



REQUEST FOR QUALIFICATIONS (RFQ)

**Request for Statements of Interest and Qualifications of
Design Professionals for Renovation of the former
Whittemore Elementary School into the Whittemore
Community Center**

RFQ DUE DATE/TIME:

**March 22, 2019
2:00 p.m., local time**

POINT OF RECEIPT:

**City of Conway
c/o Ken Senn
PO Drawer 1075
Conway, SC 29526**

**Physical Address:
City of Conway – City Shop
2940 Jerry Barnhill Blvd.
Conway, SC 29527**

ADVERTISEMENT

CITY OF CONWAY

Qualified professional Architectural Design Firms are invited to submit Statements of Interest, Qualifications and Experience to the City of Conway to provide professional design services for the renovation of the Whittemore School into the Whittemore Community Center in Conway, SC. This project is a U.S. Housing & Urban Development CDBG-funded Project and contingent upon funding availability. Therefore, all rules and regulations related to such funding will apply including the Brooks Act, Davis-Bacon, Section 3, and MBE/WBE. As this is a CDBG-funded project, the selected firm will also work with the State Historic Preservation Office on all proposed work. See the attached letter from SHPO dated February 4, 2019, referencing SHPO project No. 18-JS0140, as well as the “National Register of Historic Places Evaluation for Whittemore Elementary School” completed by New South Associates.

Professional services shall include Basic and Additional Architectural, Engineering, and Cost Estimating services, generally described in the AIA B101 Owner Architect 2007 edition, as necessary for the programming, planning, design, preparation of contract documents, and contract administration of the proposed project. The City has already entered into a contract with Owens & Associates, Inc. to provide Mechanical, Electrical, and Plumbing Engineering Design Services.

Phase I will include the renovation of the former Whittemore Elementary school addition that was completed in 1961, and is approximately 10,000 square feet. Phase II will include the renovation of the original school that was built in 1954 and is approximately 33,800 sf. Proposers are not expected to submit a complete project analysis or design in their response. Rather, proposers must provide sufficient information for City of Conway to evaluate their qualifications in accordance with the process and criteria established in this RFQ.

All interested parties shall have a demonstrated ability to work within a team environment, demonstrated ability in the assessment and design of similar type facilities and the ability successfully manage and coordinate a multi-disciplined effort by various professionals.

All Statements of Qualifications **MUST** be received at the City of Conway Procurement Office at 2940 Jerry Barnhill Blvd, Conway, South Carolina 29526 no later than **2:00 p.m., local time, on March 22, 2019, at which time only the names of the Offerors will be announced.** Any submission received later than the specified time/date will **NOT** be accepted/considered. Hand-delivered submissions should be delivered to the same above referenced address. No facsimile, email, or telephone responses will be accepted. Statements of Qualifications **MUST** be enclosed in a sealed envelope, clearly marked **“Architectural Design Services for Whittemore Community Center”** on the outside of the envelope.

Contact Information for this Project

Ken Senn

ksenn@cityofconway.com

(843) 381-0870

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I. INSTRUCTIONS TO OFFERORS

General

This solicitation will be conducted in accordance with City of Conway Procurement Code and Regulation.

City of Conway hereby notifies all those responding to this RFQ that, in accordance with the provisions of the Civil Rights Act of 1964 (Chapter 21, Title 42, of the U.S. Code) and Regulations promulgated in connection therewith, that it will affirmatively ensure that any contract entered into pursuant to this RFQ, disadvantaged business enterprises will be afforded full and fair opportunity to make submittals in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

Submitting a Statement of Qualifications

Statements of Qualifications must be received by the City of Conway Office of Procurement at 2940 Jerry Barnhill Blvd, Conway, South Carolina 29526, no later than 2:00 p.m., local time on **March 22, 2019**. Any Statements of Qualifications received later than the specified time and date will be considered a "Late Response" and will not be accepted or considered. No facsimile, email, or telephone submittals will be accepted. Submissions shall contain all information requested and shall be submitted in the format shown within this solicitation document. Submissions must be sealed and clearly identify the name and number of the RFQ on the outside of the envelope/package, as well as the Submitter's business name, address, and license number (if applicable). No other information shall be included or written on the outside of the RFQ envelope/package. City of Conway shall not be responsible for unidentified submittals.

Examination of RFQ Document

Prior to submitting qualifications, each offeror shall carefully examine the RFQ document, study and thoroughly familiarize himself/herself with the requirements thereof and notify Owner of all conflicts, errors, or discrepancies.

The offeror shall sign his submittal correctly by submitting the required Certification form. The submission shall remain firm for not less than one hundred-twenty (120) calendar days from the date established for receipt of qualifications submissions.

By submission of a Statement of Qualifications, the proposer guarantees that all services offered meet the requirements of the solicitation.

Questions / Addendum

Submit written questions to Mr. Ken Senn via email at ksenn@cityofconway.com. All questions related to this Request for Qualifications must clearly identify the name and number of the RFQ. The deadline for questions is 2:00 p.m., local time, on **March 11, 2019**.

Questions will be answered and the responses to inquiries shall be in the form of an Addendum. If it becomes necessary to revise any part of this RFQ, revisions will be made in writing, in the form of an addendum. All addenda will be posted on the City of Conway website. All addenda issued by City of Conway must be acknowledged in writing by the Proposer. It shall be the Proposer's responsibility to ensure they have all addenda which have been issued, by visiting the City's website at <http://www.cityofconway.com/departments/procurement/index.php>. Verbal information obtained otherwise will not be considered in the awarding of the RFQ.

Licenses

All Proposers must be properly licensed to do business in the State of South Carolina and must comply with the Code of Laws of South Carolina. The Proposer's company does not need to be

based in South Carolina, but should be licensed to do business in South Carolina, and specifically City of Conway, if awarded a contract. **The successful offeror must have all appropriate business license(s) prior to contract execution.** Proposers that fail to comply with this requirement, may subject their Statement of Qualifications to being rejected as non-responsive.

Independent Contractor Status

The contractor shall not, by entering into a contract become a servant, agent, or employee of City of Conway, but shall remain at all times an independent contractor to the City. The contract resulting from this RFP shall not be deemed to create any joint venture, partnership, or common enterprise between the Contractor and City of Conway, and the rights and obligations of the parties shall not be other than as expressly set forth.

Insurance Requirements

The successful proposers shall provide proof of all required insurance(s), including worker's compensation, auto and general liability. Worker's compensation shall include a minimum limit of \$100,000 and commercial general liability coverage shall provide minimum limits of liability of \$1,000,000 per occurrence Combined Single Limit for Bodily Injury and Property Damage. This shall include coverage for premises/operations, products/completed operations, contractual liability, independent contractors, and vehicles used in premises/operations, and errors and omissions. Errors & omission coverage shall include a minimum limit of \$1,000,000 per occurrence. Insurance shall indemnify City against any and all claims arising under or as a result of the performance of the resulting contract. The City of Conway shall be named as an additional insured on all liability policies and expressed on the Certificate of Liability Insurance. Insurance shall indemnify City against any and all claims arising under or as a result of the performance of the contract resulting from this solicitation. The City of Conway must be provided notice prior to cancellation, modification or reduction in limits of any stipulated insurance. It is the responsibility of the vendor/contractor to ensure that all subcontractors / subconsultants comply with all insurance requirements of this solicitation and the resulting contract.

Tax Information

City of Conway Government is required to pay sales tax. The tax rate in City of Conway is (8%) eight percent.

Evaluation

This procurement will be conducted in accordance with federal, state, and local laws, including, but not limited to the Brooks Act.

The City of Conway reserves the right to reject any or all offers and further reserves the right to waive technicalities and informalities in submissions as well as to accept in whole or in part such submissions where it deems it advisable in protection of the best interest of the City. The City shall be the sole judge as to whether responses submitted meet all requirements contained in this procurement.

Acceptance of Content

The contents of the qualifications submission of the successful proposer may become part of the contractual obligations, if a contract ensues. Failure of a successful proposer to accept these obligations may result in non-award.

Contract Award

This procurement does not commit the City of Conway to award a contract, to pay any costs incurred in the preparation of the submissions, or to procure or contract for goods or services

listed herein. Costs associated with response preparation, oral interviews, or presentations shall be the sole responsibility of the proposer.

Only those interested parties who respond to the RFQ, may be considered for contract- award. City of Conway prefers to award only one (1) contract from this RFQ, but reserves the right to make multiple awards if determined most advantageous to the City.

Disadvantaged, Small, Minority and Women Owned Businesses (DBE/SBE/MBE/WBE)

Offerors must identify if they currently possess a certification from State of SC DBE Program.

Grievance

Any actual or prospective offeror who is aggrieved in connection with the Request for Qualifications or award of this contract may protest to Adam Emrick, City Administrator. The protest must be submitted in writing no later than fourteen (14) days after announcement of the selected offerer. The City Administrator will attempt to resolve the issue. If the protest is not resolved by mutual agreement, a decision will be issued in writing within ten (10) days after the last meeting to reach an agreement. If all attempts have failed to resolve the disagreement, the protestor has the right to bring the issue to City Council.

Freedom of Information Statement

Procurement information shall be a public record to the extent required by Chapter 4 of Title 30, Code of Laws of South Carolina (1976, as amended The Freedom of Information Act), with the exception that commercial or financial information obtained in response to a "Request for Qualifications" which is privileged and confidential if so designated by the proposer shall be protected from disclosure. Such information must be clearly marked as "CONFIDENTIAL" by those submitting responses for each section of information so affected. Privileged and confidential information is information in specific detail not customarily released to the general public, the release of which might cause harm to the competitive position of the party supplying the information.

Legal Statement

Responders to this RFQ must disclose involvement in any litigation within the last five (5) years in which a claim has been made against any team member (individual or company) asserting a cause of action other than Employment issues or Contracts not related to your professional work. Explain the issues in these cases (or the fact there are none) as part of your submittal.

RFQ submittals should include one unbound (1) original and seven (7) copies.

II. REQUEST FOR QUALIFICATIONS

PROJECT OBJECTIVE AND SCOPE OF SERVICES BACKGROUND

The City of Conway (hereinafter City or Owner) is soliciting Statements of Qualifications for the selection of a firm to provide Design Services for the development of the new Whittemore Community Center located along Horry Street in Conway, SC.

RFQ PURPOSE/OVERVIEW

The initial purpose of this Request for Qualifications (“RFQ”) is to solicit responses from qualified and experienced consultants to perform Design Services for the Whittemore Community Center. Proposers are not expected to submit a complete project analysis or design in their responses. Rather, proposers must provide sufficient information for City of Conway to evaluate their Responses in accordance with the process and criteria established in this RFQ.

PROJECT SCOPE

The existing Whittemore Elementary School is vacant. The City of Conway intends to renovate the former school into a Community Center. Phase I will include the renovation of the former Whittemore Elementary school addition that was completed in 1961, and is approximately 10,000 square feet. Phase II will include the renovation of the original school that was built in 1954 and is approximately 33,800 sf.

The project will consist of the renovation of the building, as well as recommendations for historic preservation. The facility shall be completely finished and include casework, building equipment, accessories, heating, cooling, lighting, communications, information technology, security, fire protection, alarm systems, building information systems, and power. The City has already entered into a contract with Owens & Associates, Inc. to provide Mechanical, Electrical, and Plumbing Engineering Design Services.

As this is a CDBG-funded project, the selected firm will also work with the State Historic Preservation Office on all proposed work. See the attached letter from SHPO dated February 4, 2019, referencing SHPO project No. 18-JS0140, as well as the “National Register of Historic Places Evaluation for Whittemore Elementary School” completed by New South Associates.

The Project’s scope of services may contain, but are not limited to the following work items:

Evaluate, assess, and make recommendations on design needs for the Community Center. The selected firm will formulate project design for longevity and for efficient construction of the project for completion by a qualified general construction contractor. The selected firm will develop the design plan and program document, and develop probable construction cost estimates. The selected firm will submit permit applications to local, state, and federal regulatory agencies, and advise the City on permitting and compliance issues. The firm will prepare the final design, construction documents, and all project specifications/requirements necessary for the public bid advertisement for the construction of the project. The firm will prepare all required bid documents, provide responses to bidder’s questions, clarifications to plans, bid analysis, recommendation of contract award, and other tasks as required to award and execute contract. City of Conway will provide front-end portion of bid package including Davis-Bacon, Section 3 and other documents, as required, per the City of Conway Community Development Office. This project is funded through HUD’s Community Development Block Grant.

Additionally, the selected firm will provide construction management services to include: inspect construction progress, review payment requests by contractor, provide recommendations for acceptance of sections and payments to contractor, organize records and documents of the construction, and verify contractor compliance with all permit and reporting requirements.

After construction, the selected firm will determine the final conditions by comparing with preconstruction conditions, provide recommendation for project acceptance and for post project maintenance/monitoring, and complete any close out documents required by permitting agencies.

Other needed services not listed above may be included as part of offeror's response.

RFQ FORMAT

All Statements of Qualifications submitted must follow the same format. No exceptions to this format will be accepted. To be accepted for evaluation, the Statement of Qualifications format must address all required components in order. The aim of the required format is to simplify the Statement of Qualifications preparation and evaluation processes and to ensure that all Statements of Qualifications receive the same orderly review.

RFQ SUBMISSIONS

The RFQ should be prepared in a timely and economical manner, providing a straight forward, concise description of the firms' ability to meet the requirements of the RFQ. Emphasis should be on completeness and clarity of content. The City does not desire voluminous qualifications submissions therefore the submission will be limited to twenty-five (25) double-spaced total pages, single sided. **Covers and tabs, required forms, and appendices will not count towards the total page count.** Information should be submitted as requested, in the order listed below. If the Proposer fails to provide the requested information, the RFQ may be deemed non-responsive and may not be further considered. By submitting a response, the firm agrees to the terms and conditions, including all federal grant requirements, stated herein unless explicitly stated otherwise in your response to this RFQ.

All Statements of Qualifications must include the following components:

<u>Section</u>	<u>Topic</u>
	Cover Letter
1	Company Overview
2	Project Team
3	Professional Accomplishments, Experience, and References
4	Project Approach
5	Additional Information and Required Forms

RFQ COMPONENTS Cover Letter

Provide a one or two-page cover letter.

Section 1 – Company Overview

Provide the following information about your firm:

- a. The firm's name, email address, business address, phone number, fax number, and Principals of the firm.
- b. The year the firm was established.
- c. Former names of the firm, if applicable.
- d. The type of ownership and parent company, if applicable.
- e. List of Professional Organizations / Associations firm is a member of.
- f. A brief statement of the firm's background, demonstrating longevity and financial stability. Include the years of the experience the firm has related to this type of design services.

Section 2 – Project Team

Identify key project team members and describe their role in the project and related experience. This section shall include the following information:

- a. Identify the members of the Proposer's team, their functions and qualifications specifying experience and understanding of the functions of the City Department's listed in the project. Include detailed resumes and licenses and certifications of all key personnel (note that the resumes of key personnel may be included in the appendices and shall not be counted against the 25-page maximum requirement). Resumes for each individual should include a summary of relevant professional qualifications, relevant project experience, education, training and professional registrations. The project team must have individuals that currently hold or are able to obtain professional licenses as required under state and local laws for the performance of work for this project.
- b. Provide an organizational chart of the Proposer's team and describe the role and responsibilities of each team member as it relates to this project, including any major subcontractors and consultants.
- c. Provide and describe location of project teams' office(s) to be utilized for this project.

Section 3 – Professional Accomplishments, Experience, and References

Provide a list of similar design service projects conducted by your firm. For up to five relevant projects (at least two must be completed), include a project description that demonstrates the firm's capabilities in the delivery of services that are similar to the design services that City of Conway is requesting. For each project provided as a reference, include the name / contact information of the client organization and client project manager.

Section 4 – Project Approach

In this section, which is intended to be the heart of the RFQ submittal, the respondents shall provide the City with information about how the company plans to approach and complete the Project. This should include specific details on technical approach and management, methodology, schedule, deliverables, quality assurance and control, and will explain how the respondent will attain successful completion of the project. This section should be structured as the scope of work for the services needed to complete this project.

Section 5 –Additional Information and Required Forms

At your discretion, include additional information that supports your RFQ. However, choose the additional information carefully, because this section of the RFQ should not constitute the bulk of your submission.

III. EVALUATION/SELECTION CRITERIA

The evaluation of qualifications submissions will be in accordance with the City of Conway Procurement Regulation, and this Request for Qualifications. The evaluation process shall determine the qualifications, interest, and availability to provide relevant services as requested. Staff will first review all written responses, which will result in a ranked list of fully qualified respondents. After ranking is completed by staff, informal interviews and/or presentations may be conducted, at the discretion of the City, for selected respondents determined to be the best qualified based upon the evaluation of the written responses. The determinations will be based upon the criteria below.

It is the intention of the evaluation team to select the vendor most qualified to provide the services as indicated herein. The following criteria will be used to evaluate Statements of Qualifications:

Firms' Professional Qualifications and Project Team.

The Statement of Qualifications will be evaluated based on:

- the firm's qualifications and project team. (Maximum 40 points)
- project approach to providing the professional services requested. Design services proposed shall be detailed. (Maximum 35 points)
- demonstrated successful professional project accomplishments for projects of similar technical nature, complexity, and time constraints, and for clients that are similar in size, location, and type to City. (Maximum 25 points)

IV. SUBMITTAL CHECKLIST AND REQUIRED FORMS

- Statement of Qualifications submittal meeting the requirements of the RFQ Components (NO SAMPLE/FORM PROVIDED).**
- References**
- RFQ Certification and Acknowledgement of Addenda**
- Non-Collusion Affidavit**
- Certification of Restrictions on Lobbying**
- Certification Regarding Debarment, Suspension and Other Responsibility Matters**
- Drug-Free Workplace Certification**
- Sample Insurance Certificate (NO SAMPLE/FORM PROVIDED)**
- Legal Statement (NO SAMPLE/FORM PROVIDED)**
- IRS W-9 Form (signed within 6 months of the submittal date) (NO SAMPLE/FORM PROVIDED)**



REFERENCES

Please list a minimum of three (3) references for jobs performed in the past five (5) years that are similar in size and scope to this project, with contact names and telephone numbers. Attach additional sheets if necessary.

Reference: _____ Contact: _____

Address: _____ Phone: _____

Fax: _____

Description and date(s) of project and service provided: _____

Reference: _____ Contact: _____

Address: _____ Phone: _____

Fax: _____

Description and date(s) of project and service provided: _____

Reference: _____ Contact: _____

Address: _____ Phone: _____

Fax: _____

Description and date(s) of project and service provided: _____



RFQ CERTIFICATION and ACKNOWLEDGEMENT OF ADDENDA

In compliance with the request for qualifications, and subject to all conditions thereof, the undersigned offers and agrees to furnish any or all items proposed.

DATE

AUTHORIZED SIGNATURE

COMPANY NAME

PRINT OR TYPE NAME ABOVE

COMPANY ADDRESS

COMPANY FAX #

CITY, STATE, ZIP+4

S.C. SALES TAX #
(ONLY IF OUT OF STATE)

CONTACT EMAIL ADDRESS

COMPANY TELEPHONE NUMBER

FEDERAL ID #

ACKNOWLEDGEMENT OF ADDENDA (if any)

Submitter hereby acknowledges receipt of all Addenda through and including:

Addendum No. _____, dated _____.

Addendum No. _____, dated _____.

By: _____

SEAL



NON-COLLUSION AFFIDAVIT

STATE OF _____

CITY OF _____)

_____ being first duly sworn, deposes and says that he/she is

_____ (Sole Owner, a Partner, President, Secretary, etc.)

of _____ of the party making the foregoing RFQ that such RFQ is genuine and not collusive or sham; that said proposer has not colluded, conspired, connived, or agreed, directly or indirectly with any PROPOSER or person, to put in a sham RFQ, or that such other person shall refrain from proposing and has not in any manner, directly or indirectly sought by agreement or collusion, or communication or conference, with any person to fix the RFQ of affiant or any other PROPOSER or to fix any overhead, profit or cost element of said RFQ or of that of any other PROPOSER or to secure any advantage against OWNER any person interested in the proposed contract; and that all statements in said RFQ are true; and further, that such PROPOSER has not, directly or indirectly submitted this RFQ, or the contents thereof, or divulged information or data relative thereto to any association or to any member or agent thereof.

Proposer

ACKNOWLEDGEMENT

Sworn to and subscribed before this _____ day of _____, 2018.

Notary Public for South Carolina

My Commission Expires _____



CERTIFICATION OF RESTRICTIONS ON LOBBYING

I, _____, hereby certify on behalf of
(name and title of proposer's official)
_____, that to the best of his or her
(name of proposer)

knowledge and belief that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying, " in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ day of _____, _____.

By _____
(signature of authorized official)

(title of authorized official)



CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under the applicable CFR covering New Restrictions on Government-wide Debarment and Suspension (Nonprocurement). The certification shall be treated as a material representation of fact upon which reliance will be placed when the Agency determines to award the covered transaction or cooperative agreement.

As required by Executive Order 12549, Debarment and Suspension, and implemented under the applicable CFR, for prospective participants in covered transactions, as defined in the applicable CFR.

A. The applicant certifies that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal State or local) with commission of any of these offenses enumerated in paragraph (1) (b) of this certification; and
- (d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

_____ Address: _____

Contractor's Signature

Printed or Typed Name

Title



DRUG-FREE WORKPLACE CERTIFICATION

In accordance with Section 44-107-30, South Carolina Code of Laws (1976), as amended, and as a condition precedent to the execution of this agreement, the undersigned will provide drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensations, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of the prohibition;
2. Establishing a drug-free awareness program to inform employees about:
 - a. The dangers of drug abuse in a workplace;
 - b. The person's policy of maintaining a drug-free workplace;
 - c. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - d. The penalties that may be imposed upon employees for drug violation;
3. Making it a requirement that each employee to be engaged in the performance of the agreement be given a copy of the statement required by item 1;
4. Notifying the employee in the statement required by item 1 that, as a condition of employment of this agreement, the employee will:
 - a. Abide by the terms of the statement; and
 - b. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after the conviction;
5. Notifying the South Carolina Department of Transportation within ten days after receiving notice under item 4b from an employee or otherwise receiving actual notice of the conviction;
6. Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance, or rehabilitation program by, any employee convicted as required in Section 44-107-50; and
7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of items 1,2,3,4,5, and 6.

Contractor Signature

Date

Contractor Name

Company Name

V. PROFESSIONAL SERVICES CONTRACT

No. _____

This Contract for Professional Services (“**Contract**”), with an effective date of _____, is hereby entered into between **CITY OF CONWAY**, whose Administrative Office is at 229 Main Street, Conway, SC 29526 (“**City**”); and _____ (“**Provider**”), a corporation organized and existing under the laws of the State of _____ and authorized to conduct business in the City of Conway and in the State of South Carolina.

1. GENERAL TERMS OF CONTRACT

1.1. Headings: Headings to paragraphs in this Contract shall not interpret or alter the meaning of the words in the respective paragraph, nor any other provision of this Contract.

1.2. Time of Performance: The timely performance by **Provider** of the services described in this Contract is of the essence, and shall commence on the Effective Date. Failure to perform timely, except for cause occasioned by Act of God, shall permit City to declare this Contract voided and of no further effect.

1.3. Arbitration: This contract is not subject to arbitration.

1.4. Dispute Resolution: If the parties hereto cannot settle any difference arising between them without litigation, any such litigation shall take place in the South Carolina Circuit Court in Conway, South Carolina.

1.5. Merger, Amendment, and Waiver: This Contract contains all the terms of all agreements, oral or written, between the parties, and is the only document containing all such terms. This Contract merges all prior contracts, agreements, and understandings between **City** and **Provider** concerning the scope of work described herein. The Scope of Services described in this Contract, and all other terms of this Contract, shall not be amended or varied except by a written instrument signed by a duly authorized signatory of **City** and **Provider**.

Forbearance by **City** from enforcing the strict terms of this Contract shall not be a waiver of any other term of this Contract, nor shall such forbearance entitle **Provider** to rely upon such forbearance in the event of another similar breach by **Provider** of the terms of this Contract. Any variance to the terms of this Contract shall be attached as an Exhibit hereto, and shall have effect as from the effective date thereof as set forth on such Exhibit.

1.6. Compliance with EEOC and other State and Federal Laws: To the extent set forth in the respective statutes, Provider shall comply with the provisions of:

1.6.1. Title VII of the Civil Rights Act of 1964;

1.6.2. Age Discrimination in Employment Act of 1967;

1.6.3. Title I of the Americans with Disabilities Act of 1990;

1.6.4. Equal Pay Act of 1963;

1.6.5. Fair Labor Standards Act of 1938;

1.6.6. Immigration Reform and Control Act of 1986;

1.6.7. South Carolina Payment of Wages Act, S.C. Code §§ 41-10-10 *et seq.*;

1.6.8. South Carolina Worker's Compensation Act, S.C. Code §§ 42-1-10 *et seq.*;

1.6.9 South Carolina Illegal Immigration Reform Act, including without limitation Chapters 14&29, Title 8, and Chapter 8, Title 41, S.C. Code of Laws;

1.6.10 Part 681, Title 16 of the Code of Federal Regulations, Sections 114 and 315 of the Fair and Accurate Credit Transactions Act (FACTA) of 2003; the South Carolina Act 190 of 2008; Financial and Identity Theft Protection Act; and the City of Conway Privacy / Identity Theft Policy.

1.7. By entering into this Contract, Provider affirmatively warrants that Provider is currently in compliance with such laws, and further warrants that during the term of this Contract, Provider shall remain in compliance therewith.

2. SCOPE OF SERVICES:

2.1. Provider shall perform those tasks set forth in Exhibit “A”, attached hereto and incorporated herein by reference. The anticipated scope of work shall be considered the minimum service to be provided under this Contract. If any term contained in Exhibit “A” shall conflict with any of the terms of this Contract, then such term as set forth on Exhibit “A” shall not bind **City**.

2.2. All services to be performed by **Provider** under this Contract shall be performed within the term set forth on Exhibit “A”.

3. PAYMENT FOR SERVICES:

3.1. The costs of services are set forth in Exhibit “B” of this Contract.

3.2. Services not included in the Scope of Services constitute additional charges to **City**, at rates and intervals to be agreed upon between **City** and **Provider** in a written Amendment executed by both parties prior to the performance of such services.

4. WARRANTIES OF PROVIDER AND CITY:

4.1. City warrants that:

4.1.1. City has the lawful authority required under State law and **City’s** Ordinances to enter into and perform this Contract;

4.1.2. City shall not offer employment to any employee of **Provider** for a period of two (2) years after the termination, except for cause, of this Contract.

4.2. Provider warrants that Provider has:

4.2.1. All necessary licenses and consents required for **Provider** to enter into and fully perform the Scope of Services set forth on Exhibit “A”, and is in good standing in the State of South Carolina;

4.2.2. All required insurances, including Worker’s Compensation Insurance and General Liability Insurance, to indemnify City against any and all claims arising under or as a result of the performance of this Contract, in at least the following amounts (or in those amounts, if specified, as set forth in **City’s** Invitation to Bid or Request for Qualifications, that formed the basis of the Scope of Services of this Contract):

Worker’s compensation shall include a minimum limit of \$100,000 per accident and comprehensive general liability coverage shall provide minimum limits of liability of \$1,000,000 per occurrence Combined Single Limit for Bodily Injury and Property Damage. This shall include coverage for premises/operations, products/completed operations, contractual liability, errors and omissions (professional liability), independent contractors and vehicles used in premises/operations. Insurance shall indemnify **City** against any and all claims arising under or as a result of the performance of the contract. The **City** shall be named as an additional insured on all liability policies. The **City** must be provided with notice prior to cancellation, modification or reduction in limits of any stipulated insurance.

4.2.3. No conflict of interest with any other contract with a third party that might cause a claim to arise against **City** by the entry into or performance of this Contract by **Provider**.

4.3. Provider warrants that Provider shall throughout the term of this Contract:

4.3.1. Perform all tasks required under the Scope of Services with a degree of skill and care of reputable members of the same profession in South Carolina;

4.3.2. Maintain all insurances required by law or this Contract, including worker’s compensation, premises liability, general liability, and professional malpractice coverage in those amounts set forth herein;

- 4.3.3. Properly withhold from all wages, commissions, salaries, and fees paid by **Provider** to third parties or employees, agents, or sub-contractors of **Provider**, all amounts required by State or Federal law to be withheld for or on account of taxes, social security payments, or other withholdings mandated by law or regulation;
- 4.3.4. Ensure that any third party, employee, agent, or sub-contractor of **Provider** shall comply with the terms of this Contract concerning employment discrimination, insurances, and withholdings, so far as concerns this Contract;
- 4.3.5. Comply with all lawful demands made pursuant to the South Carolina Freedom of Information Act, S.C. Code § 30-4-10 et seq. or the Federal Freedom of Information Act, 5 U.S.C.S. § 552;
- 4.3.6. Make no offer of employment to any **City** employee for a period of two (2) years after the termination of this Contract.

5. OWNERSHIP OF PROJECT MATTER: Unless otherwise agreed between **City** and **Provider**, and approved by **City's** attorney:

5.1. All plans, reports, surveys, and other professional work product of **Provider** concerning this Contract (but not internal working files, drafts, memoranda, and equipment) shall become the property of **City** during and at the completion or termination of this Contract;

5.2. All materials supplied or loaned by **City** to **Provider** during the term of this Contract shall remain the property of **City**;

5.3. All intellectual property provided to **City** by **Provider** and originating from this Contract shall become and remain the property of **City**, and **Provider** shall not, without the written consent and license from **City**, use such intellectual property for another commercial purpose;

5.4. **City** shall not become the owner, assignee, or licensee of any standard routine, programs, development tools, techniques, interfaces, texts, or other work existing prior to the date of this Contract that may be used by **Provider** in providing the services or intellectual property subject to this Contract, except as may be specifically agreed in writing between the parties.

6. EARLY TERMINATION OF CONTRACT: **City** and **Provider** shall have the right, upon sixty (60) days written notice, to terminate this Contract, and thereafter **City** shall have no obligation to pay for services provided to **City** except up to the effective date of termination of this Contract. In the event **Provider** exercises its right to terminate this Contract, **Provider** will not cease services for a reasonable period of time, not to exceed One-Hundred Twenty (120) days, to allow **City** to procure another provider.

7. INDEPENDENT CONTRACTOR STATUS: **Provider** shall not, by entering into this Contract, become a servant, agent, or employee of **City**, but shall remain at all times an independent contractor to **City**. This Contract shall not be deemed to create any joint venture, partnership, or common enterprise between **Provider** and **City**, and the rights and obligations of the parties shall not be other than as expressly set forth herein.

8. NOTICES TO PARTIES: All notices to each party to this Contract, except routine notices of performance of the Scope of Services during the Contract term, shall be in writing, and sent as follows:

8.1. To City:

8.1.1.

with a copy to:

City of Conway City Administrator
229 Main Street
Conway, SC 29526
(Tel: 843-248-1760)

8.2. To Provider:

8.2.1.

with a copy to:

8.3. Form of Notice: All notices required or permitted under this Contract shall be effective:

8.3.1. On the third (3rd) business day after mailing by depositing the notice in the United States Mail, certified mail, return receipt requested, postage prepaid, addressed as set forth above; or on the day of receipt of such notice (whether by mail, courier, hand delivery, or otherwise), whichever is the earlier date of receipt; or

8.3.2. On the first day after receipt of a facsimile transmission of the written notice, with delivery confirmed, provided that such notice is also thereafter sent by first class mail as set forth above.

9. INDEMNIFICATION AND HOLD HARMLESS AGREEMENT: The **Provider** will indemnify and hold harmless the **City** and its agents and employees from and against all claims, damages, losses and expenses, including attorney's fees arising out of or resulting from the performance of the Work provided that any such claims, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, injury to or destruction of tangible property, including the loss of use resulting therefrom, and is caused by any negligent or willful act or omission of the **Provider**, and anyone directly or indirectly employed by it or anyone for whose acts any of them may be liable. In any and all claims against the **City** or any of their agents or employees by an employee of the **Provider**, and anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way to the amount or type of damages, compensation or benefits payable by or for the **Provider** under the workman's compensation acts, disability benefit acts, or other employee benefit acts. The obligation of the **Provider** under this paragraph shall not extend to the liability of

the **City** or its agents or employees arising out of reports, surveys, change orders, designs, or specifications that are un-attributable to the **Provider**.

10. ASSIGNMENT: **Provider** shall not assign, permit the assumption of or in any manner transfer any interest in this Contract, or any part thereof, without the prior written consent of the **City**. If **Provider** assigns, permits the assumption of or in any manner attempts a transfer of its interest in this Contract, **City**, in its sole discretion, may declare this entire Contract null and void.

IN WITNESS WHEREOF, the parties have executed this Contract in three (3) originals, each of which shall be deemed to be an original on the Effective Date first above written.

Provider:

By (signature): _____

Date: _____

Print Name: _____

Title: _____

Witness: _____

City:

By (signature): _____

Date: _____

Print Name: Adam Emrick

Title: City Administrator

Witness: _____

VI. ADDITIONAL CONTRACT TERMS AND CONDITIONS APPLY:

Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(E) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(F) Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(G) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(H) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(I) See §200.322 Procurement of recovered materials.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014]

Grants Administration Community Development Block Grant Program

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) **Equal Employment Opportunity:** In carrying out the program, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor must take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this non-discrimination clause.

The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin. The Contractor shall incorporate the foregoing requirements of this paragraph in all of its subcontracts for project or program.

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

The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State advising the said labor union or workers' representatives of the contractor's commitment under this Section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the State. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the State or pursuant thereto, and will permit access to his books, records, and accounts by HUD and the State for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the Contractor's noncompliance with the non-discrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contract procedures authorized in Executive Order 11246 of September 24, 1965, or by rules, regulations, or order of the State, or as otherwise provided by law.

The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the State issued pursuant to section 204 of Executive Order 11246 of September 25, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the State may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the State the contractor may request the State to enter into such litigation to protect the interest of the State.

The Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the Grantee so participating is a local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

(B) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act,

each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(C) **Clean Air Act** (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the nonFederal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(D) **Debarment and Suspension** (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(E) **Byrd Anti-Lobbying Amendment** (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(F) **Subcontracting with Small and Minority Firms, Women’s Business Enterprise and Labor Surplus**

Areas: It is national policy to award a fair share of contracts to small and minority and women’s owned businesses. Accordingly, affirmative steps must be taken to assure that small, minority and women owned businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

- (1) Including qualified small and minority businesses on solicitation lists;
- (2) Assuring that small, minority and women owned businesses are solicited whenever they are potential sources;
- (3) Whenever economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small, minority and women owned businesses' participation;
- (4) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority businesses; and

(5) Using the services and assistance of the Small Business Administration, the Governor's Office of Small and Minority Business Assistance, the Department of Commerce and the Community Services Administration as required.

(G) **Section 109 of the Housing and Community Development Act of 1974:** No person in the United States shall on the grounds of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

(H) **Section 504 of the Rehabilitation Act of 1973, as amended:** The Contractor agrees that no otherwise qualified individual with disabilities shall, solely by reason of his disability, be denied the benefits, or be subjected to discrimination including discrimination in employment, any program or activity that receives the benefits from the federal financial assistance.