



REQUEST FOR QUALIFICATIONS (RFQ)

Request for Statements of Interest and Qualifications of Engineering Firms for cost estimate, design, permitting, bidding and construction for a Five-Million-Gallon water ground storage tank with booster pump station

RFQ DUE DATE/TIME:

**December 14, 2023
2:00 p.m. EST**

RFQ NUMBER:

23-10PU-Q1

POINT OF RECEIPT:

**City of Conway
c/o Amanda Hooper
PO Drawer 1075
Conway, SC 29528**

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

ADVERTISEMENT

CITY OF CONWAY

Qualified professional Engineering Firms are invited to submit Statements of Interest, Qualifications and Experience Proposals to the City of Conway to provide professional design services for a New Five-Million-Gallon ground storage tank with booster pump station to be located near Highway 905 in Conway, SC.

Professional services shall include Basic and Additional Architectural, Engineering, and Cost Estimating services, generally described in the AIA B101 Owner Architect 2017 edition, as necessary for the programming, planning, design, preparation of contract documents, and contract administration of the proposed project.

The project will consist of an approximately 5,000,000 gallon ground storage water tank with booster station to help maintain pressure and flows during peak use times.

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 29527 no later than **2:00 p.m., local time, on December 14, 2023, 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 proposals will be accepted. Statements of Qualifications **MUST** be enclosed in a sealed envelope, clearly marked **“RFQ Statements of Interest and Qualifications of Design Professional for Development of a Five Million Gallon Ground Storage Tank”** on the outside of the envelope.

Contact Information for this Project

Amanda Hooper
ahooper@cityofconway.com
(843) 397-2539

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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 29527, no later than 2:00 p.m., local time on **December 14, 2023**. Any Statements of Qualifications received later than the specified time and date will be considered a "Late Proposal" and will not be accepted or considered. No facsimile, email, or telephone proposals 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 proposal envelope/package. City of Conway shall not be responsible for unidentified proposals.

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 proposer shall sign his proposal correctly by submitting the required Proposal 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 Mrs. Amanda Hooper via email at ahooper@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 **December 6 2023**.

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 RFQ 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

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

Acceptance of Proposal 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 proposal, or to procure or contract for goods or services listed herein. Costs associated with proposal 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.

Grievance

Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the bid solicitation 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 the acceptance of the bid. 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 a new Five-Million-Gallon ground storage water tank with booster station.

RFQ PURPOSE/OVERVIEW

The initial purpose of this Request for Qualifications (“RFQ”) is to solicit proposals from qualified and experienced consultants to perform Design Services for a new Five-Million-Gallon ground storage water tank located on Highway 905. Proposers are not expected to submit a complete project analysis or design in their proposals. Rather, proposers must provide sufficient information for City of Conway to evaluate their Proposals in accordance with the process and criteria established in this RFQ.

PROJECT SCOPE

In support of the rapid pace that the City is growing, there is a pressing need to maintain adequate water pressure and flows. This project will ensure reliable and efficient water distribution to meet current and future demands. Therefore, the City intends to develop and construct a new Five-Million-Gallon Water Ground Storage Tank off of Highway 905 in Conway, SC.

The projects will consist of the design and construction of an approximately 5,000,000 water ground storage tank with booster pump stations. There will need to be a hydraulic study done to determine the best location and design for the tank. The facility shall be completely finished and include but not limited to 5,000,000 gallon ground storage tank, complete pump station design, diesel by-pass pump, SCADA System, appropriate security lighting, electrical needs and all equipment enclosed in a fenced in area.

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 new Ground Storage Tank. 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. There will need to be a hydraulic study done to determine the best location and design for the tank.

Additionally, the selected firm will provide construction observation 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 proposal.

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.

PROPOSAL SUBMISSIONS

Proposals 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 Proposal may be deemed non-responsive and may not be further considered. By submitting a proposal, 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 submitted.
- project approach to providing the professional services requested. Design services proposed shall be detailed.
- 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.

IV. REQUIRED FORMS

REFERENCES

PROPOSAL CERTIFICATION and ACKNOWLEDGEMENT OF ADDENDA FORM

NON-COLLUSION AFFIDAVIT

W-9 IRS FORM



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: _____



PROPOSAL CERTIFICATION and ACKNOWLEDGEMENT OF ADDENDA

In compliance with the request for proposal, 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 _____
the party making the foregoing Proposal that such proposal 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 proposal, 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 proposal of affiant or any other PROPOSER or to fix any overhead, profit or cost element of said Proposal 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 Proposal are true; and further, that such PROPOSER has not, directly or indirectly submitted this Proposal, 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 _____, 2023.

Notary Public for South Carolina

My Commission Expires _____

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 Proposals/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: _____