonstrate an acceptable safety history. Firms must provide copies of any complaints, safety violations or reports from the North Carolina Qualifications Board, OSHA, or any other regulating agency associated with any construction project.

i. **Legal Authorization** –The Applicant must provide a copy of their North Carolina Contractor's License, or provide a statement indicating that they are able to acquire one before submitting a bid on a project. If a statement is required, the Applicant shall identify the states in which they are licensed for this type of work.

VII. Review of Application – City Bid Projects:

1. **Prequalification Committee** – The Project Manager shall establish a Prequalification Committee for each project to review and score applications submitted by the firms to determine the prequalification eligibility.

2. **Review of Applications** – The Prequalification Committee shall use an objective assessment process and criteria for that specific project. The prequalification criteria shall not require the firm to have previously been awarded a construction or repair project by the City. The prequalification criteria used by the Prequalification Committee shall include prequalification scoring values and the minimum required score to be prequalified for the project. The Prequalification Committee shall approve or deny the applications in accordance with the prequalification criteria and scoring system.

3. **Notice of Decision** – The firms shall be promptly notified in writing of the Prequalification Committee's decision via e-mail and first class mail. The notification to a contractor determined not to be prequalified shall include the reason(s) for denial. Notice shall be provided prior to the advertisement of bids for the project and with sufficient time for the firm to protest the denial of prequalification.

VIII. Review of Application – CM at Risk Projects:

1. **Prequalification Committee** - The Construction Manager and the Project Manager shall agree upon the members of the Construction Manager's Prequalification Committee. The Prequalification Committee will review prequalification applications submitted by the firms and will determine prequalification eligibility for the CM at Risk project.

2. **Review of Applications** – The Prequalification Committee and the Project Manager shall agree upon an objective assessment process. The Construction Manager and the Project Manager shall develop prequalification criteria, including prequalification scoring values and the minimum required score to be prequalified for the project. The prequalification criteria shall not require the firm to have previously been awarded a construction or repair project by the Construction Manager or the Town. The Prequalification Committee shall approve or deny the applications in accordance with the prequalification criteria and scoring system.

3. **Notice of Decision** – The firms shall be promptly notified of the Prequalification Committee's decision via e-mail and first class mail. The notification to a contractor determined not to be prequalified shall include the reason(s) for denial. Notice shall be provided prior to the advertisement of bids for the project and with sufficient time for the firm to protest the denial of prequalification.

IX. Protest Procedure:

1. **Protest Procedure** – The protest procedure is as follows:

a. The firm may protest the denial of prequalification. A written protest must be received by the Bid Agent, or designee, within two business days of notice of denial. The written protest shall clearly identify the project and the Project Manager, clearly articulate the reasons for the protest, and attach any documents or additional information in support of the firm's position. The Bid Agent or designee, will contact the firm and set up a date and time to discuss the protest. If upon review, the Bid Agent, or designee, determines that the firm meets the criteria for prequalification, the firm shall be notified that it is prequalified to bid on the project and allowed to participate in the bid process. If the Bid Agent, or designee, upholds the denial, the firm shall be notified in writing by e-mail and first class mail.

b. If the firm desires further review after receiving the decision of the Bid Agent or designee, the firm may request an administrative review and final decision by the City Manager, or designee. A written request for administrative review must be received by the City Manager, or designee, within two business days of the firm's receipt of the decision from the Bid Agent, or designee. The request for administrative review shall clearly identify the project and the Project Manager, clearly articulate the reasons for the review, and attach any documents or additional information in support of the firm's position. The City Manager, or designee, will contact the firm and set up a date and time for the administrative review. If, upon review, the City Manager, or designee, determines that the firm meets the criteria for prequalification, the firm shall be notified that it is prequalified to bid on the

project and allowed to participate in the bid process. If the City Manager, or designee, upholds the denial, the firm shall be notified in writing by e-mail and first class mail.

2 **General Rules for Protests** – Firms submitting applications shall be provided an e- mail address for communication with the Bid Agent during the protest process. The firm shall provide at least two e-mail addresses for use by the Bid Agent in communicating with the firm. The bid opening cannot occur until the protest process is completed. The bid opening must be scheduled in order to allow sufficient time for a bidder that is prequalified as a result of a protest to submit a bid on that project.

ADOPTED this the 6th day of March 2025.

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Ed Hatley, Mayor
City of Lincolnton