CORNELIUS PARKS AND RECREATION DEPARTMENT
REQUEST FOR PROPOSALS
FOR
Pickleball Program Operator

Exceptional Parks, Greenways, and Community Experiences

RFP RELEASE DATE:

OCTOBER 1, 2024

PROPOSALS DUE:

DECEMBER 12, 2024 @ 12 PM.

DELIVER PROPOSALS TO:

C/O Josh Handelsman, CPRP, Recreation Superintendent

Cornelius Parks and Recreation Department

USPS Mail: P.O. Box 399

Ground Delivery: 21445 Catawba Avenue

Cornelius, North Carolina 28031

Phone: (704) 892-6031 Ext. 165

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NOTICE INVITING PROPOSALS FOR SERVICES TO PERFORM

Pickleball Program Operator

Introduction

The Town of Cornelius Parks & Recreation Department (the "Town") is issuing this Request for Proposals (RFP) to solicit proposals from experienced and qualified professional Pickleball Program Operators ("Operators"). The selected Operator will be responsible for delivering comprehensive Pickleball programming that caters to the growing interest and participation within our community. As part of this engagement, the Town seeks an Operator who can not only manage and expand our current program offerings but also provide strategic recommendations for enhancing and scaling these programs to better serve the increasing demand within the local Pickleball community.

Town Background

The Town of Cornelius is located in Mecklenburg County, North Carolina. The Parks & Recreation Department provides quality programs, parks, and facilities for everyone to enjoy. The Department oversees various recreational facilities, including parks, sports fields, and recreation centers. Detailed information about the parks and recreation facilities can be found on the Town website.

Project Goals & Objectives

This document provides Operators with the necessary information to submit a proposal for review and, if selected, to enter into a Professional Services Agreement with the Town.

The Town of Cornelius currently collaborates with a local organization to offer a variety of Pickleball classes, ranging from introductory to advanced levels, including ladder leagues. Additionally, the Town provides multiple days of Open Play, allowing community members to participate and learn the sport free of charge. In response to the growing demand for Pickleball and the increasing number of participants, the Town has approved the construction of a new Pickleball complex at Bailey Road Park. This new facility will feature ten (10) dedicated lighted Pickleball courts at a single venue (See Attachment A).

Pickleball programming will be centralized at the Bailey Road Park Court Complex. Presently, the Town also maintains ten (10) hybrid tennis/Pickleball courts at Robbins Park and Torrence Chapel Park, open to the public for recreational use.

The selected Operator will assume primary responsibility for the Bailey Road Park Court Complex during programming. This includes program management in coordination with the Town for instruction, clinics, special events, tournaments, and supervision of the courts as well as the Operator's employees, contractors, and volunteers during programming. A key priority for the Town is ensuring that these courts are accessible to all community members, regardless of age, ability, or socioeconomic background, and maximizing their use as a recreational resource.

The goal is to partner with an Operator who can expand the current Pickleball programming, which currently consists of approximately ten (10) classes per month, catering to various skill levels from

beginner to advanced. With the completion of the Bailey Road Court Complex, there will be a need to further expand programming, including the scheduling of tournaments and leagues.

The Bailey Road Court Complex is expected to be completed on or around July 1, 2025. Programming is anticipated to begin between July 1 and September 1, 2025. Proposals should include a detailed timeline of milestones, outlining the start of programming and any phased approaches to increasing offerings.

Term of Contract

The initial term of the contract will be for one year from the date of contract execution. Upon mutual agreement between the Town and the awarded Operator(s), the contract may be renewed for up to four additional one-year periods.

Project Scope

The Operator shall review the Town's current offerings and propose an increase in programming. Below are the outlined responsibilities for the Operator and the Town:

Responsibilities of the Operator

a. **Prior to the Start of Contract**
   i. The Operator must hold a Professional Pickleball Registry Certification.
   ii. Provide a letter to the Town certifying that all personnel involved in the programming, including instructors, contractors, staff, volunteers, and anyone who will be working around or interacting with children, have successfully completed comprehensive background checks.
   iii. Meet the Town's insurance requirements. Such evidence lists the TOWN as an additional insured. Commercial General Liability: The amounts of such insurance shall not be less than ONE MILLION DOLLARS ($1,000,000) bodily injury each occurrence/aggregate and ONE MILLION DOLLARS ($1,000,000) property damage each occurrence/aggregate or ONE MILLION DOLLARS ($1,000,000) bodily injury and property damage combined single limits each occurrence/aggregate.

b. **Duration of the Contract**
   i. Program Management:
      1. Direct, manage, and supervise Pickleball programming, including leagues, tournaments, clinics, community days, open plays, and group/private lessons.
      2. Host at least one league, one tournament, and 40+ clinics per quarter, based on community and facility availability. Pre-scheduling with the Town is required to manage court and park usage.
      3. Provide a minimum of four summer sports camps annually, hosting at least 40 campers per camp.

ii. Staffing:
    1. The Operator is responsible for hiring, supervising, and compensating all staff, contractors, and professionals required to conduct programming on the Town's Pickleball courts.

iii. Fee Recommendations:
    1. Recommend fees for private lessons, group lessons, clinics, camps, special events, tournaments, and league participation.

iv. Registration System:
    1. Use the Operator's own registration system for community members to sign up for programming.

v. Court Operations:
    1. Maintain court hours consistent with Town policies, ensuring courts are open every day throughout the year, weather permitting.
        a. Unlighted Facilities: Dawn to dusk.
        b. Lighted Facilities: Dawn to 11 PM.
    2. Provide a combination of no-charge and fee-based court use, as a balance of both is highly desired.

vi. Equipment:
    1. Provide all necessary equipment, including balls, ball machines, paddles, and other materials required to conduct lessons, clinics, camps, etc.

vii. Licensing:
    1. Secure and maintain all essential licenses and permits required to operate the Pickleball program in the Town of Cornelius.
    2. Handle payment of any federal, state, or local self-employment, Worker's Compensation, income taxes, or other assessments related to the Pickleball management services. The Town must be reimbursed for any claims or assessments arising from the Operator's failure to fulfill these responsibilities.

viii. Fiscal Management:
    1. Coordinate with the Town for financial management of Pickleball programming, providing either a percentage or flat fee rate to the Town.
    2. Maintain complete accounting records and implement appropriate account controls consistent with standard business practices.

ix. Financial Reporting:
    1. Submit an annual financial summary within 120 days of the contract's anniversary date, including a balance sheet and income statement.
    2. The Town reserves the right to review financial statements more frequently and may request monthly reports at its discretion.
    3. The Town reserves the right to request an audit of the Operator's financial operations in the event of discrepancies or concerns regarding financial reporting.

x. Transaction Accounting:
    1. Maintain and provide the Town with monthly participation and revenue reports, including:
        a. Participant names, addresses, type of instruction, amount paid.
        b. Gross revenues by category, including lessons, clinics, camps, league play, events, tournament receipts, and maintenance fees paid by the Town.

xi. Maintenance:
    1. Daily cleaning, such as blowing courts and trash pickup, may be required.

xii. Damage Repair:
    1. The Operator is responsible for repairing any damage caused, to the Town's satisfaction, at the Operator's expense, with the exception of normal wear and tear*.

Normal wear and tear refers to the expected and typical deterioration of a property or equipment that occurs over time with regular use. It is the natural and gradual decline in the condition of an item due to ordinary, everyday use. This does not include damage that results from accidents, negligence, misuse, or abuse.*

Responsibilities of the Town

a. Court Availability:
    i. Provide and book court time for the Operator's programming as available.
b. Marketing Assistance:
    i. Support marketing efforts by including programs in the monthly newsletter, social media, the Town's website, and announcements as appropriate.
c. Utilities and Maintenance:
    i. The Town is responsible for electrical, water, sewer, and trash collection services.
d. Major Repairs and Capital Improvements:
    i. The Town will handle major repairs and capital improvements, including:
        1. Fencing repairs.
        2. Light fixture repairs.
        3. Court resurfacing as necessary.

Submission Requirements

Interested Operators must submit one electronic version of the proposal (in PDF or Microsoft Word format) by the deadline. The proposal should begin with an **Executive Summary**, which provides a concise overview of the key aspects of the proposal, including the operator's qualifications, subcontractors, approach, and how they plan to meet the objectives outlined in the RFP. The Executive Summary should capture the essence of the proposal, making it easy for the evaluation committee to quickly grasp the main points.

The entire proposal, including the Executive Summary, must include all required information and should not exceed 20 pages, excluding staff resumes, which do not count toward the page limit. Proposals that fail to meet these requirements may not be considered.

Transmittal Letter to the Selection Committee

a. The proposal must include a cover letter signed by an official authorized to commit the Operator to the representations, commitments, and statements in the proposal and subsequent contracts. The letter should include the name, mailing address, email address, and phone number of the Operator's primary contact for the proposal. Advertising materials, brochures, and other promotional content should not be included.

Description and Qualifications of the Operator

a. Business Overview:
    i. Describe the Operator's business and background, including ownership, organizational structure, the jurisdiction in which the Operator is organized, and the date of inception.
b. Services and Qualifications:
    i. Provide an overview of the services offered and any relevant qualifications.
c. Experience:
    i. Detail the number of years the Operator has been running Pickleball programming, including:
        1. Experience and qualifications in conducting Pickleball programming for similar government or public sector entities.
        2. Experience in hosting and/or administering tournaments.
        3. Professional Pickleball Registry Certification.

Failure to provide this information may result in the proposal being rejected.

Staffing

a. Organizational Chart: Include an organizational chart that identifies:
    i. The Operator's manager responsible for overseeing the programming.
    ii. Each key person assigned to carry out the work, along with their respective roles.
b. Experience and Qualifications: Provide a separate description of the experience and qualifications of these managers and key persons, including a summary of their experience in similar programming.
    i. Resumes for all critical individuals should be included as an appendix to the submission.

References

a. References for the Operator and Subcontractors: Provide a list of no more than three (3) references for the Operator and no more than three (3) references for any

proposed subcontractors. Include the names, addresses, and telephone numbers of recent clients, preferably public agencies, along with details of the specific programming and key individuals involved. Include the dollar amount related to each participation.

b. Examples of Past Work: Provide a minimum of two (2) examples of past work completed within the last five (5) years that reflect the type of programming requested in this RFP. These examples may include projects mentioned in your references or separate projects. Briefly describe these references, including their start dates, current status, the Operator's role/involvement, and any specific information on community responsiveness to the programming.

Scope of Work

a. Understanding of Services: Provide a clear and concise statement of the Operator's understanding of the nature and extent of the services required.
b. Programming Approach: Outline your approach to the programming, highlighting the methodology, process, components, and expected deliverables.
c. Timeline: Provide a timeline for the implementation of programming.
d. Quality Assurance: Describe the standards and methods the Operator uses to ensure quality deliverables to the Town and community.
e. Addressing Concerns: Explain how your company will address concerns or deficiencies in quality control and deliverables, including specific examples.
f. Subcontractor Involvement: Indicate any portion of the work that would be performed by a subcontractor.
g. Programming Strategy: Submit a general overview of the Operator's approach, demonstrating how the Operator will:
    i. Maximize Pickleball programming.
    ii. Provide community access to the courts through a combination of fee-based and no-charge court use.
    iii. Ensure regular court maintenance to remove debris.
    iv. Engage the community to increase interest in programming.
    v. Leverage technology to maximize community access and programming.
h. Strategic Growth: Describe your long-term vision and strategy for growing pickleball programming within the community. Include plans for: i. Expanding and diversifying programming to meet evolving community needs. ii. Developing partnerships or collaborations to enhance offerings. iii. Scaling operations to accommodate increasing demand. iv. Introducing innovative initiatives or programs that contribute to the sport's growth and community engagement.
i. Key Objectives: Identify any objectives or tasks you believe are essential to the success of the proposed programming, including those not already identified in this RFP.

Project Budget & Other Financial Information

a. Financial Details:
    i. Cost and Programming: Provide a brief summary of anticipated expenses, revenues, and net income for each year. Break down costs by program, including any minimums and time frames.
        1. Include projected public costs for program elements, such as:
            a. Lesson (group and private) rates.
            b. League rates.
            c. Tournament rates.
            d. Any other proposed fees.
b. Revenue Sharing: Propose options for revenue sharing with the Town, either as a percentage or a flat monthly fee with potential escalations.
c. Contract History: Provide full disclosure of any significant past or ongoing contract failures, civil or criminal litigation, or pending investigations involving the proposer within the last five years. If no adverse history exists, state this affirmatively.
d. Conflict of Interest: Disclose any personal, professional, or financial relationships with any Town officer or employee.
e. Detailed Budget: Include a detailed budget outlining anticipated expenses and revenues for each program element.
f. Cash Flow Management: Provide a cash flow management plan with projections for the first year of operation.
g. Assumptions: Clearly state any assumptions underlying these financial projections.

Required Documents

a. General attachments:
    i. A copy of United States Pickleball Certificate
    ii. Cost and Programming Proposal

Evaluation Criteria

The objective is to choose the proposal that offers the highest quality services and will achieve the project's goals and objectives within a reasonable budget. While cost is important, other factors are also significant, and the Town of Cornelius may not select the lowest cost proposal.

All proposals submitted in response to this RFP will be evaluated by a committee following the objectives mentioned above and the following criteria with a given point value listed below:

Selection Criteria—RFP	Points Available
Understanding of Scope of Work; Recommended Methodology	30
Programming Proposal/Fees/Revenue Share	30
Demonstrated Expertise in Performing Similar Work	15
Qualifications and Experience of Key Staff	15
References & Past Project Samples	10
Total Points Available Per Proposal	**100**

Scoring and Ranking: The total scores will be tabulated, and the highest-ranked Operator will enter contract negotiations with the Town.

Potential Presentations: If the Town requests presentations from shortlisted firms, committee members may adjust their initial scores based on the additional information and clarifications provided during this phase. Although presentations are not currently scheduled or anticipated, the Town may decide to conduct interviews. If so, shortlisted firms will be notified with a set date for their presentations.

Operator Selection & Notification

Issuing this RFP and selecting the most qualified Operator is the initial step in a process that will ultimately lead to the execution of an agreement with the chosen Operator. Each proposal will be reviewed to determine if it meets the submittal requirements outlined in this RFP.

The successful Operator, upon receiving the contract award, must enter into a formal agreement with the Town within 60 days of Parks and Recreation Commission approval. This agreement must comply with the specifications detailed in the RFP, and the Operator must provide all necessary documentation to finalize the contract.

The Town reserves the right to enter into a contract without further discussion of the submitted proposal. Consequently, proposals should be submitted on the most favorable terms the Operator can offer from the outset.

The Town also reserves the right to:

a. Accept or withdraw the RFP, in whole or in part, at any time and for any reason.
b. Request additional information from all proposers.
c. Modify any aspect of the RFP process, waive any irregularities, terminate, or delay the RFP and/or the program outlined within it, if such actions are in the best interest of the Town.

Submission of a proposal confers no rights upon the proposer and does not obligate the Town in any way. The contract award will be made at the sole discretion of the Town, based on the evaluation of all responses.

By submitting a proposal, each proposer agrees that if the Town accepts its proposal, the proposer will provide all items and services according to the terms and conditions outlined in this RFP and the subsequent contract. Proposals that do not meet the mandatory requirements set forth in this RFP will be considered non-compliant. The Town may disqualify an Operator and reject the proposal for any of the following reasons, including but not limited to:

a. Failure to properly respond to the RFP.
b. Evidence of collusion among proposers.
c. Failure to comply with the specification requirements of the RFP.

Contract Requirements

The Town plans to use the attached Town of Cornelius Professional Services Agreement (See Attachment B) for this contract. Operators with significant concerns about the terms in the sample agreement should reconsider submitting a proposal in response to this RFP.

The top-ranked proposer will be notified in writing and asked to meet with the Town to discuss and finalize their scope of services, as well as refine programming fees (whether percentage-based or fee-based). If, after negotiations, the Town is unable to reach an acceptable agreement with the top-ranked Operator, the Town reserves the right to:

a. Terminate negotiations with the top-ranked Operator.
b. Enter negotiations with the second-ranked Operator.
c. Withhold the award for any reason.
d. Elect not to proceed with any of the proponents.
e. Re-solicit new proposals.

Estimated Selection & Approval Schedule

Request for Proposals Release: October 1, 2024

Proposals Due: December 12, 2024 by 12:00 PM (Noon)

Evaluation/Interviews: January 2-12, 2025

Award of Contract: Estimated February 28, 2025

Start of Services: Estimated July 1, 2025

Please note: The Town reserves the right to revise the above schedule.

Questions

Upon the release of this RFP, all communications regarding the RFP must be directed to Joshua Handelsman, Recreation Superintendent, using the contact information provided below. Unauthorized contact with other Town employees concerning this RFP may result in disqualification. Please note that any oral communications will be considered unofficial and non-binding. Operators should rely only on written statements issued by Mr. Handelsman.

Name: Joshua Handelsman, CPRP, Recreation Superintendent

Address: Cornelius Parks and Recreation Department

21445 Catawba Ave, Cornelius, NC 28031

Email: jhandelsman@cornelius.org

Submittal Instructions

Proposals must be received no later than December 12, 2024, at 12:00 PM (Noon). Please submit the proposal electronically in PDF or Microsoft Word format via email. The email should be clearly labeled with the Operator's name and the subject line 'Pickleball Program Operator RFP.

Please note:

- No amendments, additions, or alterations will be accepted after the submission deadline.
- Late proposals will not be accepted.
- All proposals and accompanying documents become the property of the Town of Cornelius upon submission.
- **Proposers are encouraged to confirm receipt of their submissions with the Town by contacting Joshua Handelsman, Recreation Superintendent, to ensure that their proposals have been received and recorded by the submission deadline.**

Attachment A – Court Design



Attachment B – Professional Services Agreement

CONTRACT FOR SERVICES
(Short Form)

This Contract for Services ("Contract") is made and entered into to be effective [**Date]** ("Effective Date") between the **Town of Cornelius** (the "Town") and **[Full Legal Name of the Service Provider]** (the" Service Provider"). For and in consideration of the mutual promises set forth in this Contract, the parties do mutually agree as follows:

1. Obligations of the Service Provider. The Service Provider agrees to provide **Insert general description of service** more particularly described in Scope of Services attached hereto and incorporated herein by reference as **Exhibit 1** (the "Scope of Services").

   The initial term of this Contract shall be from the Effective Date – [date of end of term]. Upon mutual agreement between the Town and the Service Provider, this Contract may be renewed for up to four (4) additional one-year periods. Any such extension shall be agreed upon in writing by both parties at least 60 days before the expiration of the then-current term.

   This Contract does not grant the Service Provider the right or the exclusive right to provide specified services to the Town. Similar services may be obtained from sources other than the Service Provider (or not at all) at the discretion of the Town.

   The Service Provider shall begin work immediately upon issuance of a written notice to proceed. The Service Provider agrees to perform the Services in a timely, complete, and professional manner and in accordance with the terms and conditions of this Contract. Furthermore, the Service Provider represents and warrants that (i) it is duly qualified and, if required by law, licensed to provide the Services; (ii) it will provide the Services in a manner consistent with the level of care and skill ordinarily exercised by contractors providing similar Services under similar conditions; (iii) it possesses sufficient experience, personnel, and resources to provide the Services; (iv) it shall provide the Services in compliance with applicable laws, statutes, ordinances, codes, orders, rules and regulations; and (v) its reports, if any, shall be complete, accurate, and unambiguous.

   The Service Provider hereby agrees to pay to the Town for the faithful performance of this Contract as follows ("Contract Price"):

				Budget Account No.:
(i)	Service Provider's Fee	$	_____	_____
(ii)	Travel Not to Exceed	$	_____	_____
(iv)	Other (e.g., any applicable taxes)	$	_____	_____
(v)	Total Not to Exceed	$	_____	_____

2. Town's Project Coordinator. **[name and title],** is designated as the Project Coordinator for the Town. The Project Coordinator shall be the Town's representative in connection with the Service Provider's performance under this Contract. The Town has complete discretion in replacing the Project Coordinator with another person of its choosing.

3. Primary Client Contact for the Service Provider. **[Name of primary contact for the Service Provider]**, is designated as the Primary Contact for the Service Provider. The Primary Contact is fully authorized to act on behalf of the Service Provider in connection with this Contract.

4. Terms and Methods of Payment. The Town will make payment after invoices are approved on a net 30-day basis. Applicable North Carolina sales tax shall be invoiced as a separate item. Invoices shall be sent to the Town's Chief Finance Officer with a copy to the Town's Project Coordinator. The Town will not pay in advance without the prior

approval of the Town's Finance Officer. The Service Provider to submit invoices on the following schedule: **[Invoice Schedule]**.

5. Standard Terms and Conditions: The Service Provider agrees to the Standard Terms and Conditions set forth as **Attachment A** attached hereto and incorporated herein by reference.

6. Federal Funding. If the source of funds for this contract is federal funds, the following federal provisions apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as applicable): Equal Employment Opportunity (41 C.F.R. Part 60); Davis-Bacon Act (40 U.S.C. 3141-3148); Copeland "Anti-Kickback" Act (40 U.S.C. 3145); Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387); Debarment and Suspension (Executive Orders 12549 and 12689); Byrd Anti-Lobbying Amendment (31 U.S.C. 1352); Procurement of Recovered Materials (2 C.F.R. § 200.322); and Record Retention Requirements (2 CFR § 200.324).

7. Counterpart Execution. This Contract may be executed and recorded in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. Each party shall be entitled to rely upon executed copies of this Contract transmitted by facsimile or electronic "PDF" to the same and full extent as the originals.

8. Extension Terms. The Town may, at its sole discretion, extend this Contract for up to four (4) additional one-year periods under the same terms and conditions, including any adjustments to the Contract Price as mutually agreed upon by both parties. Each extension shall be formalized by a written amendment to this Contract, signed by both parties. If an extension is not agreed upon and executed in writing by the parties, this Contract shall terminate at the end of the then-current term.

IN WITNESS WHEREOF, the Town and the Service Provider have executed this Contract on the day and year first written above.

[Full Legal Name of the Service Provider]
Service Provider Name

Signature of Authorized Representative Date

Service Provider's Federal Identification #
[if Contract is with Organization or Social Security Number if individual]

Town of Cornelius
Owner

Signature of Authorized Representative Date

Town of Cornelius Finance Director Date
This Disbursement has been approved as required by the
Local Government Budget and Fiscal Control Act.

Attachment A

Standard Terms and Conditions
(Service Contracts)

1. Contract Documents. The Service Provider's execution of this Contract constitutes an agreement to (i) all terms and conditions set forth or referenced herein, (ii) on any attachments hereto, (iii) any applicable solicitation documentation related to hereto (including without limitation any request for qualifications), and (iv) any other terms and conditions of a written agreement signed by the Service Provider and the Town that deals with the same subject matter (collectively, the "Contract Documents"). The terms and provisions set forth in the Contract Documents shall constitute the entire agreement between the Service Provider and the Town with respect to the purchase by the Town of the Services provided or work performed as described in the Contract Documents. The agreements set forth in the Contract Documents are sometimes referred to herein as the "Contract." In the event of any conflict between any terms and conditions of the Contract Documents, the terms and conditions most favorable to the Town shall control. No additional or supplemental provision or provisions in variance herewith that may appear in the Service Provider's quotation, acknowledgment, invoice, or in any other communication from the Service Provider to the Town shall be deemed accepted by or binding on the Town. The Town hereby expressly rejects all such provisions which supplement, modify or otherwise vary from the terms of the Contract Documents, and such provisions are superseded by the terms and conditions stated in the Contract Documents, unless and until the Town's authorized representatives expressly assent, in writing, to such provisions. Stenographic and clerical errors and omissions by the Town are subject to correction.
2. Nondiscrimination. During the performance of the Contract, the Service Provider shall not discriminate against or deny the Contract's benefits to any person on the basis of sexual orientation, national origin, race, ethnic background, color, religion, gender, age or disability.
3. Conflict of Interest. The Service Provider represents and warrants that no member of the Town or any of its employees or officers who may obtain a direct benefit, personal gain or advantage for themselves or a relative or associate as a result of the Contract, subcontract or other agreement related to the Contract is in a position to influence or has attempted to influence the making of the Contract, has been involved in making the Contract, or will be involved in administering the Contract. the Service Provider shall cause this paragraph to be included in all Contracts, subcontracts and other agreements related to the Contract.
4. Gratuities to the Town. The right of the Service Provider to proceed may be terminated by written notice if the Town determines that the Service Provider, its agent or another representative offered or gave a gratuity to an official or employee of the Town in violation of policies of the Town.
5. No Kickbacks to the Service Provider. The Service Provider shall not permit any kickbacks or gratuities to be provided, directly or indirectly, to itself, its employees, subcontractors or subcontractor employees for the purpose of improperly obtaining or rewarding favorable treatment in connection with a Town contract or in connection with a subcontract relating to a Town contract. When the Service Provider has grounds to believe that a violation of this clause may have occurred, the Service Provider shall promptly report to the Town in writing the possible violation.
6. E-Verification. The Service Provider shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.
7. Indemnification. The Service Provider shall indemnify and hold harmless the Town, its officers, agents, employees and assigns from and against all claims, losses, costs, damages, expenses, attorneys' fees and liability that any of them may sustain (a) arising out of the Service Provider's failure to comply with any applicable law, ordinance, regulation, or industry standard or (b) arising directly or indirectly out of the Service Provider's breach of the terms and conditions of the Contract. In the event the Service Provider, its employees, agents, subcontractors and or lower-tier subcontractors enter premises occupied by or under the control of the Town in the performance of the Contract Documents, the Service Provider agrees that it will indemnify and hold harmless the Town, its officers, agents, employees and assigns, from any loss, costs, damage, expense or liability by reason of property damage or personal injury of whatsoever nature or kind arising out of, as a result of, or in connection with such entry.
8. Insurance. Unless such insurance requirements are waived or modified by the Town, the Service Provider certifies that it currently has and agrees to purchase and maintain during its performance under the Contract

the following insurance from one or more insurance companies acceptable to the Town and authorized to do business in the State of North Carolina: Automobile - the Service Provider shall maintain bodily injury and property damage liability insurance covering all owned, non-owned and hired automobiles. The policy limits of such insurance shall not be less than $1,000,000 combined single limit each person/each occurrence. Commercial General Liability - the Service Provider shall maintain commercial general liability insurance that shall protect the Service Provider from claims of bodily injury or property damage which arise from performance under the Contract. This insurance shall include coverage for contractual liability. The policy limits of such insurance shall not be less than $1,000,000 combined single limit each occurrence/annual aggregate. Worker's Compensation and Employers' Liability Insurance - If applicable to the Service Provider, the Service Provider shall meet the statutory requirements of the State of North Carolina for worker's compensation coverage and employers' liability insurance. The Service Provider shall also provide any other insurance or bonding specifically recommended in writing by the Town or required by applicable law. Certificates of such insurance shall be furnished by the Service Provider to the Town and shall contain the provision that the Town be given 30 days' written notice of any intent to amend or terminate by either the Service Provider or the insuring company. Failure to furnish insurance certificates or to maintain such insurance shall be a default under the Contract and shall be grounds for immediate termination of the Contract.

9. Termination for Convenience. In addition to all of the other rights which the Town may have to cancel this Contract, the Town shall have the further right, without assigning any reason therefore, to terminate the Contract, in whole or in part, at any time at its complete discretion by providing 10 days' notice in writing from the Town to the Service Provider. If the Contract is terminated by the Town in accordance with this paragraph, the Service Provider will be paid in an amount which bears the same ratio to the total compensation as does the Services actually delivered or performed to the total originally contemplated in the Contract.
10. Termination for Default. The Town may terminate the Contract, in whole or in part, immediately and without prior notice upon breach of the Contract by the Service Provider. In addition to any other remedies available to the Town law or equity, the Town may procure upon such terms as the Town shall deem appropriate, Services substantially similar to those so terminated, in which case the Service Provider shall be liable to the Town for any excess costs for such similar goods, supplies, or services and any expenses incurred in connection therewith.
11. Contract Funding. It is understood and agreed between the Service Provider and the Town that the Town's obligation under the Contract is contingent upon the availability of appropriated funds from which payment for Contract purposes can be made. No legal liability on the part of the Town for any payment may arise until funds are made available to the Town's Finance Officer and until the Service Provider receives notice of such availability. Should such funds not be appropriated or allocated, the Contract shall immediately be terminated. the Town shall not be liable to the Service Provider for damages of any kind (general, special, consequential or exemplary) as a result of such termination.
12. Improper Payments. The Service Provider shall assume all risks attendant to any improper expenditure of funds under the Contract. The Service Provider shall refund to the Town any payment made pursuant to the Contract if it is subsequently determined by audit that such payment was improper under any applicable law, regulation or procedure. The Service Provider shall make such refunds within 30 days after the Town notifies the Service Provider in writing that a payment has been determined to be improper.
13. Contract Transfer. The Service Provider shall not assign, subcontract or otherwise transfer any interest in the Contract without the prior written approval of the Town.
14. Contract Personnel. The Service Provider agrees that it has, or will secure at its own expense, all personnel required to provide the Services set forth in the Contract.
15. Contract Modifications. The Contract may be amended only by written amendment duly executed by both the Town and the Service Provider.
16. Relationship of Parties. The Service Provider is an independent contractor and not an employee of the Town. The conduct and control of the work will lie solely with the Service Provider. The Contract shall not be construed as establishing a joint venture, partnership or any principal-agent relationship for any purpose between the Service Provider and the Town. Employees of the Service Provider shall remain subject to the exclusive control and supervision of the Service Provider, which is solely responsible for their compensation.
17. Advertisement. The Contract will not be used in connection with any advertising by the Service Provider without prior written approval by the Town.

18. No Pre-Judgment or Post-Judgment Interest. In the event of any action by the Service Provider for breach of contract in connection with the Contract, any amount awarded shall not bear interest either before or after any judgment, and the Service Provider specifically waives any claim for interest.
19. Background Checks. At the request of the Town's Project Coordinator, the Service Provider (if an individual) or any individual employees of the Service Provider shall submit to the Town criminal background check and drug testing procedures.
20. Confidential Information. Employee Personnel Information: If, during the Service Provider's performance of the Contract, Service Provider should obtain any information pertaining to employees of the Town's personnel records, Service Provider agrees to keep any such information confidential and to not disclose or permit it to be disclosed, directly or indirectly, to any person or entity. Other Confidential Information: (a) the Service Provider agrees that it will at all times hold in confidence for the Town all designs, know-how, techniques, devices, drawings, specifications, patterns, technical information, documents, business plans, item requirements, forecasts and similar data, oral, written or otherwise, conveyed by the Town to the Service Provider in connection herewith or procured, developed, produced, manufactured or fabricated by the Service Provider in connection herewith or procured, developed, produced, manufactured or fabricated by the Service Provider in connection with the Service Provider's performance hereunder (collectively, "Information"). The Service Provider shall exercise the same degree of care to prevent disclosure of any Information to others as it takes to preserve and safeguard its own proprietary information, but in any event, no less than a reasonable degree of care. The Service Provider shall not, without the prior written consent of the Town, reproduce any Information; nor disclose Information to any party; nor use any Information for any purpose other than performance for the benefit of the Service Provider hereunder. Any technical knowledge or information of the Service Provider which the Service Provider shall have disclosed or may hereafter disclose to the Town in connection with the Services or other performance covered by the Contract shall not, unless otherwise specifically agreed upon in writing by the Town, be deemed to be confidential or proprietary information and shall be acquired by the Town free from any restrictions as part of the consideration of the Contract.
21. Intellectual Property. The Service Provider agrees, at its own expense, to indemnify, defend and save the Town harmless from all liability, loss or expense, including costs of settlement and attorney's fees, resulting from any claim that the Town's use, possession or sale of the Services or any goods infringes any copyright, patent or trademark or is a misappropriation of any trade secret.
22. Mediation. If a dispute arises out of or relates to the Contract, or the breach of the Contract, and if the dispute cannot be settled through negotiation, the parties agree to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to litigation.
23. No Third-Party Benefits. The Contract shall not be considered by the Service Provider to create any benefits on behalf of any third party. The Service Provider shall include in all contracts, subcontracts or other agreements relating to the Contract an acknowledgment by the contracting parties that the Contract creates no third-party benefits.
24. Force Majeure. If the Town is unable to perform its obligations or to accept the Services because of Force Majeure (as hereinafter defined), the time for such performance by the Town or acceptance of Services will be equitably adjusted by allowing additional time for performance or acceptance of Services equal to any periods of Force Majeure. "Force Majeure" shall mean any delays caused by acts of God, riot, war, terrorism, inclement weather, labor strikes, material shortages and other causes beyond the reasonable control of the Town.
25. Strict Compliance. The Town may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous course of dealing or course of performance between the parties to the contrary.
26. General Provisions. The Town's remedies as set forth herein are not exclusive. Any delay or omission in exercising any right hereunder, or any waiver of any single breach or default hereunder, shall not be deemed to be a waiver of such right or of any other right, breach, or default. If action be instituted by the Service Provider hereunder, the Town shall be entitled to recover costs and reasonable attorney's fees. the Service Provider may not assign, pledge, or in any manner encumber the Service Provider's rights under this Contract, or delegate the performance of any of its obligations hereunder, without the Town's prior, express written consent.
27. Contract Situs. All matters, whether sounding in contract or tort relating to the validity, construction, interpretation and enforcement of the Contract, will be determined in Mecklenburg County, North Carolina. North Carolina law will govern the interpretation and construction of the Contract.