



INTERNATIONAL CITY/COUNTY
MANAGEMENT ASSOCIATION
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Washington, DC 20002-4201
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icma.org

REQUEST FOR PROPOSAL

Original Date Issued: Friday, September 8, 2017
Closing Date/ Time for Offeror Questions: Monday, October 2, 2017 5:00 pm EST
Closing Date/Time for Receipt of Proposals: Monday, October 9, 2017 12:00 pm EST
Subject: Request for Proposal No. ICMAHO/ICMA OfficeSpace/2017

ICMA/ The International County Management Association (ICMA) is seeking proposals from eligible real estate firms to identify and implement the optimal real estate solution for ICMA in Washington, D.C. ICMA anticipates awarding one (1) single award as a result of this solicitation. ICMA reserves the right to award more or fewer awards than anticipated above.

Technical questions concerning this solicitation should be directed to the ICMA Chief Operating Officer, at workwithus@icma.org. All contractual questions relating to this solicitation must be submitted to Representative, Grants and Contracts Administration, at workwithus@icma.org.

All communications must include the solicitation title, ICMAHO/ICMA OfficeSpace/2017, in the subject line.

No communication intended to influence this procurement is permitted except by contacting the designated contacts above. Contacting anyone other than the designated contacts (either directly by the Respondent or indirectly through a lobbyist or other person acting on the respondent's behalf) in an attempt to influence this procurement: (1) may result in a Respondent being deemed a non-responsive Respondent, and (2) may result in the Respondent not being awarded a contract.

This solicitation in no way obligates ICMA to award a contract nor does it commit ICMA to pay any cost incurred in the preparation and submission of a proposal.

ICMA bears no responsibility for data errors resulting from transmission or conversion processes.

ICMA appreciates your responsiveness and looks forward to a mutually beneficial business relationship.

Sincerely,

Uma Ramesh
Chief Operating Officer

I. PURPOSE

ICMA seeks a qualified firm to assist in identifying and implementing the optimal real estate solution for our headquarters facility in Washington, DC. Services will include strategic planning for long-term occupancy of a headquarters facility, analysis of options ranging from renovation of existing office space to relocation of our office to a new space (leased or owned), understanding ICMA's current and desired culture, exploring possibilities under our current ownership from sublease to sale, representation in the leasing, acquisition and disposition of real estate, market research, and project management to implement the option selected including construction management, asset management, move coordination, lease abstraction, lease audit, lease administration, and tax incentive consultation.

II. ABOUT ICMA

ICMA advances professional local government worldwide. Our mission is to advance professional local government through leadership, management, innovation, and ethics. ICMA provides member support, data and information, peer and results-oriented technical assistance, and training and professional development to more than 11,000 ICMA members, city, town, and county experts and other individuals and organizations throughout the world. The management decisions made by ICMA's members affect millions of individuals living in thousands of communities, from small villages and towns to large metropolitan areas.

ICMA is a 501(c)(3) nonprofit organization founded in 1914 that offers a wide range of [services to its members](#) and the local government community. The organization is an internationally recognized [publisher](#) of information resources ranging from textbooks and survey data to topical newsletters and [e-publications](#). ICMA provides technical assistance to local governments in developing and decentralizing countries, helping them to develop professional practices and ethical, transparent governments. The organization performs a wide range of mission-driven grant and contract-funded work both [in the U.S.](#) and [internationally](#), which is supported by federal government agencies, foundations, and corporations.

For more information regarding ICMA's programs and services, please go to www.icma.org.

ICMA's Dun and Bradstreet number is 072631831.

III. BACKGROUND

ICMA occupies office space at 777 North Capitol Street, NE, in Washington, D.C. This office space has not been updated since the early 2000s. It is not reflective of the organization and the values of being innovative, responsive, forward-thinking, high energy, and collaborative. We believe that office space plays a critical role in shaping organizational culture and values and are in need of a solution that will best achieve this goal. As such, ICMA is seeking a qualified firm to provide overall direction and support in identifying and implementing the optimal real estate solution for our headquarters office space.

ICMA is one-third shareholder in the Center for Public Administration and Service, Inc. (CPAS), a Real Estate Investment Trust (REIT) which owns the building at 777 North Capitol Street, NE. As a one-third shareholder of CPAS, ICMA receives an annual dividend from the investment in the REIT. At the same time, ICMA leases approximately one-fourth of the total rentable square footage, or approximately 49,419 sq. ft., in the building under a lease agreement with CPAS, which expires December 31, 2026. Under this lease agreement, ICMA currently pays rent at approximately \$47/sq. ft. Of the space it leases

from CPAS, ICMA occupies 26,388 sq. ft. at Suite 500 and subleases 23,031 sq. ft. of space to other tenants within the building. Our current staff capacity for headquarters is approximately 100 ICMA staff. ICMA staff must be able to continue to arrive to headquarters via access to metropolitan Washington public transportation options in addition to any other methods of transportation.

ICMA is open to all options to achieve the optimal solution.

IV. PROJECT REQUIREMENTS

The firm selected to implement this project is expected to act in the best interest of ICMA in the following:

- A) Analysis of various options and selection of optimal solution.
- B) Implementation of selected solution, including, as applicable:
 - Conduct staff engagement activities to identify a vision for a best in class office space
 - Demonstrate innovative space design and space utilization efficiency
 - Research, evaluation of location options and selection of location
 - Create and execute a strategy to include all transactions related to ownership and occupancy
 - Project manage all aspects of implementation not limited to sourcing services of relevant architectural or other firms, conducting due diligence on identified third parties necessary for project implementation, negotiation of contracts and subcontracts, construction management and move management.

V. PROPOSAL SUBMISSION REQUIREMENTS

Section 1. Company profile:	<ol style="list-style-type: none"> 1. Provide a description of your business relative to the purpose of this solicitation. 2. Provide a description of your firm’s presence in the DC market including size, financial strength, number of employees, years in business, and key clients. Please describe all related services offered by your firm through internal resources. Include size of each group, number of years providing each service line, and the benefit of each to ICMA. 3. List the location(s) of your local offices and indicate from which office our relationship will be managed. 4. List examples of lease transactions negotiated for other clients in the past 24 months by the proposed team in metropolitan Washington, DC. Identify any transactions where equity participation has been achieved and tax incentives realized. 5. Provide any other information about your company that you believe will help us better understand your corporate philosophy.
Section 2. Proposed Team:	<ol style="list-style-type: none"> 1. Identify the individuals in your firm who will be assigned to work on the ICMA account, the role of each individual will serve, and the office in which the team member is located. 2. Provide resumes for each team member, including years of industry experience and years with your organization, and the value that each will bring to the assignment.

	3. Indicate what you believe differentiates your proposed team from those of other firms in your industry.
Section 3: References:	<ol style="list-style-type: none"> 1. Provide references for at least three (3) clients for whom you have provided services of a similar structure and scope of work including those projects that had yielded innovative space design and space utilization. 2. Include a brief overview of each of those three projects, outlining any specific challenges that arose in the transaction and how you facilitated overcoming the same, and the outcomes achieved. 3. Include a contact name, title, phone number, and email address for each reference.
Section 4: Approach:	<ol style="list-style-type: none"> 1. Identify preliminary options for ICMA and articulate what the most optimal solution may be. 2. Prepare a preliminary cost/benefit analysis of each preliminary solution compared to one-another. 3. Include a preliminary long-term financial and non-financial impact analysis of each preliminary solution. 4. Explain how you will approach staff engagement activities to identify innovative best in class office space specific to ICMA's needs and values. 5. Describe any associated services necessary to implement the selected solution. Of these, which services will your firm conduct in-house and which will be outsourced to third-party providers? 6. Describe any additional services that you provide and/or that you believe ICMA should consider as part of this project. 7. Describe how your team will manage the project. How will the team lead interact with ICMA? 8. In the event your firm represents another company that is pursuing the same space as ICMA, describe how you will resolve the conflict. 9. Provide a proposed timeline to complete the full project.
Section 5: Pricing:	<ol style="list-style-type: none"> 1. Describe in detail your proposed method of compensation, including a detailed fee proposal which delineates your firms direct costs and those of third-party service providers. 2. Describe which services provided are included under the proposed compensation package. 3. Describe which services will be add-on charges and describe the fee structure for those services. 4. Describe which services will be provided by third parties and describe the fee structure for those services. <p>Please be advised that ICMA is cost-conscious about procuring outside services.</p>
Section 6: Post-Proposal Presentation:	Offerors that scored highest on the proposal may be invited to conduct an in-person presentation of their proposal to the ICMA evaluation committee.

VI. TYPE OF CONTRACT TO BE AWARDED

TBD

VII. CONTRACT TERM AND DELIVERY DATES

Final delivery dates will be negotiated upon award.

VIII. EVALUATION AND AWARD PROCESS

Following the receipt and evaluation of all responses received, a short list of finalists will be notified by ICMA via email and may be invited to conduct an in-person presentation of their proposal to the ICMA evaluation committee.

Proposals will be evaluated based on the following criteria:

1. ability to match the qualifications set forth in this solicitation
 - i. section 1 (10%)
 - ii. section 2 (10%)
 - iii. section 3 (10%)
 - iv. section 4 (45%)
2. price (25%)

ICMA reserves the right to award under this solicitation without further negotiations. The respondents are encouraged to offer their best terms and prices with the original submission.

IX. INSTRUCTIONS TO THE RESPONDENTS

Respondents interested in submitting proposals must return a signed standard Non-Disclosure Agreement (“NDA”). Upon signing the NDA, Respondents will be provided with attachments referenced in the Appendices section of this RFP.

Respondents interested in providing the services described above should submit a proposal following the prescribed format in the Proposal Submission Requirements section of this RFP.

Adherence to the proposal format by all respondents will ensure a fair evaluation with regard to the needs of ICMA. Respondents who do not follow the prescribed format may be deemed non-responsive. A letter transmitting the proposal must be signed by an officer of the firm authorized to bind the respondent as required by this solicitation.

1. Transmission letter
2. Proposal
3. Completed and signed IRS Form W-9 and New Vendor Form

Proposals must be submitted electronically to Representative, Grants and Contracts Administration, at workwithus@icma.org. Place “**ICMAHO/ICMA OfficeSpace/2017**” in the subject line. No phone calls, please.

Proposals received after the closing date stated on the top of page 1 will be rejected.

X. APPENDICES

- a. Non-Disclosure Agreement
- b. IRS Form W-9
- c. New Vendor Form
- d. Amended and Restated Shareholders Agreement

- e. ICMA's Lease with CPAS
- f. Subleases
- g. Floorplan

XI. GENERAL CONDITIONS

Proposal Submission - Late proposals and proposals lacking the appropriate completed forms will be rejected. Faxed proposals will not be accepted. Proposals will not be accepted at any other ICMA location other than the email address above. If changes are made to this solicitation, notifications will be sent to the primary contact provided to ICMA from each Respondent. ICMA takes no responsibility for effective delivery of the electronic document. The vendor offer will be rejected if the vendor modifies or alters the electronic solicitation documents.

Proprietary Information - Careful consideration should be given before confidential information is submitted to ICMA as part of your proposal. Review should include whether it is critical for evaluating a proposal, and whether general, non-confidential information may be adequate for review purposes. Information submitted to ICMA that the Respondent wishes to have treated as proprietary and confidential trade secret information should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to except it from disclosure, including a written statement of the reasons why the information should be excepted. However, ICMA cannot guarantee the confidentiality of any information submitted.

Contract Award - ICMA anticipates making one award under this solicitation. It may award a contract based on initial applications without discussion, or following limited discussion or negotiations. Each offer should be submitted using the most favorable cost and technical terms. ICMA may request additional data or material to support applications. ICMA expects to notify Respondents in approximately one month from the proposal due date whether your proposal has been selected to receive an award.

Limitation - This solicitation does not commit ICMA to award a contract, pay any costs incurred in preparing a proposal, or to procure or contract for services or supplies. ICMA reserves the right to accept or reject any or all proposals received, to negotiate with all qualified sources, or to cancel in part or in its entirety the solicitation when it is in ICMA's best interest.

Disclosure Requirement - The Respondent shall disclose any indictment for any alleged felony, or any conviction for a felony within the past five years, under the laws of the United States or any state or territory of the United States, and shall describe circumstances for each.

When a Respondent is an association, partnership, corporation, or other organization, this disclosure requirement includes the organization and its officers, partners, and directors or members of any similarly governing body. If an indictment or conviction should come to the attention of ICMA after the award of a contract, ICMA may exercise its stop-work right pending further investigation, or terminate the agreement.

No Gifts - It is ICMA's Policy that no gifts of any kind and of any value be exchanged between respondents and ICMA personnel. Discovery of the same will be grounds for disqualification of the Respondent from participation in any ICMA's procurements and may result in disciplinary actions against ICMA personnel involved in such discovered transactions.

Equal Opportunity - In connection with the procurement of the specified services, the firm warrants that it shall not discriminate because of race, color, religion, sex, national origin, political affiliation, non-disabling physical and mental disability, political status, matriculation, sexual orientation, gender identity or expression, genetic information, status as a veteran, physical handicap, age, marital status or any other characteristic protected by law.

Small and Disadvantaged Businesses - ICMA shall use good faith efforts to provide contracting and procurement opportunities for SBD's. SDB categories include minority business enterprises (MBE), woman-owned business enterprises (WBE), small veteran and disabled veteran owned businesses, Historically Black Colleges and Universities (HBCUs), predominantly Hispanic Universities (HACUs), small businesses in Historically Under-utilized Zones (HUBZones) and private voluntary organizations (PVOs) principally operated and managed by economically disadvantaged individuals.

SAMPLE TERMS AND CONDITIONS

These Terms and Conditions are effective as of the last date signed below (the Effective Date), by and between **[CONTRACTOR]** (Contractor), a/an **[STATE OF INCORPORATION]** corporation, with its principal place of business at **[ADDRESS]** and **THE INTERNATIONAL ICMA/COUNTY MANAGEMENT ASSOCIATION (ICMA)**, a Washington, D.C. nonprofit corporation, with its principal place of business at North Capitol Street NE, Suite 500, Washington, DC 20002. Contractor and ICMA are sometimes referred to individually as a Party and collectively as the Parties.

WHEREAS, Contractor delivers certain professional services, including, but not limited to, **[DESCRIPTION OF SERVICES OFFERED BY CONTRACTOR]**; and

WHEREAS, ICMA wishes to obtain such professional services.

NOW, THEREFORE, intending to be legally bound hereby, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. SERVICES PROVIDED

1.1 Statement of Work.

(a) Contractor will provide professional services (the Services) as specified in Attachment A, the statement of work (Statement of Work) agreed to by the Parties. Together, these Terms and Conditions and the Statement of Work shall constitute the Agreement. The Statement of Work shall contain, at a minimum, the following information: (a) the responsibilities of the Contractor, including a description of the Services and Work Product (as defined in the "Intellectual Property" Section); (b) the commencement and termination dates of the Services; and (c) fees, expenses and a payment schedule. Both Parties must approve and execute the Statement of Work for such Statement of Work to be in effect.

(b) Changes. Additions or modifications to the Statement of Work may be accomplished through the use of a Change Order as defined below. A Change Order must be in writing and signed by both Parties in order to be effective. The procedure for creating a Change Order is as follows: (a) Either Party shall submit a written request to the other Party specifying the additions or modifications to the Statement of Work desired (the Change Notice); (b) after the exchange of such Change Notice, the Contractor shall submit a change order proposal (the Change Order) to ICMA which shall include a description of the work, any additional fees and any changes to the delivery dates. Upon ICMA's written signature to the Change Order, the Change Order will become part of the Agreement. Without a Change Order, ICMA shall have no duty to make payment for any additional work performed.

1.2 Personnel.

(a) ICMA approval. The Services provided by Contractor may be performed by Contractor's employees or subcontractors. ICMA shall have the right to approve all personnel including subcontractors assigned to perform Services under this Agreement, and Contractor shall not replace personnel or subcontractors without ICMA's prior written approval.

(b) Replacement of personnel. In the event that any personnel performing Services hereunder are found to be unacceptable to ICMA for any reason, ICMA shall notify Contractor in writing, and Contractor shall, at ICMA's request, either provide a qualified replacement or take appropriate corrective

action. Contractor agrees to provide ICMA with written notification two weeks before replacing any project personnel. Two weeks advance notice is not required where immediate termination is clearly necessary to protect the interest of the project. However, in such cases, Contractor shall notify ICMA promptly. In all cases, ICMA must approve in writing changes to any personnel assigned to perform work under this Agreement.

(c) No payment for training. In the event that Contractor provides replacement personnel for any reason, Contractor shall not charge ICMA for the time required to train the replacement until such personnel are familiar with the particular project and all work done prior thereto, so that such replacement personnel are capable of performing the Services as efficiently as the replaced personnel at the time of departure.

1.3 Subcontractors. Contractor agrees that in the event it hires or works with any subcontractor to perform any of the Services under the Agreement, Contractor shall ensure that such subcontractors are bound by the terms of this Agreement, including, where necessary, executing an addendum to existing contracts between Contractor and subcontractor. At a minimum, as part of an addendum or otherwise, Contractor shall notify the subcontractor in writing, in substantially the form attached hereto as Exhibit A, of the following ICMA requirements: (a) subcontractor is prohibited from using names, logos, or other marks owned by or associated with ICMA for any purpose, including marketing, advertising or publications without ICMA's prior written consent; (b) subcontractor shall comply with all applicable laws in the performance of the Services for which it has been engaged by Contractor; (c) subcontractor shall not disclose or use information about ICMA for purposes other than performing the Services for which it has been engaged by Contractor; (d) subcontractor shall assign to ICMA all of its right, title, and interest in and to any Work Product; and (e) subcontractor shall carry appropriate insurance coverage as applicable, and shall supply proof of its insurance coverage such as a Certificate of Insurance at the request of Contractor.

1.4 Background Checks. Contractor agrees that prior to Contractor or its Personnel, if any, being permitted to begin performing Services for ICMA on ICMA's premises, Contractor shall certify that it has performed a background check (Background Check) verifying the following records: (i) Social Security number; (ii) county criminal records; (iii) national criminal records; (iv) and credit check, if appropriate, and that Contractor and any Personnel have successfully passed the Background Check. In the following situations, Contractor shall also perform and verify a credit check on Contractor and any Personnel: where the position involves fiscal responsibilities or access to confidential or sensitive information; where the work to be performed requires access to ICMA's networks, equipment, and/or facilities; or where Contractor and any Personnel's access or work is similar to that of ICMA employees.

In the event that Contractor has not performed a Background Check on Contractor or its Personnel proposed for assignment to work in or on ICMA's premises (or that any Background Check(s) performed by Contractor are not satisfactory to ICMA) Contractor agrees that: (i) ICMA may perform the Background Check at its own expense and (ii) Contractor and any Contractor Personnel who do not consent to the required Background Check will not be permitted to perform services on ICMA's premises. In the event that ICMA determines, subject to applicable law, based upon a review of the Background Check materials, that the proposed Personnel do not meet ICMA's minimum acceptable standards, Contractor agrees that such Personnel shall not perform services for ICMA and Contractor shall supply other Personnel for ICMA's consideration. In the event Contractor fails the Background Check, ICMA may terminate this Project Agreement.

2. INTELLECTUAL PROPERTY AND LICENSES PROVIDED

2.1 Intellectual Property. Work product consists of the deliverables and other materials, including drafts thereof, prepared by Contractor or subcontractor(s), if any, to carry out the Services under this Agreement (Work Product). Contractor represents and warrants to ICMA that the Work Product is the original Work Product of Contractor and/or subcontractor and that it does not infringe any third party's intellectual property rights. ICMA shall own all right, title and interest in the Work Product. Contractor agrees that the Work Product is a "work made for hire" for ICMA under Section 101 of Title 17 of the United States Code as it now stands or as later amended. If the Work Product is deemed not to be a "work made for hire," Contractor does hereby sell, transfer, assign and deliver to ICMA and its successors and assigns forever, all of Contractor's right, title and interest, including all copyright interest, in the Work Product, in all forms, including, but not limited to, written or electronic form. In order to effectuate the ownership provision of this Agreement, Contractor shall obtain from any subcontractors, in substantially the form attached hereto as Exhibit A, an assignment of all right, title and interest in and to the Work Product, including all copyrights, created by subcontractors in favor of ICMA. Contractor and subcontractor shall promptly take any actions that ICMA may reasonably request in connection with this assignment.

2.2 Contractor Property. Notwithstanding the foregoing, Contractor shall retain sole and exclusive ownership of and all right, title and interest in all intellectual property of Contractor existing prior to Contractor's performance of the Services. In addition, nothing herein is intended to restrict Contractor's right to use any and all ideas, concepts, expertise, know-how and learnings Contractor may discover, acquire or develop during the provision of Services which is of general application and does not contain any ICMA Confidential Information or other ICMA-specific information (all of the foregoing the Contractor Property). To the extent the Work Product contains Contractor Property or requires the use of Contractor Property, Contractor grants to ICMA (including ICMA contractors and grantees) the irrevocable, perpetual, nonexclusive, worldwide, royalty-free, paid-up right and license for ICMA's business purpose to use, execute, reproduce, display, perform, modify, and distribute copies of such Contractor Property, as reasonably required in conjunction with ICMA's business.

2.3 Third-Party Licenses. To the extent the Work Product contains third-party intellectual property, Contractor agrees to obtain on behalf of ICMA an irrevocable, perpetual, nonexclusive, worldwide right and, where possible, royalty-free license to use the third-party intellectual property. If Contractor is unable to obtain such a license, Contractor shall inform ICMA in writing.

2.4 Infringing Work Product. If the Work Product becomes, or in Contractor's reasonable opinion is likely to become, the subject of any claim or action, then Contractor shall either, at Contractor's election: (a) procure for ICMA the right to continue using the Work Product as contemplated hereunder; (b) modify, subject to ICMA's written consent, the Work Product to render same non-infringing (provided such modification does not adversely affect ICMA's use as determined by ICMA); or (c) subject to ICMA's written consent, replace same with equally suitable, functionally equivalent, compatible non-infringing Work Product. If none of the foregoing is commercially reasonable or acceptable to ICMA, ICMA shall have the right to terminate and Contractor shall be considered to have materially breached this Agreement. Upon such termination, and without waiver of any other rights and remedies available to ICMA, Contractor shall refund to ICMA all amounts paid by ICMA for any nonconforming Work Product.

3. PAYMENTS

3.1 Payment Terms. Subject to the payment schedule set forth in the Statement of Work, ICMA will make payments within thirty (30) days from the date on which ICMA receives a complete invoice. To be complete, invoices must be submitted by e-mail to **TBD** with a copy to **[INSERT NAME and email]**, and must contain at least the following information:



- description of services;
- fees;
- expenses with receipts attached, if applicable; and
- any other information required by the Agreement.

Contractor's failure to remit a complete invoice will postpone the date for ICMA's payment accordingly. If ICMA disputes an invoice, ICMA will notify Contractor of the dispute within thirty (30) days of the date on which ICMA receives the invoice.

4. TERM AND TERMINATION

4.1 Term. These Terms and Conditions shall go into effect on **[EFFECTIVE DATE]** (Effective Date) and shall terminate on **[TERMINATION DATE]** (Termination Date).

4.2 Material Breach Termination. If either Party is in material breach of any of its obligations under either the Terms and Conditions or the Statement of Work, the other Party may give written notice of termination (First Notice), and, unless the breaching Party cures such material breach within fifteen (15) days after its receipt of the First Notice, the notifying Party shall have the right to terminate the Agreement effective immediately upon delivery of written final notice of termination. Termination of the Terms and Conditions operates as a termination of the Agreement. Termination of the Agreement hereunder shall not relieve either Party of any obligations that had accrued through the effective date of the termination.

4.3 Non-Breach Termination. Either Party may at any time and without cause terminate this Agreement in full by giving thirty (30) days written notice of termination to the other Party.

4.4 Payment at Termination. Upon non-breach termination of the Agreement, ICMA shall pay Contractor for all Services rendered under the Statement of Work prior to the date of termination, and Contractor shall provide to ICMA any completed or in-progress Work Product. If Contractor terminates prior to the end of the terms of this agreement, Contractor shall cooperate with and shall pay ICMA for any reasonable costs of transitioning the Services to a new Contractor. ICMA shall use reasonable efforts to secure a new Contractor.

5. CONFIDENTIALITY

5.1 Confidential Information. The Parties acknowledge that it will be necessary for each of them to disclose or make available to each other both verbal information and materials in hard copy, digital or electronic form (collectively, the Confidential Information) that may be confidential or proprietary or may contain valuable trade secrets, and that such information may already have been disclosed prior to the Effective Date. All information which Contractor or its employees receives from ICMA in connection with the Services (for example, all information related to ICMA's finances, accounting, human resources, grantees, charitable projects, prospects and donors) shall be considered ICMA's Confidential Information. All information Contractor designates in writing as confidential shall be considered Contractor's Confidential Information. All Confidential Information made available hereunder, including copies thereof, shall be returned or destroyed upon the written request of the disclosing Party.

5.2 Non-Disclosure. Each of the Parties agrees: (a) to use commercially reasonable efforts to protect the Confidential Information of the other Party from unauthorized use or disclosure and to use at

least the same degree of care with regard thereto as it uses to protect its own Confidential Information of a like nature, including advising employees of the confidentiality obligations imposed on such employees by this section; (b) to use and reproduce the Confidential Information of the other Party only as permitted under this Agreement or as needed to perform its duties hereunder; and (c) not to disclose or otherwise permit access to the Confidential Information of the other Party to any third party, without the other Party's prior written consent.

5.3 Exceptions. Confidential Information does not include information that: (a) is already, or otherwise becomes, publicly known by third parties as a result of no act or omission of the receiving Party; (b) is lawfully received, after disclosure hereunder, from a third party having the right to disseminate the information without restriction in disclosure; or (c) can be shown by the receiving Party to have been independently developed by such Party prior to the execution of this Agreement. Any Party asserting that information is not Confidential Information by virtue of any of (a) through (c) hereof shall have the burden of proof on such issue.

5.4 Injunctive Relief. The Parties agree that any breach by either Party or any of its officers, directors, or employees of any provisions of this Section may cause immediate and irreparable injury to the other Party and that, in the event of such breach, the injured Party will be entitled to seek injunctive relief as well as any and all other remedies available at law or in equity.

5.5 Judicial/Legal Request. If either Party receives a subpoena or other validly issued administrative or judicial process requesting Confidential Information of the other Party (Legal Request), it shall provide prompt notice to the other of such receipt so that Party may seek to obtain a protective order requiring that the Confidential Information not be disclosed. If the other Party fails to obtain a protective order, or chooses not to pursue one, the Party receiving the Legal Request shall thereafter be entitled to comply with it to the extent permitted by law. The receiving Party shall nevertheless use reasonable efforts to minimize such disclosure.

6. WARRANTIES

6.1 Contractor Warranties

(a) Contractor represents and warrants that: (i) the Services shall be performed and the Work Product produced in a professional manner consistent with reasonable commercial standards in its industry; (ii) its employees and subcontractors shall be experienced, properly trained or otherwise qualified and capable of performing the Services; and (iii) there is no outstanding contract, commitment or agreement to which Contractor is a Party, or legal impediment of any kind known to Contractor, which conflicts with this Agreement or might limit, restrict or impair the rights granted hereunder.

(b) Contractor represents and warrants that: (i) it has and will have all rights, titles, licenses, permissions and approvals necessary to perform its obligations under this Agreement; (ii) any intellectual property, in whole or in part, provided, created or used by it and/or its subcontractors, if any, under this Agreement, does not and will not infringe, violate or in any manner contravene or breach any patent, trademark, copyright, license or other property or proprietary right of any third party, or constitute the unauthorized use or misappropriation of a trade secret of any third party (collectively, Unauthorized Use); (iii) Contractor has received no claims or charges of Unauthorized Use; and (iv) Contractor has no reason to believe that its use under this Agreement of any such intellectual property, in whole or in part, will constitute an Unauthorized Use.

(c) Contractor represents and warrants that the Work Product will substantially conform to the functionality and/or other objective requirements, including acceptance criteria, provided by ICMA or described in the Statement of Work.

6.2 ICMA Warranties. ICMA represents and warrants that there is no outstanding contract, commitment or agreement to which ICMA is a party, or legal impediment of any kind known to ICMA, which conflicts with this Agreement or might limit, restrict or impair the rights granted hereunder.

7. INDEMNIFICATION

7.1 Contractor Indemnification. Contractor shall indemnify, defend and hold harmless ICMA and its officers, directors, employees, agents, affiliates and contractors from and against any and all claims, liabilities, damages, losses, expenses, demands, suits and judgments, including without limitation reasonable attorneys' fees and costs, arising from or relating to a) Contractor's performance of this Agreement; b) Contractor's breach of this Agreement; c) the intentional misconduct or negligent acts or omissions of Contractor, its employees, agents, contractors or consultants in connection with the performance of its obligations under this Agreement.

7.2 Misclassification Release and Indemnification. In the event that any federal, state or local government or administrative agency, or other regulatory entity, or any court determines that Contractor or any personnel of Contractor, or of a subcontractor thereof, acted as an employee of ICMA in performing Services, Contractor: (i) waives any and all claims that Contractor may have as a result of any such determination and acknowledges that Contractor agreed to render Services under this Agreement with the understanding that neither Contractor nor any employee of Contractor (nor any employee of any subcontractor of Contractor) has any right or entitlement to any benefit under any of ICMA's employee benefit plans or programs; and (ii) agrees to indemnify and hold ICMA harmless from all liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees) incurred by ICMA as a result of, or related to, such a determination.

7.3 Claim Procedures. To receive the foregoing indemnities, the Party seeking indemnification must notify the other in writing as soon as reasonably practicable of a claim or suit and provide reasonable cooperation and full authority to defend or settle the claim or suit. The indemnifying Party shall be entitled to control the handling of any such claim and to defend or settle any such claim, in its sole discretion, with counsel of its own choosing, provided however that any settlement of a claim other than one that contains a full release of all claims and liabilities of the indemnified Party requires the prior written consent of the indemnified Party, which consent shall not be unreasonably withheld.

7.4 **LIMITATION OF LIABILITY: NOTWITHSTANDING ANY CONTRARY PROVISION HEREOF, UNLESS THE RESULT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL ICMA'S LIABILITY IN CONNECTION WITH THIS AGREEMENT EXCEED THE AMOUNTS PAYABLE TO CONTRACTOR HEREUNDER.**

8. INSURANCE

8.1 Contractor is required to procure and maintain, at its sole expense, for itself and its employees, and shall require any subcontractors it may engage to maintain the following insurance coverages:

(a) General Liability Insurance covering bodily injury, property damage and contractual liability with limits of not less than \$1,000,000 per occurrence, \$2,000,000

products/completed aggregate, \$1,000,000 personal and advertising, \$2,000,000 aggregate. ICMA shall be added as an additional insured to Contractor's general liability insurance policy. Contractor's general liability insurance policy shall be primary and ICMA's insurance shall not contribute until Contractor's insurance is exhausted.

(b) Workers Compensation and Employers' Liability in accordance with the statutory requirements of the state or states in which Contractor is providing Services, and employer's liability insurance of not less than \$1,000,000 each accident for bodily injury by accident, and \$1,000,000 each employee and policy limit for bodily injury by disease.

(c) Commercial Auto/or Personal Liability Insurance with a \$1,000,000 combined single limit covering owned, hired, and non-owned autos. ICMA shall be added as an additional insured to Contractor's auto liability insurance policy. Contractor's auto liability insurance policy shall be primary and ICMA's insurance shall not contribute until Contractor's insurance is exhausted.

(d) Professional Liability Insurance with a minimum limit of \$1,000,000 each claim/aggregate.

8.2 Contractor and its general liability and workers' compensation insurance carriers shall waive subrogation rights against ICMA. Contractor will ensure that its insurance carrier will notify ICMA within thirty (30) days if any of Contractor's policies are canceled, not renewed, or materially altered. Contractor agrees to notify ICMA promptly in writing of any claim by a third party arising from the performance of the Agreement or any incident or event which may give rise to a claim arising from the performance of the Agreement. Certificates of insurance evidencing the required coverages must be submitted to ICMA before the work or services begin.

9. DISPUTES

9.1 Dispute Resolution. The Parties shall endeavor to settle all claims, controversies, or disputes arising out of or relating to this Agreement involving threatened, alleged, or actual breach of the Agreement, including without limitation, any claim, controversy, or dispute concerning any determination, negotiation, or agreement to be reached by the Parties under this Agreement (hereinafter, the "Dispute") by alternative dispute resolution under the then applicable current rules of the American Arbitration Association (hereinafter, "AAA") procedure in effect on the date of this Agreement. Unless otherwise agreed, the Parties will select one single arbitrator. The costs of the arbitration shall be shared equally between the parties, except that each party shall be responsible for its own attorneys' fees and costs in preparing and presenting its case. Any dispute which remains unresolved thirty (30) days after the appointment of an arbitrator shall be settled by binding arbitration by a sole arbitrator in accordance with applicable AAA rules in effect on the date of this Agreement. The arbitration shall be governed by the Federal Arbitration Act, 9 U. S. C. Section 1 - 16 to the exclusion of state laws inconsistent therewith, and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The place of arbitration shall be in Washington, DC. The arbitrator is not empowered to award punitive damages or damages in excess of compensatory damages and each party hereby irrevocably waives any right to recover such punitive damages or excess damages.

9.2 Continue to Perform. The Parties will continue to perform under this Agreement during the Dispute Resolution Process.

10. GENERAL

10.1 Independent Contractors. Contractor is an independent contractor for ICMA, and no partnership, joint venture or employee-employer relationship is intended or created by this Agreement. Neither Party shall have the power to obligate or bind the other Party. ICMA acknowledges that Contractor retains the right to control the details of the work. Contractor fully accepts the responsibility to determine how and by whom the work will be done and acknowledges that personnel supplied by Contractor shall work exclusively for Contractor and shall not, for any purpose, be considered employees or agents of ICMA. Contractor agrees that all such personnel shall be informed that they are employees or contractors solely of Contractor (or of a subcontractor if applicable) and not entitled to benefits (including, without limitation, fringe benefits such as medical or dental insurance, workers' compensation, disability income, social security taxes and benefits, federal unemployment compensation taxes, state unemployment insurance benefits and federal income tax withholding) normally provided to ICMA employees. Contractor assumes full responsibility for the acts of such personnel while performing services hereunder and shall be solely responsible for their supervision, direction and control. Contractor is responsible for providing the necessary office space, equipment, supplies and other facilities in connection with the performance of the work set forth in the Statement of Work. Nothing contained in this Agreement shall be construed to discourage or prohibit Contractor from providing services to or soliciting business from clients in addition to ICMA.

10.2 ICMA Policies. Contractor has access to, read and agrees to abide by [ICMA's Code of Conduct](#). Contractor agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

10.3 No Use of ICMA Name for Marketing. Contractor agrees not to use the names, logos or any other marks owned by or associated with ICMA for marketing or advertising purposes, or on any form of public ICMA (including in Contractor's publicly distributed client lists, on Contractor's Web site or in any of Contractor's other promotional materials) without the prior written consent of ICMA in each instance.

10.4 Governing Law. The courts in the District of Columbia will have exclusive jurisdiction over any and all disputes arising out of, or in any way related to this Agreement, and Contractor shall submit to the personal jurisdiction of those courts. The laws of the District of Columbia shall apply to any such disputes without regard to any conflict of law principles.

10.5 Amendment. Any changes made to this Agreement, including the Statement of Work, whether initiated by Contractor or ICMA, will be effective only if documented by both parties in writing.

10.6 Assignment. Notwithstanding any provision in this Agreement to the contrary, ICMA may assign all or any part of its right, title and interest in this Agreement, provided ICMA gives notice to Contractor of any such assignment. Contractor may not assign this Agreement, in whole or in part, without ICMA's prior written consent.

10.7 No Third-Party Benefit. The provisions of this Agreement are for the sole benefit of the Parties hereto. This Agreement confers no rights, benefits, or claims upon any person or entity not a Party hereto.

10.8 Complete Agreement. This Agreement is the Parties' final and binding expression of their agreement and the complete and exclusive statement of its terms. This Agreement cancels, supersedes

and revokes all prior negotiations, representations and agreements between the Parties, whether oral or written, relating to the subject matter of this Agreement.

10.9 Headings and Subsections. Section headings are provided for reference and do not constitute part of this Agreement.

10.10 Construction. For purposes of construction, to the extent any provision of the Statement of Work conflicts with these Terms and Conditions, the Terms and Conditions shall govern unless otherwise set forth in writing in the Statement of Work.

10.11 Construction in Favor of Joint Drafters. If an ambiguity or question of intent arises with respect to any provision of this Agreement, the Agreement will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring either Party by virtue of authorship of any of the provisions of this Agreement.

10.12 Severability; No Waiver. If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The Parties agree to replace any invalid provision with a valid provision, which most closely approximates the intent and economic effect of the invalid provision. The waiver by either Party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

10.13 Force Majeure. Either Party shall be excused from performance and shall not be liable for any delay, in whole or in part, caused by the occurrence of any contingency beyond the reasonable control either of the excused Party or its subcontractors or suppliers including, but not limited to, war, sabotage, insurrection, riot or other act of civil disobedience, act of public enemy, failure or delay in transportation, act of any government or any agency or subdivision thereof affecting the terms hereof, accident, fire, explosion, flood, severe weather or other act of God, or shortage of labor or fuel or raw materials.

10.14 Contractor's Authority. Contractor represents and warrants that (a) it has the corporate, statutory or other power and authority to enter into this Agreement and to perform its obligations hereunder; (b) the person who executes this Agreement on behalf of Contractor has the necessary authority to bind Contractor; and (c) neither the execution and delivery of this Agreement, nor the performance of its obligations hereunder, will constitute a violation of, a default under, or conflict with any term of any applicable governance documents such as a certificate of incorporation, bylaws or other agreements to which it is bound.

10.15 Notices. All legal notices, requests and other communications that a Party is required or elects to deliver (not including invoices as described in the "Payment Terms" Section), shall be in writing and shall be delivered personally, or by electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other Party at its address set forth below or to such other address as such Party may designate by notice given pursuant to this section:

If to ICMA: **TBD**

with a copy to: **TBD**

If to Contractor: **[CONTRACTOR NAME]**
[CONTRACTOR STREET ADDRESS]

[CONTRACTOR ICMA, STATE AND ZIP CODE]
[CONTRACTOR PHONE]
[CONTRACTOR E-MAIL]

10.16 Survival. The “Intellectual Property and Licenses Provided”, “Confidentiality”, “Indemnification”, and “General” Sections shall survive any termination or expiration of this Agreement.

10.17 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument. Faxed and PDF counterpart signatures are sufficient to make this Agreement effective.

10.18 Compliance with Laws. Contractor agrees to comply with all applicable federal, state and local laws, regulations or rules.

10.19. Anti-Terrorism. By signing this Agreement, Contractor certifies that it does not and will not promote or engage in violence or terrorism. Further, Contractor agrees that it shall at all times comply with all relevant laws prohibiting transactions with individuals and organizations associated with terrorism, including, without limitation, Executive Order 13224 and the Patriot Act. Without limitation, Contractor agrees that prior to incurring and making any payment pursuant to this Agreement, it will ensure that the payee is not on the “Specially Designated Nationals” list maintained by the United States Department of the Treasury, or on a terrorist list maintained by the United Nations or the European Union.

For: [CONTRACTOR]

For: ICMA

By: _____

By: _____

Title: _____

Title: _____

Signature: _____

Signature: _____

Date: _____

Date: _____

APPENDICES