

## **Request for Proposals (RFP) Design Phase Cost Analysis For**

**Recreation and Parks Department**  
2000 Cedar Lane  
Greenville, NC 27858

Date of Issue: ***February 18, 2015***

### **South Greenville Recreation Center and Park Renovations**

Through this RFP the City of Greenville is soliciting Proposals from professional construction estimators for the provision of upfront cost analysis during the design phase of the South Greenville Recreation Center and Park Renovations.

#### **Project Manager Contact Information:**

Lamarco M. Morrison, Parks Planner  
City of Greenville  
Greenville Recreation and Parks Department  
Parks Division  
(252) 329-4242  
[lmorrison@greenvillenc.gov](mailto:lmorrison@greenvillenc.gov)

## 1. DEFINITIONS IN THIS RFP

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**“City”** means the City of Greenville.

**“Proposal”** is the response of a person, firm, or corporation proposing to provide the services sought by this RFP.

**“Proposer”** is the person, firm, or corporation that submits a Proposal.

**“Estimator”** is the Proposer with which the City enters into a contract to provide the services stipulated in this RFP.

## 2. PURPOSE OF RFP & SCOPE OF SERVICES

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The South Greenville Park and Recreation Center is located at 851 Howell Street, Greenville, NC. The recreation center was built in 1957, and since its completion has provided basic amenities to several surrounding neighborhoods. However, the facility has not had any significant renovations since it was built. The current facilities are outdated and inadequate in serving its users. The project focuses on major renovations to the existing 6,690 square foot gymnasium and storage areas, the demolition/reconstruction of the existing 8,054 square foot building space that currently houses office space for staff, a computer lab, weight room, multi-purpose room, kitchenette, and staff restroom. Additionally, the project will include a 2,200 square foot building addition that includes 2 multi-purpose rooms, storage and staff office. Site improvements for the project include vehicular circulation, ADA compliant sidewalks, two paved parking lots, renovations to the youth baseball practice field and multi-purpose field, and site amenities. The final South Greenville Recreation Center and Park Master Plan, shown in **Appendix A**, provides a conceptual building facility, building program elements and site plan that addresses facility renovations and site improvements.

The purpose of this RFP is to secure construction cost analysis services for the City of Greenville Recreation and Parks Department. The goal of the RFP is to identify qualified firms or individuals to contract with the City to provide upfront construction cost analysis for the construction of renovations at the South Greenville Recreation Center and Park.

### 2.1. SCOPE OF SERVICES

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The City of Greenville is seeking qualified firms or individuals to provide upfront cost analysis in relation to the plans and specifications for the South Greenville Recreation Center and Park Renovations. The proposed renovations have a minimum of 16,944 square feet of building space, and a maximum budget for construction of \$2,600,000. The Estimator shall prepare independent construction cost analysis at the end of 100% Schematic Design Phase, 100% Design Development Phase, 60% Construction Documents Phase, and 100% Construction Documents Phase for comparison with the Designer's estimates. A line item by line-item comparison and reconciliation of the two estimates will be performed.

Cost analysis reports and all subsequent updates shall be submitted to the Project Manager within 15 days after the Designer's completion of the design documents for each phase (or within such reasonably longer period of time as agreed to by the City).

2.2.1. FORMAT – The Estimator shall format estimates by building systems and sub-systems (Uni-format) in order to monitor cost by system. Any cost variations between estimate phases shall be analyzed and explained. Cost reduction measures shall be taken, if deemed necessary, to bring costs in line with budget estimates.

2.2.2. VALUE ENGINEERING – The Estimator shall attend Value Engineering meetings, if deemed necessary, to bring costs in line with the budget. When it has been determined that the design documents are within budget, the Project Manager shall issue a Notice to Proceed to the Designer to continue into the subsequent Design Phase.

2.2.3. ESTIMATING SOFTWARE – Standard estimating software will be used and draw cost data from historical cost databases. The Estimator will coordinate the efforts of all estimators and be responsible for the final quality and accuracy of the estimates.

2.2.4. UNIQUE PROJECT FACTORS – The Estimate shall be responsible for determining all local adjustment factors to be applied to the estimate for Construction Administration, Contractors Overhead, Profit, Insurance, and Taxes. In addition, the Estimator shall be responsible for selecting the appropriate time-period and Cost Index to apply to the estimate for escalation.

2.2.5. DESIGNER'S ESTIMATE – The Designer shall be required to produce an independent estimate at the end of 100% Schematic Design, 100% Design Development, 50% Construction Documents, and 100% Construction Document Phrases. The purpose of the Designer estimate is to provide a basis for comparison with the Estimator's estimates. **The Estimator will coordinate estimating protocols with the Designer prior to the start of each estimate by requesting the proposed format from the Designer.** The Estimate will not discuss assumptions or pricing with the Designer's cost consultant.

2.2.6. ESTIMATE RECONCILIATION – The City shall be responsible for scheduling, producing the agenda, distributing the estimates, and notifying the attendees of the date and location of the estimate reconciliation meeting. At least one week prior to the meeting, the Estimator and the Designer shall exchange estimates. Each firm shall study the other's estimate in preparation for the upcoming meeting.

## **2.2. CITY RESPONSIBILITIES**

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The City of Greenville shall be responsible for:

- a. Arranging, scheduling, and providing facility space for meetings.
- b. Providing the Estimator with copies of relevant South Greenville Recreation Center plans that will assist the consultant in his/her cost analysis. Note that the City can only provide those plans that are currently in existence, and is not responsible for plan information that is incorrect, incomplete, or out of date.
- c. Providing the Estimator with copies of relevant City of Greenville plans, studies, master plans, ordinances, design guidelines and special plans of the project area.
- d. Providing access to the facility during normal business hours of operation.

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

## 2.3. CONTRACT

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

### Exceptions:

Any and all exceptions to the RFP must be listed on an item-by-item basis and cross-referenced with the RFP 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

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Firms that are interested in providing the required services to the Greenville Recreation and Parks Department (GRPD) are invited to submit a Proposal, in electronic format only, to Lamarco. M. Morrison at [lmorrison@greenvillenc.gov](mailto:lmorrison@greenvillenc.gov). Each firm is solely responsible for the timely delivery of its Proposal. All Proposals must be received **by 2:00 pm local time on Tuesday, March 3, 2015.** ***No Proposal will be accepted after this deadline.*** Firms accept all risks of late delivery regardless of fault.

**The individual, firm, or corporation awarded the contract to provide the services described herein will, as a condition of the contract, be prohibited from submitting a bid on the contract for the construction of the "South Greenville Recreation Center and Park Renovations" Project and from participating as a contractor or subcontractor in the construction of the "South Greenville Recreation Center and Park Renovations" Project.**

### 3.1. SUBMITTAL TIMELINE

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

Advertisement .....	February 18, 2015
Proposals .....	March 11, 2015
Evaluation procedure .....	March 6, 2015
Contract Negotiations.....	March 16, 2015
Contract Approval (Notice to Proceed) .....	March 23, 2015

### 3.1.1 DESIGN SCHEDULE

Schematic Design Complete .....	March 23, 2015
Design Development Complete .....	April 20, 2015
50% Construction Documents .....	May 13, 2015
100% Construction Documents .....	May 25, 2015

## **3.2. FORMAT**

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The Proposal shall include the information outlined below and in the following order. Proposals shall not exceed 15 pages (single sided), exclusive of specifications, drawings and / or photographs incorporated into their offerings. Photographs and graphics included should help describe the quality of each project.

### **3.2.1. COVER LETTER**

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The Proposal 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 Proposal on behalf of the legal name of company in response to the City of Greenville RFP for the Design Phase Cost Analysis for the South Greenville Recreation Center and Park Renovations Cost Analysis.

### **3.2.2. PROJECT TEAM**

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

- a). Provide the firm’s information including the firms principal office locations, and number of employees.
- b). Identify key members of the firm’s staff along with their technical certifications and experience. Include the individual who will be the primary contact for the firm.
- c). Include detailed resumes of all team members assigned to this project including sub-consultants.

### **3.2.3. RELEVANT EXPERIENCE**

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Provide a summary of Proposer’s experience with projects of similar scope. Include detailed information for a maximum of ten previously completed projects by the firm 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.

### **3.3. LIMIT ON CLAIMS**

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

### **3.4. COMMUNICATION GUIDELINES AND QUESTIONS**

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Firms may submit written questions concerning this RFP to the Project Manager for receipt no later than **5 pm local time on Thursday, February 26, 2015**. Any questions about the RFP should be submitted, in writing to:

Lamarco M. Morrison, Parks Planner  
City of Greenville  
Recreation Department  
PO Box 7207  
Greenville, NC 27834-7207

or via Email: [lmorrison@greenvillenc.gov](mailto:lmorrison@greenvillenc.gov)

or via fax: (252)329-4062

Questions received after the stated deadline will not be answered. No oral statement of any person shall modify or otherwise change or affect the terms, conditions, or specifications stated in the RFP, and changes to the RFP, if any, shall be made in writing only and issued in the form of an Addendum to the RFP.

### **3.5. COMPENSATION**

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Compensation will be negotiated with the successful Proposer.

### **3.6. EVALUATION CRITERIA**

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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 RFP. GRPD shall perform the evaluations, and shall put each Proposal submitted through a process of evaluation to determine responsiveness to all administrative and technical requirements of the RFP.

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 Proposal Package or obtain additional information. All firms/teams who submit a Proposal Package will be notified of the selection

### **3.6.1. EVALUATION METHOD**

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

Analysis: The City will analyze how the Proposers' qualifications, experience, and professional content meet the City's needs.

## **4. ADDITIONAL PROVISIONS OF THIS RFP**

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A response to this RFP should not be construed as a contract, nor indicate a commitment of any kind. The RFP does not commit the City to pay for costs incurred in the submission of a response to this RFP or for any cost incurred prior to the execution of a final contract. No recommendations or conclusions from this RFP 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**

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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 RFP 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 D, Section 6 of the Standard form of Agreement**.

### **4.2. DISCRETION OF THE CITY**

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The City reserves the right to request substitutions of sub-consultants. The City reserves the right to contact any firm/team to negotiate if such is deemed desirable by the City. The City of Greenville reserves the right to reject any or all Proposals. 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 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 Proposal, whether or not something is stated to be mandatory and whether or not it is said that an Proposal will be rejected if certain information or documentation is not submitted with it, and (ii) to enter into an agreement for the work with one or more firms that do not submit an Proposal. For example, all deadlines are for the administrative convenience or needs of the City and may be waived by the City in its discretion.



# MASTER PLAN



## SOUTH GREENVILLE RECREATION CENTER GREENVILLE RECREATION & PARKS OCTOBER 2014



### LEGEND

- (A) ELEMENT A - GYMNASIUM AND CENTER RENOVATION - 6600 SQ. FT.**
- GYMNASIUM INTERIOR, 6600 SQ. FT.**
- BUILDING RENOVATIONS 6024 sq. ft.:
    - Two Offices
    - Computer lab
    - Weight room
    - ADA compliant restrooms
    - Multi-Purpose Room
  - PAVED PARKING LOT
- (B) ELEMENT B - BUILDING ADDITION**
- BUILDING EXPANSION 2200 SQ. FT. :**
- Multi-Purpose Room
  - Office Space
  - PAVED PARKING LOT
- (C) ELEMENT C - SPORTS FIELDS & SITE IMPROVEMENTS**
- BASEBALL FIELD RENOVATIONS**
- New Turf
  - Irrigation System
  - Sports Field Lighting
  - Bleachers
- MULTI-PURPOSE FIELD**
- Goal Posts
  - Irrigation System
  - Sports Field Lighting
  - Fencing
- SITE FURNISHINGS**
- Water Fountain
  - Benches
  - Trash Receptacles and Recycling Bins
  - Bollards

### NOTES

-THE PLAN IS DIVIDED INTO THREE ELEMENTS AS SHOWN ON THE PLAN AND COST ESTIMATE.

A) ELEMENT (A) MAKES USE OF THE EXISTING GYMNASIUM FRAME AND EXISTING BUILDING FOOTPRINT, AND INCLUDES THE FOLLOWING:

- 1) DEMOLITION - Demolition of existing structures including gymnasium interior (keeping the frame and metal siding only) existing sidewalks, parking areas, clearing and grubbing.
- 2) GYMNASIUM - Interior renovation of existing structure, furnishings, and new HVAC.
- 3) NEW BUILDING EXPANSION - 8,024 sq. ft. of new space to include two offices, a multi-purpose room, kitchenette, and weight room.
- 4) SITE WORK - Two paved parking lots, site utilities (storm drainage, site lighting, sanitary sewer) entrance plaza and landscaping.
- 5) New paved parking area with 18 parking spaces.

B) ELEMENT (B) INCLUDES A BUILDING EXPANSION WITH THE FOLLOWING ELEMENTS:

- 1) 4,645 sq. ft. of new building space to include a meeting room, locker room, multi-purpose room, and dance studio.
- 2) Office furnishings including cabinetry, fixtures, blinds, tables, appliances and chairs.
- 3) New paved parking area with 25 parking spaces.

C) ELEMENT (C) INCLUDES SPORTS FIELDS AND SITE IMPROVEMENTS:

- 1) Upgrade existing baseball field with new sod and irrigations
- 2) New multi-purpose field with goal posts and irrigation
- 3) Sports field lighting, bleachers, vinyl coated fencing, and site furnishings.



# Standard Form of Agreement Between Owner and Architect

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The name of this Agreement is:

## CONTRACT FOR COST ANALYSIS RELATED TO THE SOUTH GREENVILLE PARK AND RECREATION CENTER RENOVATIONS

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];*

Sec. 1. Background and Purpose. The South Greenville Park and Recreation Center is located at 851 Howell Street, Greenville, NC. The recreation center was built in 1957, and since its completion has provided basic amenities to several surrounding neighborhoods. The Design Phase of the project focuses on major renovations to the existing 6,690 square foot gymnasium and storage areas, the demolition/reconstruction of the existing 8,054 square foot building space that currently houses office space for staff, a computer lab, weight room, multi-purpose room, kitchenette, and staff restroom. Additionally, the project will include a 2,200 square foot building addition that includes 2 multi-purpose rooms, storage and staff office. Site improvements for the project include vehicular circulation, ADA compliant sidewalks, two paved parking lots, renovations to the youth baseball practice field and multi-purpose field, and site amenities.

The purpose of this Contract is for the provision of upfront construction cost analysis for the construction of renovations at the South Greenville Recreation Center and Park.

Sec. 2. Services and Scope to be Performed. The Estimator shall provide professional services as follows:

The proposed renovations have a minimum of 16,944 square feet of building space, and a maximum budget for construction of \$2,600,000. The Estimator shall prepare independent construction cost analysis at the end of 100% Schematic Design Phase, 100% Design Development Phase, 60% Construction Documents Phase, and 100% Construction Documents Phase for comparison with the Designer's estimates. A line item by line-item comparison and reconciliation of the two estimates will be performed.

Cost analysis reports and all subsequent updates shall be submitted to the Project Manager within 15 days after the Designer's completion of the design documents for each phase (or within such reasonably longer period of time as agreed to by the City).

2.2.1. FORMAT – The Estimator shall format estimates by building systems and sub-systems (Uni-format) in order to monitor cost by system. Any cost variations between estimate phases shall be analyzed and explained. Cost reduction measures shall be taken, if deemed necessary, to bring costs in line with budget estimates.

2.2.2. VALUE ENGINEERING – The Estimator shall attend Value Engineering meetings, if deemed necessary, to bring costs in line with the budget. When it has been determined that the design documents are within budget, the Project Manager shall issue a Notice to Proceed to the Designer to continue into the subsequent Design Phase.

2.2.3. ESTIMATING SOFTWARE – Standard estimating software will be used and draw cost data from historical cost databases. The Estimator will coordinate the efforts of all estimators and be responsible for the final quality and accuracy of the estimates.

2.2.4. UNIQUE PROJECT FACTORS – The Estimate shall be responsible for determining all local adjustment factors to be applied to the estimate for Construction Administration, Contractors Overhead, Profit, Insurance, and Taxes. In addition, the Estimator shall be responsible for selecting the appropriate time-period and Cost Index to apply to the estimate for escalation.

2.2.5. DESIGNER'S ESTIMATE – The Designer shall be required to produce an independent estimate at the end of 100% Schematic Design, 100% Design Development, 50% Construction Documents, and 100% Construction Document Phrases. The purpose of the Designer estimate is to provide a basis for comparison with the Estimator's estimates. **The Estimator will coordinate estimating protocols with the Designer prior to the start of each estimate by requesting the proposed format from the Designer.** The Estimate will not discuss assumptions or pricing with the Designer's cost consultant.

2.2.6. ESTIMATE RECONCILIATION – The City shall be responsible for scheduling, producing the agenda, distributing the estimates, and notifying the attendees of the date and location of the estimate reconciliation meeting. At least one week prior to the meeting, the Estimator and the Designer shall exchange estimates. Each firm shall study the other's estimate in preparation for the upcoming meeting.

Sec. 3. Complete Work without Extra Cost. The City shall pay the Designer for the Work as follows: The City shall not be obligated to pay the Designer any payments, fees, expenses, or compensation other than those authorized by this section.

Sec. 4. Compensation. The City shall pay the Designer for the Work as follows:

The Designer shall be compensated on a monthly basis based on the completed services outlined below.

**PHASE**

Schematic Design .....	25%
Design Development .....	35%
Final Construction Documents .....	40%

Sec. 5. Estimator's Billings to City. The Estimator 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 twenty days after the City receives an invoice, the City shall send the Estimator a check in payment for all undisputed amounts contained in the invoice.

Sec. 6. Insurance. The Estimator shall not commence services under this Contract until the Estimator 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 Estimator shall take out and maintain during the life of this Contract such Public Liability and Property Damage Insurance as shall protect from claims for damage for personal injury, including accidental death, as well as from claims for property damages which may arise from operations under this Contract, whether such operation be by himself or by any sub-consultant, or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall not be less than \$500,000 for injuries, subject to the same limits per person and \$1,000,000 for property damage or otherwise needed to protect the interests of the City. The City of Greenville shall be named as an additional insured on all coverage.

**B. Other Insurance:**

The Estimator shall furnish such additional insurance as may be required by the General Statutes of North Carolina, including motor vehicle insurance in amounts not less than statutory limits.

**C. Workers Compensation.**

Meeting the statutory requirements of the State of North Carolina and Employers Liability - \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit.

**D. Cancellation:**

Each certificate of insurance shall bear the provision that the policy cannot be canceled in less than ten (10) days after mailing written notice to the assured of such cancellation.

**E. Proof of Carriages:**

The Estimator shall furnish the City with satisfactory proof of carriage of the insurance required before written approval of such insurance is granted by the City.

**F. Sub-Consultants:**

If any part of the services to be performed under this Contract is sublet, the sub-consultant shall be required to meet all insurance requirements set forth in this Agreement. The parties stipulate that the Estimator 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 Estimator from meeting all insurance requirements or otherwise being responsible for the sub-consultant.

Sec. 7. Performance of Work by City. If the Estimator fails to perform the service under this contract in accordance with the schedule listed in Attachment A, 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 services, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Estimator notice of its intention. The Estimator 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 services pursuant to this section.

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

Sec. 12. 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 Estimator 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 Estimator of monies due, the Estimator 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 Estimator shall be relieved of any liability whatsoever. In case of TFC, the Estimator shall follow the City's instructions as to which Subcontracts to terminate. (c) *Payment*. The City shall pay the Estimator 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 Estimator. Within 20 days after TFC, the City shall pay the Estimator 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 Estimator 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.

Sec. 13. Notice. (a) All notices and other communications required or permitted by this Contract shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the City of Greenville:

c/o Greenville Recreation and Parks Department  
P.O. Box 7207  
Greenville, NC 27835  
The fax number is (252) 329-4062

To the Estimator:

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this Contract shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 14. Indemnification. The Estimator 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 Estimator or any sub-consultant or other persons employed or utilized by the Estimator 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 Contractors, agents, officers or employees.

Sec. 15. 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 Estimator 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 Estimator and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Estimator's duties that arise out of this Contract and all of the City's claims that arise out of this Contract. Without granting the Estimator the right to assign, it is agreed that the duties of the Estimator 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 Estimator 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 ESTIMATORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONSULTANTS AND VENDORS UNDER CITY CONTRACTS.

(h) EEO Provisions. During the performance of this Contract the Estimator agrees as follows: (1) The Estimator 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 Estimator 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 Estimator shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Estimator shall in all solicitations or advertisement for employees placed by or on behalf of the Estimator, 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 Estimator 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 Estimator'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 Estimator ineligible for further City Contracts. (5) Unless exempted by the City Council of the City of Greenville, the Estimator 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-consultant vendors.

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

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

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

(m) Standard of Care. In rendering its services under this Contract, the Estimator shall exercise that degree of care which an Estimator of ordinary skill and prudence practicing in Pitt County, North Carolina or similar communities would exercise under the same or similar circumstances.

(n) Hazardous Materials. Estimator 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.

(o) Prohibition from Bidding. The individual, firm, or corporation awarded the contract to provide the services described herein will, as a condition of the contract, be prohibited from submitting a bid on the contract for the construction of the “South Greenville Recreation Center and Park Renovations” Project and from participating as a contractor or subcontractor in the construction of the “South Greenville Recreation Center and Park Renovations” Project.



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:

[COMPANY NAME]

BY: \_\_\_\_\_  
Barbara Lipscomb  
City Manager

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

**APPROVED AS TO FORM:**

BY: \_\_\_\_\_  
David A. Holec, 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: \_\_\_\_\_  
Bernita W. Demery, CPA, Director of Financial Services