CONTRACT FOR INSTALLATION OF TRAFFIC SIGNAL INDUCTIVE LOOP DETECTION UPGRADES IN DURHAM

This contract is made and entered into as of the 1st day of January, 20 14, by the City of Durham ("City") and Fulcher Electric of Fayetteville, Inc. ("Contractor"), a corporation organized and existing under the laws of the State of North Carolina and authorized to do business in the State of North Carolina.

Sec. 1. Background and Purpose. This project consists of the installation of inductive loop detector upgrades within the City of Durham

Sec. 2. Services and Scope to be Performed. The Contractor shall install a traffic signal at the intersection of Martin Luther King Jr. Parkway and Archdale Road and install fiber optic communications cable along Martin Luther King Jr. Parkway between Old Chapel Hill Road and Stratford Lakes Drive within the City of Durham. All work and materials shall be in accordance with the provisions of the 2012 North Carolina Department of Transportation Standard Specifications for Roads and Structures, the Project Standard Provisions (attached hereto as Attachment A), the Project Standard Special Provisions (attached hereto as Attachment A), the 2012 North Carolina Department of Transportation Roadway Standards Drawings, and the current edition of the Manual of Uniform Traffic Control Devices (MUTCD). In this contract, "Work" means the services that the Contractor is required to perform pursuant to this contract and all of the Contractor's duties to the City that arise out of this contract.

Sec. 3. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 4. Compensation. The City shall pay the Contractor the contract sum of $252,685.76 for the Work in accordance with the estimated quantity and unit price provided as follows:

ITEM	DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE
1	SELECT TREE REMOVAL	EA	5	$ 250.00
2	PEDESTRIAN SIGNAL HEAD (16", 1 SECTION W/ COUNTDOWN)	EA	2	$ 675.00
3	SIGNAL CABLE	LF	1,100	$ 2.50
4	VEHICLE SIGNAL HEAD (12", 3 SECTION)	EA	5	$ 700.00
5	VEHICLE SIGNAL HEAD (12", 4 SECTION)	EA	1	$ 800.00
6	VEHICLE SIGNAL HEAD (12", 5 SECTION)	EA	1	$ 975.00
7	BACKPLATES	EA	7	$ 125.00
8	MESSENGER CABLE (1/4")	LF	50	$ 4.00
9	DELASH/RELASH EXISTING AERIAL CABLE	LF	1,095	$ 1.25
10	REUSE EXISTING CONDUIT	LF	7,800	$ 0.50
11	DIRECTIONAL DRILL (2 CONDUITS-2")	LF	2,135	$ 15.00

ITEM	DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE
12	TRACER WIRE	LF	13,735	$ 0.40
13	UNPAVED TRENCHING (2 CONDUITS-2")	LF	4,800	$ 5.25
14	JUNCTION BOX (OVER-SIZED, HEAVY DUTY)	EA	23	$ 375.00
15	REMOVE JUNCTION BOX (OVER-SIZED, HEAVY DUTY)	EA	7	$ 100.00
16	REUSE JUNCTION BOX (OVER-SIZED, HEAVY DUTY)	EA	17	$ 100.00
17	JUNCTION BOX (STANDARD SIZE)	EA	6	$ 150.00
18	2" RISER WITH WEATHERHEAD	EA	1	$ 500.00
19	REUSE 2" RISER & INSTALL NEW CABLE SEAL	EA	3	$ 125.00
20	REUSE EXISTING CABINET STUBOUT	EA	6	$ 225.00
21	INDUCTIVE LOOP SAWCUT	LF	650	$ 6.00
22	LEAD-IN CABLE (18-2 PAIR)	LF	2,500	$ 1.00
23	COMMUNICATIONS CABLE (12 FIBER)	LF	16,440	$ 1.35
24	COMMUNICATIONS CABLE (12 FIBER DROP)	LF	800	$ 1.40
25	COMMUNICATIONS CABLE (18 FIBER)	LF	650	$ 1.50
26	FIBER-OPTIC TRANSCEIVER, DROP ADD	EA	6	$ 1,500.00
27	SPLICE ENCLOSURE	EA	3	$ 1,350.00
28	MODIFY EXISTING SPLICE ENCLOSURE	EA	4	$ 800.00
29	INNERCONNECT CENTER	EA	6	$ 1,350.00
30	SIGNAL PEDESTAL WITH FOUNDATION	EA	2	$ 1,650.00
31	SIGNAL CABINET FOUNDATION	EA	1	$ 900.00
32	50 AMP MANUAL TRANSFER SWITCH WITH EMERGENCY GENERATOR PROVISIONS	EA	6	$ 1,250.00
33	CONTROLLER WITH FULLY LOADED 332 CABINET (TYPE 2070E, BASE MOUNTED)	EA	1	$ 13,750.00

ITEM	DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE
34	LIGHT STANDARD LUMINAIRE (250W, COBRA ROADWAY SERIES 325)	EA	1	$ 1,000.00
35	DRILLED PIER FOUNDATION	CY	14	$ 800.00
36	MASTARM WITH METAL POLE DESIGN	EA	2	$ 300.00
37	METAL POLE WITH DUAL MASTARM	EA	1	$ 17,325.00
38	METAL POLE WITH SINGLE MASTARM	EA	1	$ 11,375.00
39	NEW ELECRICAL SERVICE	EA	2	$ 950.00
40	SOIL TEST	EA	2	$ 1,000.00

Sec. 5. Contractor's Billings to City. The Contractor shall send invoices to the City on a monthly basis for the amounts to be paid pursuant to this contract. Each invoice shall document to the reasonable satisfaction of the City the Work completed by the Contractor in conformance with this Contract. All requests for payment shall be made by Contractor's invoice, the invoice shall be submitted to:

City of Durham Transportation Division
Attention: Pete Nicholas, P.E.
101 City Hall Plaza, 4th Floor Transportation
Durham, NC 27701

All invoice items and unit costs shall correspond to contract pay items. In the event of error or discrepancy in items or unit costs, the Department will return the invoice to the contractor for correction. Within twenty days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice, less any withholding for defective or incomplete Work.

Sec. 6. Insurance. The Contractor shall obtain from an insurance company, duly authorized to do business in North Carolina, Public Liability and Property Damage Insurance to protect his company and subcontractors performing work covered under this contract from claims, which may arise from operations under this contract. Insurance coverage shall be maintained during the life of this contract and shall extend to operations performed by the Contractor or his subcontractors, and by anyone employed directly or indirectly by either of them.

Contractor shall maintain insurance not less than the following:

Commercial General Liability, Covering

- Premises/operations
- Products/completed operations
- Broad form property damage
- Explosion, collapse, and underground hazards if the hazards exist in the performance of this contract

- Contractual liability
- Independent contractors, if any are used in the performance of this contract
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)
- Combined single limit not less than $5,000,000 per occurrence; products/completed operations shall not be less than $5,000,000 per occurrence

Automobile Liability Insurance, Covering

- Owned, hired, or borrowed vehicles
- Employee vehicles, if used in performance of this contract
- combined single limit not less than $5,000,000 per occurrence

Workers' Compensation Insurance, Covering

- Statutory benefits
- Covering employees; owners, partners, officers, and relatives (who work on this contract)
- Employers' liability, $1,000,000.

Insurance Shall Be Provided By

- Companies authorized to do business in the State of North Carolina
- Companies with Best rating of A or better.

Insurance Shall Be Evidenced By a Certificate

- Providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
- Certificates shall be addressed to:
  City of Durham, North Carolina
  Attention: Finance Director
  101 City Hall Plaza
  Durham, NC 27701
- The insurance certificate and the additional insured endorsement must be originals and must be approved by the City's Finance Director before Contractor can begin any work under this contract.

Proof of insurance shall be furnished to the Engineer prior to beginning work.

Sec. 7. Performance of Work by City. If the Contractor fails to perform the Work in accordance with the Project Manual referred to in section 2 above, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 8. Attachments. The following attachments are made a part of this contract:

- Attachment A – Project Standard Provisions (pgs. 3-10), Project Standard Special Provisions (pgs. 11-61). Project Special Provisions (pgs. 62-111)
- Attachment B – Traffic Signal Plans (Sig. 1 - Sig. 6)
- Attachment C – Cable Routing Plans (CRP 1 - CRP 20)

In case of conflict between an attachment and the text of this contract excluding the attachment, the text of this contract shall control.

Sec. 9. 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, fax, or certified United States mail, return receipt requested, addressed as follows:

To the City:
Transportation Department-Transportation Division
City of Durham
101 City Hall Plaza, 4th Floor
Durham, NC 27701
The fax number is (919) 560-4561

To the Contractor:
Fulcher Electric of Fayetteville, Inc.
PO Box 2799
Fayetteville, NC 28302
The fax number is 910-483-5651

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by 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. If the notice or other communication is sent by United States 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 United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 10. Indemnification. (a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. (e) Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 11. E-Verify Compliance. The contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the

North Carolina General Statutes (NCGS). The City is relying on this E-Verify Compliance section in entering into this contract. The parties agree to this section only to the extent authorized by law. If this section is held to be unenforceable or invalid in whole or in part, it shall be deemed amended to the extent necessary to make this contract comply with NCGS 160A-20.1(b).

Sec. 12. Miscellaneous

(a) Choice of Law and Forum. This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

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

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment. Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(g) City Policy. THE CITY 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 CITY CONTRACTS.

(h) 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 insure 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. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without

regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

(i) SDBE. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that chapter shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that chapter, this contract, and State law. The Participation Plan submitted in accordance with that article is binding on the Contractor. Section 18-59(f) of that article provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor's alleged violations of other obligations.

(j) No Third Party Rights Created. This contract is intended for the benefit of the City and the Contractor and not any other person.

(k) Principles of Interpretation and Definitions. In this contract, unless the context requires otherwise: (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References 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 words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this contract. (5) "Duties" includes obligations. (6) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (7) The word "shall" is mandatory. (8) The word "day" means calendar day.

(*l*) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager or a deputy or assistant City Manager signs it for the City. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(m) City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor's services under this contract, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

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

BY THE CITY OF DURHAM:

ATTEST: CITY OF DURHAM

_____ By:_____

Preaudit Certification, if necessary:

Fulcher Electric of Fayetteville, Inc.

By: _____

Kenneth L. Fulcher, Vice President

ATTEST:

_____

Louis A. Fulcher, Jr., Secretary

(Affix corporate seal.)

FULCHER ELECTRIC OF FAYETTEVILLE INC. CORPORATE SEAL 1933 NORTH CAROLINA

State of North Carolina

County of Cumberland

ACKNOWLEDGMENT BY CORPORATION

I, a notary public in and for the aforesaid county and state, certify that Louis A. Fulcher, Jr. personally appeared before me this day and stated that he or she is the Secretary of Fulcher Electric of Fayetteville, Inc., a corporation, and that by authority duly given and as the act of the corporation, the foregoing contract or agreement with the City of Durham was signed in its name by its Vice President, whose name is Kenneth L. Fulcher, sealed with its corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary. This the 15th day of January, 2014.

My commission expires:

Sept. 22, 2017

Kellie Thompson

Notary Public

KELLIE THOMPSON NOTARY PUBLIC CUMBERLAND COUNTY, NC