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Recreation and Parks Department

2000 Cedar Lane
Greenville, NC 27858

Request for Qualifications (RFQ)

Date of Issue: **November 16, 2020**



Wildwood Park Elevated Walkways and Tower

Through this RFQ the City of Greenville is soliciting Statements of Qualifications from architecture and engineering firms for the provision of design of and construction bid documents related to proposed bridges, boardwalks, canopy walks, observation tower, and trail work at a City of Greenville park.

Project Manager Contact Information:

Mark Nottingham, Parks Planner
City of Greenville
Greenville Recreation and Parks Department
Parks Division
(252) 329-4242
mnottingham@greenvillenc.gov

1. DEFINITIONS IN THIS RFQ

“City” means the City of Greenville.

“Statement of Qualifications” or **“SOQ”** is the response of a person, firm, or corporation proposing to provide the services sought by this RFQ.

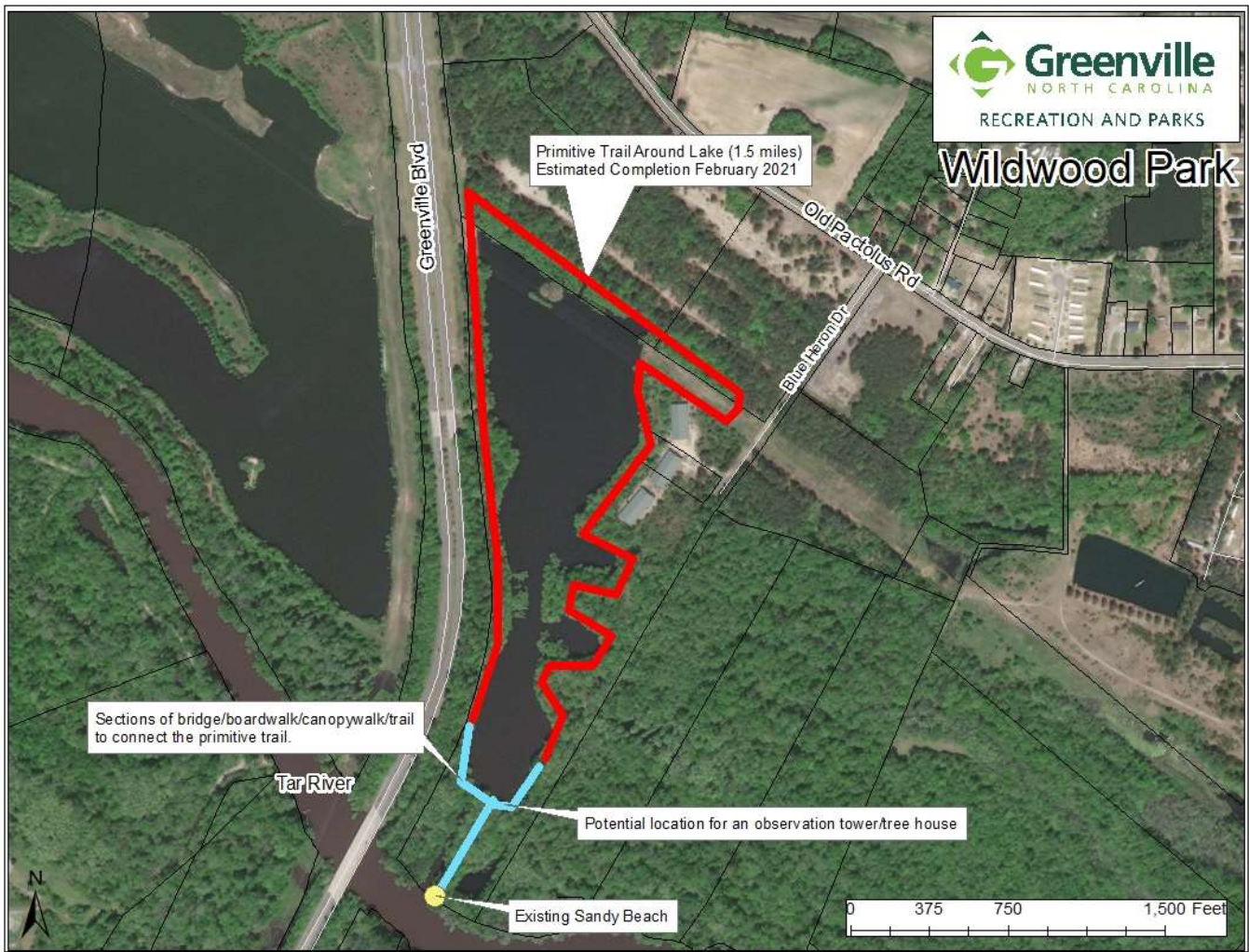
“Proposer” is the person, firm, or corporation that submits an SOQ.

“Designer” is the Proposer with which the City enters into a contract to provide the services stipulated in this RFQ.

2. PURPOSE OF RFQ & SCOPE OF SERVICES

In late 2019, The City of Greenville purchased property located on the northern bank of the Tar River for use as an adventure park. The park, Wildwood Park, has approximately 8,000 feet of primitive trail soon to be under construction. The trail almost completes a loop around the lake located on the property, which is also connected to the Tar River. The purpose of this RFQ is to secure design services to design, engineer, and permit, a means of completing the trail loop around the water using some form of elevated bicycle and pedestrian infrastructure which may include boardwalk, canopy walk, and bridging. The improvements shall provide access to an existing riverfront sandy beach as well. The bridging shall be of sufficient height to maintain boat access into the adventure park from the Tar River. Additionally, this project shall feature an observation tower and a tree house located in the forest canopy, that can be built either concurrently or as funds are made available. The current budget for design and construction is \$900,000.

Wildwood Park is located on parcel #01031, 3050 Blue Heron Dr., Greenville, NC. A map of the project area is shown below (figure 1).



(figure 1)

2.1. SCOPE OF SERVICES

The City of Greenville seeks a qualified firm to develop contract documents that includes site plan, facility design, construction documents, project manual, technical specifications, permitting documents and applications, and a statement of probable construction cost. The Designer shall prepare construction documents for the new Wildwood Park canopy walk, boardwalk, observation tower, and tree house with the following building program elements:

2.1.1. CONTRACT DELIVERABLES – The Designer shall provide the following deliverables:

- a. Schematic Phase: Facilitate design meetings with the City to develop design solutions that accommodate desired elements. The Designer shall confirm all existing conditions documentation with the city, and prepare design studies including demolition, preliminary plans and site/civil plans. The Designer shall submit schematic plans (30% completion of Construction Documents) for review, comment and approval by the City. A preliminary probable cost statement prepared by an independent estimator shall accompany the schematic drawings to ensure budget control.

- b. Design Development: The Designer shall provide design Development Documents (65% completion of construction documents), that include demolition plans, floor plans, sections and elevations, and outline specifications. In addition to architectural drawings, the Design Development documents shall include engineering, and other related disciplines required for the successful completion of the work. The final submittal of the Design Development documents shall include a statement of probable cost by an independent estimator to ensure budget control. The Designer shall submit Design Development documents to the City for a review and final approval prior to proceeding with the Construction Documents Phase of the Project.
- c. Construction Documents: The Designer shall submit construction documents at 95% completion, for final review and comment by the City. The final submittal of bid documents shall be a sealed and signed set of construction documents detailing the work as it relates to materials, workmanship, finishes, and equipment required. The bid documents shall include plans, specifications, and a final statement of probable cost prepared by an independent estimator. The Designer shall also prepare all required permit applications needed prior to construction and obtain all required permits needed prior to construction.

In addition, the Designer shall provide the City with an electronic copy of the final construction documents and an electronic copy of the technical specification in Microsoft Word or PDF format.

2.1.2. CONSTRUCTION BUDGET – The Designer shall provide complete construction documents for the new Wildwood Park elevated walkway with amenities, and has a maximum price for design and construction of \$900,000. The construction price shall include materials, labor, equipment, permits, testing, and periodic construction inspection by the Designer or their engineer.

This scope provides a best representation of the work to be completed; however, the City reserves the right to make reasonable changes in scope that do not significantly augment the overall outcome of the project.

2.2. CITY RESPONSIBILITIES

The City of Greenville shall be responsible for:

- a. Arranging, scheduling, and providing facility space for meetings.
- b. Providing the Designer with copies of relevant materials that can assist the consultant in his/her design. Note that the City can only provide materials that are currently in existence, and is not responsible for information that is incorrect, incomplete, or out of date.
- c. Providing the Designer with copies of relevant City of Greenville plans, studies, master plans, ordinances, design guidelines and special plans of the project area.

- d. Providing the Designer with a summary of the findings from any previous related Public Input Sessions, if they exist.
- e. Providing access to the proposed construction site during normal business hours of operation.

The City of Greenville shall work closely with the Designer to answer questions, make decisions, provide guidance and assist with coordination where needed. The City’s responsibilities do not include conducting research and design tasks for the consultant.

2.3. CONTRACT

It is the City’s intention to use the contract that is attached as **Appendix C**. If your firm objects to any of the contract’s content, please state the objections.

Exceptions:

Any and all exceptions to the RFQ must be listed on an item-by-item basis and cross-referenced with the RFQ document. If there are no exceptions, Proposer must expressly state that no exceptions are taken.

If your firm wishes to submit a proposal that does not comply with the standards as discussed above, it is recommended that you also submit one that does comply in addition to the one that does not comply so that your “non-compliant” version can be considered as an alternative if the City is interested in it. This will allow your firm’s compliant version to be considered if the City remains steadfast on applying the standards discussed above.

3. SUBMITTAL REQUIREMENTS

Firms that are interested in providing the required services to the Greenville Recreation and Parks Department (GRPD) are invited to submit a Statement of Qualifications (SOQ), in electronic format along with one paper hard copy, to Mark Nottingham at 2000 Cedar Ln Greenville, NC 27858, and mnottingham@greenvillenc.gov. Each firm is solely responsible for the timely delivery of its SOQ. All SOQs must be received **by 2:00 pm local time on Tuesday, December 08, 2020. No Qualification Packages will be accepted after this deadline.** Firms accept all risks of late delivery regardless of fault.

3.1. SUBMITTAL TIMELINE

The following is the likely schedule and timing leading up to a contract signing. The City may change this schedule as appropriate

Advertisement	November 16, 2020
Last Day to Submit Questions	November 30, 2020
Answers to Questions Posted.....	December 02, 2020
SOQs Submitted	December 08, 2020
Evaluation Procedure	December 10, 2020
Short Listed Consultant Interviews (if needed)	December 15, 2020
City Council Designer Approval	January 14, 2021

3.2. FORMAT

The SOQ should be divided into the individual sections listed below. Proposers are urged to include only information that is relevant to this specific project so as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of the RFQ and emphasize the Proposer's demonstrated capability to provide services of this type.

All requirements and questions should be addressed and all requested data should be supplied. The City reserves the right to request additional information which, in its opinion, is necessary to ensure that the Proposer's competence, number of qualified employees, business organization and financial resources are adequate to perform according to contract.

The SOQ should be no longer than 20 pages in length, exclusive of required MWBE forms (these items should be included in tabbed sections and placed behind the main document). Minimum font size should be the equivalent of 11pt Times New Roman.

3.2.1. COVER LETTER

The SOQ should contain a cover letter, signed by a principal in the firm, indicating his or her title that he or she has authority to submit the proposal on behalf of the firm, including the cover letter, and which should contain the following statement:

"The undersigned has the authority to submit this SOQ on behalf of the legal name of company in response to the City of Greenville RFQ for the New Outdoor Aquatic Facility"

The cover letter should contain one of the following two paragraphs:

"With respect to all trade secrets that the Proposer may submit to the City in connection with this SOQ or the Contract, if the Contract is awarded to the Proposer, the Proposer shall comply with the section of the RFQ titled "Trade Secrets and Confidentiality," (see Appendix A) including but not limited to all of its subsections, such as the subsection titled "Defense of City." The Proposer acknowledges that the City will rely on the preceding sentence."

-or-

"The Proposer is not submitting and shall not submit any trade secrets to the City in connection with this SOQ or the Contract, if the Contract is awarded to the Proposer." The Proposer acknowledges that the City will rely on the preceding sentence.

3.2.2. NON-COLLUSION

This RFQ constitutes an invitation to bid or propose. Firms and their staff are prohibited from communicating with elected City officials and City employees regarding the RFQ or submittals from the time the RFQ has been released until all respondents have been notified and the selection results have been publicly announced. These restrictions extend to “thank you” letters, phone calls, and emails and any contact that results in the direct or indirect discussion of the RFQ and/or the Qualification Package submitted by the firm/team. Violation of this provision by the firm/team and/or its agents may lead to the disqualification of the firm’s /team’s submittal from consideration. Exceptions to the restrictions on communications with City employees are detailed in **Section 3.5 of the RFQ**. Acknowledge that you have read this section by including the following signed Non-Collusion affidavit with your response:

The City of Greenville prohibits collusion, which is defined as a secret agreement for a deceitful or fraudulent purpose.

I, _____ affirm that I have not engaged in collusion with any City employee(s), other person, corporations or firms relating to this bid, SOQs or quotations. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.

Signature: _____

3.2.3. PROJECT TEAM (TAB 1)

Behind “Tab1” respond to the following requirements in the same sequence as listed:

- a). Identify the legal entity that would enter into the contract with the City and include location of company headquarters, local office location, type of business (sole proprietorship, partnership, or corporations), state of incorporation or organization, and the name and title of the person authorized to enter into an agreement.
- b). Identify the primary contact professional who would be assigned responsibility for this project and note their experience with projects of a similar scope. Also identify other assigned personnel, their qualifications and their location.
- c). For proposed sub-consultants, provide the name of each firm, the office location, contact name and telephone number, and the service to be provided.
- d). Provide an organizational chart, identifying all key members of the team including sub-consultants who would be assigned to this project. **Specifically identify individuals who will serve as project managers.**
- e). Provide a description of the professional and technical experience, background, qualifications and professional licensing / certification of the firm. The Proposer should show that their firm possesses demonstrated experience in all areas of the project scope of services.
- f). Include detailed resumes of all team members assigned to this project including sub-consultants.
- g). Illustrate the project availability of proposed project team members by indicating the percentage of their time to be devoted to the project.

3.2.4. RELEVANT EXPERIENCE (TAB 2)

Provide a summary of Proposer's experience with projects of similar scope.

Behind "Tab 2", to be attached to the SOQ, include detailed information for a maximum of ten previously completed projects by the firm or its sub-consultants that are similar in nature to this specific project, including, but not limited to, contracts with the City, currently in progress or having been performed in the past five (5) years comparable to this project as follows:

- List only projects **involving current staff** comprising your proposed team;
- List projects in **date order** with newest project listed first; and
- List projects in **North Carolina** first, followed by projects located in other states.

Information should include a description of the project, scope of work, location of project and total project cost; client name and telephone number; and dates of project work. As part of the selection process the City may contact the Proposer's references.

3.2.5. METHODS AND PROCEDURES (TAB 3)

The Proposal should provide a detailed methodology for accomplishing the entire project scope. This project approach shall include additional suggestions that are not specifically requested in this RFQ, but are considered necessary to ensure the highest degree of safety, constructability, value and operation. The respondent shall also provide an estimated amount of time needed to complete this scope of work. There is a not to exceed timeframe of 6 months for this scope of work to be completed, after contract is fully executed.

If your SOQ assumes that the City will take certain actions or provide certain facilities, data or information, state these assumptions explicitly.

3.2.6. EQUAL BUSINESS OPPORTUNITY PROGRAM (TAB 4)

It is the policy of the City of Greenville to provide minorities and women equal opportunity for participating in all aspects of the City's contracting and procurement programs, including but not limited to, construction projects, supplies and materials purchase, and professional and personal service contracts. In accordance with this policy, the City has an adopted a Minority and Women Business Enterprise (M/WBE) Plan and subsequent program, outlining verifiable goals.

The City has established a 4% Minority Business Enterprise (MBE) and 4% Women Business Enterprise (WBE) goal for the participation of M/WBE firms in supplying goods and services for the completion of this project. All firms submitting qualifications and/or proposals agree to employ "good faith efforts" towards achieving these goals and supply other information as requested in the "M/WBE Professional and Personal Services Forms" included in **Appendix B. Failure to complete the M/WBE forms shall be cause to deem the submittal nonresponsive.**

Questions regarding the City's M/WBE Program should be directed to the M/WBE Office at (252) 329-4462.

Equal Employment Opportunity Clause

The City has adopted an Equal Employment Opportunity Clause, which is incorporated into all specifications, purchase orders, and contracts, whereby a vendor agrees not to discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin or ancestry. A copy of this clause may be obtained at the City Clerk's Office, City Hall, Greenville, NC. By submitting qualifications and/or proposals, the firm is attesting that they are an Equal Opportunity Employer.

Include the completed forms behind "Tab 4" to be attached to the SOQ.

3.3. LIMIT ON CLAIMS

No Proposer will have any claims or rights against the City for participating in the SOQ process, including without limitation submitting an SOQ. The only rights and claims any Proposer will have against the City arising out of participating in the SOQ process will be in the Contract with the selected Proposer.

3.4. COMMUNICATION GUIDELINES AND QUESTIONS

Firms may submit written questions concerning this RFQ to the Project Manager for receipt no later than **5 pm local time on Monday, November 30, 2020**. Any questions about the RFQ should be submitted, in writing via email to:

Mark Nottingham, Parks Planner
City of Greenville
Recreation and Parks Department

via Email: mnottingham@greenvillenc.gov

Questions received after the stated deadline will not be answered. Answers to submitted questions will be published on December 02, 2020. No oral statement of any person shall modify or otherwise change or affect the terms, conditions, or specifications stated in the RFQ, and changes to the RFQ, if any, shall be made in writing only and issued in the form of an Addendum to the RFQ.

3.5. COMPENSATION

Compensation will be negotiated with the successful Proposer.

3.6. EVALUATION CRITERIA

It is the policy of the City that the selection of firms to provide professional services shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. GRPD shall conduct a fair and impartial evaluation of all submittals that are received in accordance with the provisions of this RFQ. GRPD will appoint a selection committee to perform the evaluations, and shall put each SOQ submitted through a process of evaluation to determine responsiveness to all administrative and technical requirements of the RFQ.

The evaluation criteria are intended to be used to make a recommendation to the entity or person who will award the contract, but who is not bound to use these criteria or to award to a firm on the basis of the recommendation. Further, the City reserves the right to vary from this procedure as it determines to be in the City's interest. For example, the City may request clarification of any point in a firm's/team's Qualification Package or obtain additional information. Final approval of any selected firm/team is subject to the action of City Council.

3.6.1. EVALUATION METHOD

Compliance Check: All SOQs will be reviewed to verify that minimum requirements have been met. SOQs that have not followed the requirements in this RFQ or do not meet minimum content and quality standards may be eliminated from further consideration.

Analysis: Members of an evaluation team assigned by the Project Manager will independently analyze each SOQ. The evaluation team will analyze how the Proposers' qualifications, experience, professional content, and proposed methodology meet the City's needs. Points will be assigned by each committee member using the point-scoring schedule below as a guideline.

At the discretion of the City, the evaluation team may decide to conduct interviews of a short list of Proposers.

3.6.2. POINT-SCORING SCHEDULE

Qualifications will be evaluated using the minimum following criteria (Total possible points = 100):

1). Proposer's Qualifications and Experience: 30 Points

Verifiable technical capacity, experience on similar projects and an outstanding record of successfully completed projects. Past performance on City projects may be considered.

2). Personnel Qualifications and Experience: 20 Points

Proposer's principal(s), years of experience and number of years with the firm/company. Proposer's location and experience of personnel assigned to the project, their projected educational background, certification and licensing that are deemed to meet the project requirements.

3). Project Approach: 25 Points

Proposer's familiarity with, and understanding of the project and their ability to innovate upon and complete the work.

4). Workload / Ability to meet Schedule: 20 points

Proposer's current workload, number of active projects, and availability to work on this project.

5). Proposer's Accessibility: 5 points

Proposer's geographic location and methods of accessibility through technology.

4. ADDITIONAL PROVISIONS OF THIS RFQ

A response to this RFQ should not be construed as a contract, nor indicate a commitment of any kind. The RFQ does not commit the City to pay for costs incurred in the submission of a response to this RFQ or for any cost incurred prior to the execution of a final contract. No recommendations or conclusions from this RFQ process concerning any firm shall constitute a right (property or otherwise) under the Constitution of the United States or under the Constitution, case law or statutory law of North Carolina. No binding contract, obligation to negotiate, or any other obligation shall be created on the part of the City unless the City and a firm jointly execute a contract.

4.1. FINANCIAL CONDITION OF THE FIRM

The City may request that the Proposer provide an annual operating statement, completed income tax form, or other reasonably comprehensive evidence of financial condition. Financial data provided in response to this RFQ will be held confidential if marked "confidential".

The Proposer must be willing and able to provide insurance coverage, bonding and forms required by the City. The insurance required for professional services can be found in **Appendix C, Section 8 of the Standard form of Agreement**.

4.2. DISCRETION OF THE CITY

The City of Greenville reserves the right to reject any or all SOQs. NOTWITHSTANDING anything to the contrary in this document or in any addendums to this document, unless the provision refers specifically to this provision, the City reserves the right (i) to negotiate reasonable changes of any nature with any firm proposing to do the work with respect to any term, condition, or provision in this document and/or in any SOQ.

4.3. E-VERIFY COMPLIANCE

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 North Carolina General Statutes. By submitting a proposal, The Proposer represents that their firm and its Subcontractors are in compliance with the requirements of Article 2 Chapter 64 of the North Carolina General Statutes.

4.4. IRAN DIVESTMENT ACT

Vendor certifies that: (i) it is not on the Iran Final Divestment List created by the NC State treasurer pursuant to N.C.G.S. 147-86.58; (ii) it will not take any actions causing it to appear on said list during the term of any contract with the City, and (iii) it will not utilize any subcontractor to provide goods and services hereunder that is identified on said list.

Appendix A: Trade Secrets and Confidentiality

As a general rule, all submissions to the City are available to any member of the public. However, if materials qualify as provided in this section, the City will take reasonable steps to keep Trade Secrets confidential.

(a) Designation of Confidential Records. The terms “Trade Secrets” and “record” are defined in (a)(1) (Definitions). To the extent that the Proposer wishes to maintain the confidentiality of Trade Secrets contained in materials provided to the City that will or may become a record, the Proposer shall prominently designate the material as “Trade Secrets” at the time of its initial disclosure to the City. The Proposer shall not designate any material provided to the City as Trade Secrets unless the Proposer has a reasonable and good-faith belief that it contains a Trade Secret. When requested by the City, the Proposer shall promptly disclose to the City the Proposer’s reasoning for designating individual materials as Trade Secrets. In providing materials to the City, the Proposer shall make reasonable efforts to separate those designated as Trade Secrets from those not so designated, both to facilitate the City’s use of records and to minimize the opportunity for accidental disclosure. For instance, if only a sentence or paragraph on a page is a Trade Secret, the page must be marked clearly to communicate that distinction. To avoid mistake or confusion, it is generally best to have only Trade Secret information on a page and nothing else on that page. To the extent authorized by applicable state and federal law, the City shall maintain the confidentiality of records designated “Trade Secrets” in accordance with this section. Whenever the Proposer ceases to have a good-faith belief that a particular record contains a Trade Secret, it shall promptly notify the City.

(1) Definitions.

“Trade secret” means business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that:

- a. Derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and
- b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The existence of a trade secret shall not be negated merely because the information comprising the trade secret has also been developed, used, or owned independently by more than one person, or licensed to other persons.

“Record” means all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, received by the City of Greenville in connection with the Proposer’s SOQ.

(b) Request by Public for Access to Record. When any person requests the City to provide access to a record designated as Trade Secrets in accordance with subsection (a), the City may

- (1) decline the request for access,
- (2) notify the Proposer of the request and that the City intends to provide the person access to the record because applicable law requires that the access be granted, or
- (3) notify the Proposer of the request and that the City intends to decline the request.

Before declining the request, the City may require the Proposer to give further assurances so that the City can be certain that the Proposer will comply with subsection (c) (Defense of City).

(c) Defense of City. If the City declines the request for access to a record designated as Trade Secrets in accordance with subsection (a), the Proposer shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of the City's non-disclosure of the records. In providing that defense, the Proposer shall at its sole expense defend Indemnitees with legal counsel. The legal counsel shall be limited to attorneys reasonably acceptable to the City Attorney. Definitions. As used in this subsection (c), "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, fines, penalties, settlements, expenses, attorneys' fees, and interest. "Indemnitees" means the City, and officers, officials, independent contractors, agents, and employees, of the City. "Indemnitees" does not include the Proposer. The City may require the Proposer to provide proof of the Proposer's ability to pay the amounts that may reasonably be expected to become monetary obligations of the Proposer pursuant to this section. If the Proposer fails to provide that proof in a timely manner, the City shall not be required to keep confidential the records whose non-disclosure gives rise to the potential monetary obligation. Nothing in this agreement shall require the City to require any natural person to be imprisoned or placed in substantial risk of imprisonment as a result of alleged nondisclosure of records or for alleged noncompliance with a court order respecting disclosure of records. This subsection (c) is separate from and is to be construed separately from any other indemnification and warranty provisions in the contract between the City and the Proposer.

APPENDIX B

**City of Greenville/Greenville Utilities
Commission Minority and Women Business
Enterprise Program**

**City of Greenville
MWBE Guidelines for Professional Service
Contracts
\$50,000 and above**

These instructions shall be included with each bid solicitation.

City of Greenville/Greenville Utilities Commission Minority and Women Business Enterprise Program

MWBE Guidelines for Professional Service Contracts \$50,000 and above

Policy Statement

It is the policy of the City of Greenville and Greenville Utilities Commission to provide minorities and women equal opportunity for participating in all aspects of the City's and Utilities' contracting and procurement programs, including but not limited to, construction projects, supplies and materials purchases, and professional and personal service contracts.

Goals and Good Faith Efforts

Service providers responding to this solicitation shall comply with the MWBE program by making Good Faith Efforts to achieve the following aspirational goals for participation.

	CITY	
	MBE	WBE
Professional Services	4%	4%

Submitters shall submit MWBE information with their submissions on the forms provided. This information will be subject to verification by the City prior to contract award. **As of July 1, 2009, contractors, subcontractors, suppliers, service providers, or MWBE members of joint ventures intended to satisfy City MWBE goals shall be certified by the NC Office of Historically Underutilized Businesses (NC HUB) only.** Firms qualifying as "WBE" for the City's goals must be designated as a "women-owned business" by the HUB Office. Firms qualifying as "MBE" for the City's goals must be certified in one of the other categories (i.e.: Black, Hispanic, Asian American, American Indian, Disabled, or Socially and Economically Disadvantaged). According to new Statewide Uniform Certification (SWUC) Guidelines, ethnicity supersedes gender; therefore, firms who are certified as both a "WBE" and "MBE" will satisfy the "MBE" category only. **Each goal must be met separately. Exceeding one goal does not satisfy requirements for the other.**

The City shall accept NCDOT certified firms on federally funded projects only.

Please note: A service provider may utilize any firm desired. However, for participation purposes, all MWBE firms who wish to do business *as a minority* must be certified by NC HUB. A complete database of NC HUB certified firms may be found at <http://www.doa.nc.gov/hub/>

Instructions

The submitter shall provide the following forms:

FORM 1—Sub-Service Provider Utilization Plan

This form provides the amount of sub-contracted work proposed on the project for MWBE. This proposed participation is based on the current scope of work. Submitter must turn in this form with submission. If the submitter does not customarily subcontract elements of this type of project, do not complete this form. Instead complete FORM 2.

FORM 2--Statement of Intent to Perform work without Sub-Service Providers

This form provides that the submitter does not customarily subcontract work on this type of project.

Sub-Service Provider Utilization Commitment

Submitted by the selected service provider after negotiation of the contract and prior to Award, this form lists the MWBE firms committed to participate on the project. This commitment will reflect any changes in the Plan due to adjustments in project scope.

NOTE: A firm is expected to maintain the level of participation proposed in FORM 1 – Sub-Service Provider Utilization Plan – unless there is a negotiated change in the service required by the City. A firm is also encouraged to increase MWBE participation in the Utilization Commitment as a result of ongoing Good Faith Efforts.

Proof of Payment Certification

Submitted by the selected service provider with each payment application, listing payments made to sub consultants. This form is not provided with the submission.

In addition to the forms provided above, each service provider must provide a discussion of its diverse business policies and procedures to include the good faith efforts it employed to utilize minority and women-owned firms on this project. This discussion must include:

- 1. Outreach efforts that were employed by the firm to maximize the utilization of MWBE's.*
- 2. A history of MWBE firms used on similar projects; and*
- 3. The percentage participation of MWBE firms on these projects.*

NOTE: Those service providers submitting FORM 2 should discuss and provide documentation to justify 100% performance without the use of subconsultants (both majority and minority) per the statements of the form.

Minimum Compliance Requirements: All written statements, signed forms, or intentions made by the Submitter shall become a part of the agreement between the Submitter and the City for performance of contracts. Failure to comply with any of these statements, signed forms, or intentions or with the minority business guidelines shall constitute a breach of the contract. A finding by the City that any information submitted (either prior to award of the contract or during the performance of the contract) is inaccurate, false, or incomplete, shall also constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It shall be solely at the option of the City whether to terminate the contract for breach or not. In determining whether a Submitter has made Good Faith Efforts, the City will evaluate all efforts made by the Submitter and will determine compliance in regard to quantity, intensity, and results of these efforts.

Sub-Service Provider Utilization Plan FORM 1

(Must be included with submission if subcontracting any portion of work)

We _____, do certify that on the
(Company Name)

_____ we propose to expend a minimum of _____%
(Project Name)

of the total dollar amount of the contract with certified **MBE** firms and a minimum of _____% of the total dollar amount with **WBE** firms.

Name, Address, & Phone Number of Sub-Service Provider	*MWBE Category	Work description	% of Work

*Minority categories: Black, African American (**B**), Hispanic or Latino (**L**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**S**) Disabled (**D**)

The undersigned intends to enter into a formal agreement with MWBE firms for work listed in this schedule conditional upon execution of a contract with the current scope proposed by the Owner.

The undersigned hereby certifies that he/she has read the terms of this agreement and is authorized to bind the submitter to the agreement herein set forth.

Date: _____

Name & Title of Authorized Representative _____

Signature of Authorized Representative _____

Statement of Intent to Perform work without Sub-Service Providers

FORM 2

(Must be included with submission if not subcontracting any portion of work)

We, _____, hereby certify that it is our intent to perform **100% of the work required** for the _____ contract.
(Project Name)

In making this certification, the Proposer states the following:

i. It is a normal and customary practice of the Proposer to perform all elements of this type of contract with its own workforce and without the use of sub consultants. *The Proposer has substantiated this by providing documentation of at least three (3) other projects within the last five (5) years on which they have done so.*

Check box to indicate documentation is attached.

ii. The Proposer has a valid business reason for self-performing all work on the Contract as opposed to subcontracting with a MWBE. The Proposal must describe the valid business reason for self-performing, and the Proposer must submit with its Bid or Proposal documentation sufficient to demonstrate to the Authority reasonable satisfaction the validity of such assertions.

Check box to indicate documentation is attached.

iii. If it should become necessary to subcontract some portion of the work at a later date, the Proposer will notify the City and institute good faith efforts to comply with all requirements of the MWBE program in providing equal opportunities to MWBEs to subcontract the work. **The firm will also submit a Request to Change MWBE Participation Form (even if the final sub consultant is not MWBE).**

The undersigned hereby certifies that he or she has read the terms of this certification and is authorized to bind the Proposer in accordance herewith.

Date: _____

Name & Title of Authorized Representative _____

Signature of Authorized Representative _____

Sub-Service Provider Utilization Commitment

(Must be submitted after contract negotiation and prior to Award)

We _____, do certify that on the
(Company Name)

_____ we will expend a minimum of _____%
(Project Name)

of the total dollar amount of the contract with certified **MBE** firms and a minimum of _____% of the total dollar amount of the work with **WBE**.

Name, Address, & Phone Number of Sub-Service Provider	*MWBE Category	Work description	% of Work

*Minority categories: Black, African American (**B**), Hispanic or Latino (**L**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**S**) Disabled (**D**)

The undersigned will enter into a formal agreement with MWBE firms for work listed in this schedule. Failure to fulfill this commitment may constitute a breach of contract.

The undersigned hereby certifies that he/she has read the terms of this commitment and is authorized to bind the submitter to the commitment herein set forth.

Date: _____

Name & Title of Authorized Representative _____

Signature of Authorized Representative _____

REQUEST TO CHANGE MWBE PARTICIPATION

(Submit changes only if recipient of intent to award letter, continuing through project completion.)

Project: _____

Bidder or Prime Consultant: _____

Name & Title of Authorized Representative: _____

Address: _____ Phone #: _____

_____ Email Address: _____

Original Total Contract Amount: \$ _____

Total Contract Amount (including approved change orders or amendments): \$ _____

Will this request change the dollar amount of the contract? Yes No

If yes, give the total contract amount including change orders and proposed change: \$ _____

The proposed request will do the following to overall MWBE participation (please check one):

Increase Decrease No Change

Name of sub consultant: _____

Service provided: _____

Proposed Action:

___ Replace sub consultant

___ Perform work in-house

For the above actions, you must provide one of the following reasons (Please check applicable reason):

___ The listed MBE/WBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract.

___ The listed MBE/WBE is bankrupt or insolvent.

___ The listed MBE/WBE fails or refuses to perform his/her subcontract or furnish the listed materials.

___ The work performed by the listed subconsultant is unsatisfactory according to industry standards and is not in accordance with the plans and specifications; or the subconsultant is substantially delaying or disrupting the progress of the work.

If replacing sub consultant:

Name of replacement sub consultant: _____

Is the subconsultant a certified MWBE ? ___ Yes ___ No

If no, please attach documentation of outreach efforts employed by the firm to utilize an MWBE.

Dollar amount of original consultant contract \$ _____

Dollar amount of amended consultant contract \$ _____

Other Proposed Action:

___ Increase total dollar amount of work

___ Add as an additional sub

___ Decrease total dollar amount of work

consultant*

Please describe reason for requested action: _____

**If adding additional sub consultant:*

Is the sub consultant a certified MWBE? ___ Yes ___ No

If no, please attach documentation of outreach efforts employed by the firm to utilize an MWBE.

Dollar amount of original consultant contract \$ _____

Dollar amount of amended consultant contract \$ _____

Interoffice Use Only:

Approval_Y_N

Date _____

Signature _____

Pay Application No. _____

Purchase Order No. _____

Proof of Payment Certification
MWBE Contractors, Suppliers, Service Providers

Project Name: _____

Prime Service Provider: _____

Current Contract Amount (including change orders): \$ _____

Requested Payment Amount for this Period: \$ _____

Is this the final payment? ___ Yes ___ No

Firm Name	MWBE Category*	Total Amount Paid from this Pay Request	Total Contract Amount	Total Amount Remaining

*Minority categories: Black, African American (**B**), Hispanic or Latino (**L**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**S**) Disabled (**D**) Date: _____

Date: _____

Certified By: _____

Name

Title

Signature

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Appendix C: Sample Contract

NORTH CAROLINA
PITT COUNTY

CONTRACT FOR DESIGN SERVICES

This contract is made and entered into as of the ____ day of _____, 20____, by the City of Greenville (“City”) and [name of firm] (“Designer”), *[indicate type of entity for instance:*

A corporation organized and existing under the laws of [name of State];
A professional corporation organized and existing under the laws of [name of State];
A professional association organized and existing under the laws of [name of State];
A limited partnership organized under the laws of [name of State];
A sole proprietorship; or
A general partnership.
a corporation organized and existing under the laws of *[name of State];*

Section 1: Background and Purpose.

In late 2019, The City of Greenville purchased property located on the northern bank of the Tar River for use as an adventure park. The park, Wildwood Park, has approximately 8,000 feet of primitive trail soon to be under construction. The trail almost completes a loop around the lake located on the property, which is also connected to the Tar River. The Designer shall provide design services to design, engineer, and permit, a means of completing the trail loop around the water using some form of elevated bicycle and pedestrian infrastructure which may include boardwalk, canopy walk, and bridging. The improvements shall provide access to an existing riverfront sandy beach as well. The bridging shall be of sufficient height to maintain boat access into the adventure park from the Tar River. Additionally, this project shall feature an observation tower and a tree house located in the forest canopy, that can be built either concurrently or as funds are made available. The current budget for design, permitting, and construction is \$900,000.

Wildwood Park is located on parcel #01031, 3050 Blue Heron Dr., Greenville, NC.

Section 2: Services and Scope to be Performed.

The Designer shall provide design services as outlined in the RFQ.

Section 3: Notice to Proceed and Schedule.

(a) Notice to Proceed: Upon award of the Contract, the Designer will receive a Notice to Proceed to develop a comprehensive Schedule. After completion and City approval of the Schedule, the Designer will receive a Notice to Proceed via a letter or email to the Designer. No work shall commence without receiving the Notice to Proceed from the City.

All final design documents and required permits shall be completed and delivered to the City within six (6) months from the Contract Date, as specified in Section 2.2.1(c), Contract Deliverables, of the City Request for Qualifications (RFQ) dated and issued November 16, 2020.

(b) Duration: This Agreement is in effect until _____.

- (c) Disputed Items: In the event that the Designer's invoices and receipts are submitted in compliance with the requirements of this Agreement, if the City disputes any items in any invoices submitted by the Designer, City shall notify the Designer within 60 days of receipt of any disputed item and request clarification and/or remedial action.

Section 4: Liquidated Damages.

- (a) Amount: The Designer shall include Liquidated Damages in the Bid Documents and Project Manual for the Contractor selected by the City for this Project.
- (b) Completion of Work: The anticipated opening date for the Project to the public is _____. The amount of liquidated damages for the Contractor shall be set at One Thousand dollars (\$1,000) per day after the construction completion date of the ___ day of _____, 2021.

Section 5: Complete Work without Extra Cost.

Except to the extent otherwise specifically stated in this contract, the Designer 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.

Section 6: Compensation.

The Designer 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, such information as may be reasonably requested by the City. Within thirty days after the City approves an invoice, the City shall send the Designer a check in payment for all undisputed amounts contained in the invoice.

The City shall not be obligated to pay the Designer any payments, fees, expenses, or compensation other than those authorized by this section. The total dollar amount to be paid under this contract by the City to the Designer shall not exceed \$XXXXXX.

Section 7: Prompt Payment to Subcontractors.

Designer shall promptly pay all Subcontractors upon receipt of payment from the City. The City may, as a condition of final payment, require the Designer to submit an affidavit stating that all Subcontractors, if any, have been paid in full for any work completed for services provided under the subcontract.

Section 8: Insurance.

The Designer agrees to purchase, at its own expense, insurance coverages to satisfy the following minimum requirements as detailed in this Section. A certificate reflecting the following minimum coverages shall accompany this Contract. The Designer shall not commence services under this Contract until the Designer has obtained all insurance required, and such insurance has been approved in writing by the City. Insurance required shall remain in effect through the term of this Contract. Failure to maintain the required insurance coverage shall constitute grounds for Contract termination.

Insurance requirements are as follows:

- (a) Public Liability and Property Damage: The Designer shall take out and maintain, during the life of this Contract, Commercial General Liability Insurance that shall protect from claims for damage for Bodily Injury, Property Damage, Personal Injury, including death which may arise from operations under this contract, whether such operations be by the Designer or by any sub-contractor, sub-consultant, or by anyone directly or indirectly employed by any of the above.

The Minimum Limits of Insurance required are:

Each Occurrence:	\$1,000,000
Personal and Advertising Injury:	\$1,000,000
General Aggregate:	\$2,000,000
Products and Completed Operations Aggregate:	\$2,000,000

The aggregate limit must apply per project. The form of coverage must be the ISO CG 00 01 policy as approved by the State of North Carolina Department of Insurance. If a form of coverage other than the CG 00 01 is used it must be approved by the Risk Manager for the City of Greenville. Any endorsed exclusions or limitations from the standard policy must be clearly stated in writing and attached to the Certificate of Insurance. Completed Operations coverage must be maintained for the period of the applicable statute of limitations. The City of Greenville must be added as an Additional Insured to the Commercial General Liability policy.

(b) Automobile Liability Insurance (If Applicable):

Limit of Insurance: \$1,000,000 combined single limit.

The City of Greenville must be added as an Additional Insured on the Commercial Auto Liability policy.

(c) Workers Compensation Insurance:

Limits of Insurance: Statutory for the State of North Carolina

Employers Liability:

Bodily Injury by Accident \$1,000,000 each accident

Bodily Injury by Disease \$1,000,000 policy limit

Bodily Injury by Disease \$1,000,000 each employee.

No sub-contractor may exclude executive officers. Workers Compensation must include all employees.

(d) Cancellation: Each certificate of insurance shall bear the provision that the policy cannot be canceled in less than 30 days after mailing written notice to the assured of such cancellation. The Insurance policies must be endorsed to reflect a 30 day notice of cancellation or material change in coverage be given to the City of Greenville.

(e) Sub-Consultants: If any part of the services to be performed under this Contract is sublet, the sub-Designer shall be required to meet all insurance requirements set forth in this Agreement. The parties stipulate that the Designer will maintain each type of insurance set forth above at a coverage level equal to the amount set forth above for such type of insurance. However, nothing contained herein shall relieve the Designer from meeting all insurance requirements or otherwise being responsible for the sub-consultant.

Section 9: Performance of Work by City.

If the Designer fails to perform the Work in accordance with the schedule 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 Designer notice of its intention. The Designer 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.

Section 10: Trade Secrets; Confidentiality.

The Request for Qualifications (RFQ) section titled “Trade Secrets and Confidentiality” shall apply to any Trade Secrets disclosed to the City during the process leading to the parties’ entering into this Contract (including all of the Designer’s responses to the RFQ). This Section (titled “Trade Secrets; Confidentiality”) shall remain in force despite termination of this contract, whether by expiration of the term or otherwise, and termination of the services of the Designer under this contract. For purposes of this contract, the word “Proposer” in the RFQ section just cited shall mean the “Designer.”

Section 11: Termination for Convenience (“TFC”).

(a) Procedure: Without limiting any party’s right to terminate for breach, the City may, without cause, and in its discretion, terminate this Contract for convenience by giving the Designer written notice that refers to this Section. TFC shall be effective at the time indicated in the notice. The City Manager may terminate under this Section without City Council action.

(b) Obligations: Upon TFC, all obligations that are still executory, on both sides, are discharged except that any right based on prior breach or performance survives, and the indemnification provisions shall remain in force. At the time of TFC, or as soon afterwards as is practical, and upon the City’s payment to Designer of monies due, the Designer shall deliver to the City all project documents, including partly completed project documents, provided however that the City assumes all risk for use of the project documents after TFC, and the Designer shall be relieved of any liability whatsoever. In case of TFC, the Designer shall follow the City’s instructions as to which Subcontracts to terminate.

(c) Payment: The City shall pay the Designer an equitable amount for the costs and charges that accrue because of the City’s decisions with respect to the Subcontracts, but excluding profit for the Designer. Within 20 days after TFC, the City shall pay the Designer a one hundred dollar TFC fee and for all services performed except to the extent previously paid for. Services shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the services been completed except to the extent it would be inequitable to either party, and if services were to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for such services. The Designer shall not be entitled to any payment except as stated in this Section because of TFC, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

Section 12: Notice.

(a) Address: 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 of Greenville:
c/o Greenville Recreation and Parks Department
P.O. Box 7207
Greenville, NC 27835

To the Designer:
TBD

(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.

Section 13: Indemnification.

- (a) Hold Harmless: The Designer shall, to the extent permitted under North Carolina law, indemnify and hold harmless the City and its officers and employees from and against all liabilities, damages, losses and costs that arise in any manner from, in connection with, or out of this Contract as a result of acts or omissions of the Designer or any sub-consultant or other persons employed or utilized by the Designer in the performance of this Contract except when such liabilities, damages, losses, and costs are proximately caused by or result from the negligence, in whole or in part, of the City or its independent Designers, agents, officers or employees.
- (b) 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 Designer under this contract.
- (c) Compliance with law: It is agreed that this Section shall be applied to the maximum extent allowed by law and limited only as necessary to comply with N.C.G.S. § 22B-1.

Section 14: Ownership of Work Products.

- (a) The Designer hereby assigns to the City, without reservation, all copyrights in all Work-related documents, including sketches, models, photographs, data sets, source code and scripts, and other Work-related expressions created by the Designer. Among those documents are certain “Work Product,” including Work-related deliverables, programs, applications, reports, design drawings, and construction documents. The City’s obligation to pay the Designer is expressly conditioned upon the Designer’s obtaining a valid written comprehensive assignment of copyrights from its subcontractors in terms identical to those that obligate the Designer to the City as expressed in this subsection, which copyrights the Designer, in turn, hereby assigns to the City. The City, in return, hereby grants the Designer and its subcontractors a revocable, nonexclusive license to reproduce the documents for purposes relating directly to the Designer’s performance of its obligations under this Contract for the Designer’s archival records, and for the Designer’s reproduction of drawings and photographs in the Designer’s marketing materials. This nonexclusive license shall terminate automatically upon the occurrence of either a breach of this Contract by the Designer or the accused commission by the Designer of a tort or a crime affecting the City or the Work or upon termination of this Contract. This nonexclusive license is granted to the Designer alone and shall not be assigned by the Designer to any other person or entity, except that the non-exclusive license granted in this Contract to the Designer for purposes of the Designer’s performance hereunder may be sub-licensed to the Designer’s subcontractors (with the same limitations). Subject to the foregoing, this nonexclusive license shall terminate automatically upon a Designer’s assignment of this nonexclusive license to another or its attempt to do so.
- (b) To the extent that liability arises from misuse of the Work Product by the City or another designer, the Designer shall not be responsible for that misuse. If the City uses the Work Products for purposes including additions to and modifications of the Work, and for other projects, the City shall indemnify the Designer for losses, including reasonable attorneys’ fees, suffered by the Designer as a result of the use of the design and these documents for such other purposes. If these documents are used for other purposes, the City shall see that they are modified (i) to indicate that the Designer did not prepare them for such other purposes and is not responsible for their use in connection with such other purposes and (ii) to delete the Designer’s name and seal from the documents (where permitted or required by law).
- (c) Except for the licenses granted in this Section, no other license or right shall be deemed granted or implied under this Contract. No other Work-related data, expression, or documents may be reproduced by the Designer or its subcontractors for any other purposes without the express written permission of the City.
- (d) If the City subsequently reproduces Work-related documents or creates a derivative work based upon Work-related documents created by the Designer, the City shall (where permitted or required by law) remove or

completely obliterate the original professional's seals, logos, and other indications on the documents of the identity of the Designer and its subcontractors.

Section 15: Standard of Care.

The standard of care for all professional design and related services performed or furnished by Designer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing on similar projects whether such projects can be found locally, regionally or nationally. Subject to the foregoing standard of care, Designer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards. The Designer warrants the accuracy of Designer's representations made to City as to Designer's qualifications and experience during the process in which the City selected the Designer. The Designer represents and warrants that it has the requisite professional licensure and registration required by the State of North Carolina necessary to perform the work.

Section 16: Dispute Resolution and Compensation for Designer's Errors.

- (a) Dispute Resolution: The City and Designer agree to negotiate each dispute between them in good faith during the 30 days after providing the other party with a notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the City and Designer may agree to mediation. If mediation is used and is unsuccessful, then the parties may exercise their rights at law. If, however, such dispute arises after the City has engaged a general contractor for construction work and during the construction administration phase, if any, the City and Designer may avail themselves of the dispute resolution process adopted by the State Building Commission pursuant to G.S. § 143-135.26(11) and G.S. § 143-128(f1).
- (b) Compensation for Designer Design Errors: If (i) the Designer creates plans or specifications containing an error that causes actual construction of a portion of the work that needs to be changed solely because of the Designer's error, and, (ii) the City elects to apply this Section 16 (b), the Designer shall perform all redesign work necessary to correct the error without compensation and shall pay the City all additional construction costs of correcting the error.
- (c) Unforeseen Conditions: An error shall not be grounds for payment under this Section 16 (b) if the error occurred because physical conditions were not in fact known to the Designer or not in fact known to the Designer's consultants.
- (d) Limit on Use of Payment against Designer: A payment by the Designer pursuant to Section 16 (b) shall be considered a compromise, and the City shall not introduce the fact of the payment in any legal action or proceeding except to the extent that compromises are admissible.
- (e) Nonpayment Hereunder Not to Prevent Other Claims: If Section 16 (b) is not applied by the City so as to compensate the City for an error, then Section 16 (b) shall not be used to construe this Agreement so as to reduce any remedy that is available to the City because of that error. For example, to the extent an error is not compensated for because of the amount exceeds the insurance deductible, the City will not be deemed to have waived a claim for any damages arising from the error.

Section 17: Miscellaneous.

- (a) Choice of Law and Forum: This Contract shall be deemed made in Pitt 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 Pitt 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 Designer 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 Designer and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Designer's duties that arise out of this Contract and all of the City's claims that arise out of this Contract. Without granting the Designer the right to assign, it is agreed that the duties of the Designer that arise out of this Contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.
- (f) Compliance with Law: Consistent with the Standard of Care set forth in this Contract, in performing all of the services, the Designer 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 DESIGNERS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBDESIGNERS AND VENDORS UNDER CITY CONTRACTS.
- (h) EEO Provisions: During the performance of this Contract the Designer agrees as follows: (1) The Designer 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 Designer 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 Designer shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Designer shall in all solicitations or advertisement for employees placed by or on behalf of the Designer, 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 Designer 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 Designer'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 Designer ineligible for further City Contracts. (5) Unless exempted by the City Council of the City of Greenville, the Designer 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 sub-Designer and vendors.

- (i) No Third Party Rights Created: This Contract is intended for the benefit of the City and the Designer and not any other person.
- (j) 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.
- (k) Modifications of 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.
- (l) Hazardous Materials: Designer shall have no responsibility or liability for the discovery, presence, identification, evaluation, handling, removal or disposal of or exposure of persons to hazardous (or allegedly hazardous) materials in any form at the project, including but not limited to asbestos, mold, mildew, PCB or other toxic substances.
- (m) E-verify Compliance: The Designer shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if the Designer utilizes a Subcontractor, the Designer shall require the Subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. By submitting a proposal, the Proposer represents that their firm and its Subcontractors are in compliance with the requirements of Article 2 Chapter 64 of the North Carolina General Statutes.
- (n) Iran Divestment Act: Vendor certifies that; (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 143-6A-4; (ii) it will not take any actions causing it to appear on any such list during the terms of this contract, and (iii) it will not utilize any subcontractor to provide goods and services hereunder that is identified on any list.

Section 18: Attachments.

The following Attachments shall be a part of this contract:

- (a) MWBE forms
- (b) RFQ
- (c) RFQ Addenda
- (d) Scope of Work

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed in duplicate originals as of the day and year first above written.

CITY OF GREENVILLE:

Chosen Design Firm:

BY: _____

BY: _____

TITLE: P.J. Connelly, Mayor

TITLE: _____

DATE: _____

DATE: _____

APPROVED AS TO FORM:

BY: _____
Emanuel D. McGirt, City Attorney

PRE-AUDIT CERTIFICATION

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

BY: _____
Byron Hayes, Director of Financial Services

Account: TAR RIVER- EAST SIDE