

## PUBLIC NOTICE

The City of Kingsport is requesting sealed Expression of Interest/Request for Qualifications from firms with the expertise to develop/provide a Parks & Recreation Master Plan.

The firms/person(s) must have experience in projects of this nature with other government entities.

Sealed requests will be received by the Procurement Manager, City of Kingsport, until 4:00 P.M., Eastern Time, June 27, 2019 and at that time will be publicly opened and the names of the submitters read in the Council Room, City Hall, 225 W. Center St., Kingsport, TN.

By submission of a signed Expression of Interest/Request for Qualifications, the consultant certifies total compliance with Title VI and Title VII of the Civil Rights Act of 1964, as amended, and all regulations promulgated thereunder.

Documents for the above referenced request are available online at <https://www.kingsporttn.gov/city-services/purchasing/>. Interested parties may also contact the Procurement Department, City of Kingsport – Phone (423) 229-9419.

PUB1T: 06/09/19

Tilden J. Fleming  
City Manager



June 10, 2019

**PROJECT:** Expression of Interest / Request for Qualifications: For a Professional Consulting Firm to Develop a Parks & Recreation Master Plan

Dear Representative:

The City of Kingsport seeks to retain the services of a professional consulting firm to develop a Parks & Recreation Master Plan.

Interested persons for firms should submit their sealed "Expression of Interest / Request for Qualifications", one (1) original and eight (8) copies to:

Procurement Manager  
City of Kingsport  
225 West Center Street  
Kingsport, TN 37660

**REPLIES MUST BE RECEIVED NO LATER THAN 4:00 P.M. EASTERN TIME, JUNE 27, 2019. MARK THE OUTSIDE OF THE ENVELOPE, EXPRESSION OF INTEREST / REQUEST FOR QUALIFICATIONS – PARKS & RECREATION MASTER PLAN.**

*If hand delivered, they will be delivered to City Hall - Receptionist, 225 W. Center Street, Kingsport, TN.*

*All sealed Expression of Interest / Request for Qualifications received by the Procurement Manager shall be publicly opened by the Procurement Manager in the Council Room, City Hall, 225 W. Center Street, Kingsport, TN at 4:00 P.M., Eastern Time, June 27, 2019. Only the names of submitters will be read.*

*Replies received after 4:00 P.M., Eastern Time, June 27, 2019 will not be considered.*

*The successful firm will be required to enter into a contract with the City of Kingsport (contract sample attached).*

*No fee structure is requested at this time.*

*Any additional information concerning this request may be obtained from the Procurement Department at (423) 229-9419.*

**City of Kingsport – Procurement Department  
225 W. Center Street, Kingsport, TN 37660  
Phone – (423) 229-9419 Fax – (423) 224-2433**



Sincerely,

Brent Morelock, CPPO, CPPB  
Procurement Manager



### General Terms and Conditions

- A. Taxes – The City is exempted from Federal Excise Taxes, State of Tennessee and local sales taxes and Proposer must quote prices which do not include such taxes, unless by law the taxes must be a part of the price. Exemption Certificates will be furnished upon request.
- B. Indemnification – The City of Kingsport, its officers, agents and employees shall be held harmless from liability from any claims, damages and actions of any nature arising from the use of any service and/or materials furnished by the Proposer, provided that such liability is not attributable to negligence on the part of the using agency or failure of the using agency to use the materials in the manner outlined by the Proposer in descriptive literature or specifications submitted with the Proposal. The City will not indemnify the successful Proposer.
- C. Patent Liability – The successful Proposer, at his own expense, will defend any suit which may be brought against the City to the extent that it is based on a claim that the goods furnished through a contract/agreement infringes a United States patent, and in any such suit will pay those costs and damages which are attributable to such claims and finally awarded against the City.
- D. Limitation of Remedies – Any remedies in the Proposer's Proposal, to include Agreement, License Product Agreement, Terms and Conditions, Literature, etc., that may be considered in agreement to waive the legal rights of the citizens of the City of Kingsport may be considered cause for rejection.
- E. All agreements related to the purchase and sale of any product pursuant to this bid document will include the following conditions: "Notwithstanding anything in this section to the contrary, any provision of provisions of this Section will not apply to the extent they are (it is) finally determined by a court of competent jurisdiction, including Appellate review if pursued, to violate the laws or Constitution of the State of Tennessee."
- F. Insurance – During any work performed by the successful Proposer(s) on the premises of the City or otherwise, the successful Proposer(s) agrees to take such measures as to effectually prevent any accident to persons or property during or in connection with the work; and especially to indemnify and save harmless the City from all loss, costs, damages, expense and liability for property damage and for bodily injuries to, or death of, any persons, including without limitation, as to both property damage and bodily injury, and the Proposer and the City and their representative agents and employees, occasioned in any way by the acts or omissions of the Proposer, or the Proposer's agents, employees, during or in connection with said work, excepting only property damage, bodily injury or death caused by the sole negligence of the City, its agents or employees.

The successful Proposer shall maintain such insurance as will protect it from claims under Workers' Compensation Acts and from any claims for bodily injuries, including death, either to its employees or others, and from all claims on account of property damage, which may arise in connection from said work.



All Certificates of insurance and policies shall contain the following clause: "The insurance covered by this Certificate will not be canceled or materially altered, except after thirty (30) days written notice has been received by the City."

Insurance required with a minimum of One Million Dollars (\$1,000,000.00) limits are Comprehensive General Public and Professional Liability, Comprehensive Automobile Liability and Owner's Liability. Malpractice Insurance is required with a minimum limit of One Million Dollars (\$1,000,000.00) per occurrence, Five Million Dollars (\$5,000,000.00) aggregate.

This requirement will be effective for the life of any contract/agreement entered into by the Proposer and the City.

- G. F.O.B. – All prices will be quoted F.O.B. Kingsport, Tennessee, delivery to City of Kingsport's location shall be without additional charge.
- H. By submission of a signed Proposal, the Proposer certifies total compliance with Title VI and Title VII of the Civil Rights Act of 1964, as amended, and all regulations promulgated thereunder.
- I. Contracts and purchases will be made or entered into with the lowest, responsible, compliant Proposer meeting specifications for the particular grade or class of material, work or service desired in the best interest and advantage to the City of Kingsport. Responsible Proposer is defined as a Proposer whose reputation, past performance, and business and financial capabilities are such that he would be judged by the appropriate City authority to be capable of satisfying the City's needs for a specific contract or purchase order.
- J. The City reserves the right to determine the low Proposer either on the basis of the individual items or on the basis of all items included in its Request for Proposal, unless otherwise expressly provided in the Request for Proposal. The City reserves the right to accept any item or group of items of any kind and to modify or cancel in whole or in part, its Request for Proposal.
- K. All contracts or purchase orders issued for this award will be governed by the laws of the State of Tennessee. Arbitration is not permitted and if a dispute arises between the parties concerning any aspect of the contract or purchase order and it cannot be resolved by mutual agreement, any party may resort to resolution of the dispute by litigation in the state or federal courts for Kingsport, Sullivan County, Tennessee. The parties waive their right to a jury trial. Mandatory and exclusive venue and jurisdiction for any disputes shall be in state or federal courts for Kingsport, Sullivan County, Tennessee.
- L. The City, in accordance with its governing directives, reserves the right to reject any and all Proposals, to waive any informality or irregularities in Proposals and unless otherwise specified by the Proposer, to accept any item.
- M. All contracts, purchase orders, and any documents or material obtained by the City may be subject to disclosure in whole or in part pursuant to the Tennessee Open Records Act set out in T.C.A. 10-7-503 et seq. without regard to any provision contained in the document declaring information confidential.



- N. All contracts or purchase orders will include a provision that is not assignable by the Proposer without the written consent of the City.

# **City of Kingsport Parks and Recreation Master Plan Request for Qualifications**

## **PROJECT OVERVIEW**

The Kingsport Parks and Recreation Master Plan will include research to identify unique qualities, geography, demographics, and trends specific to the Kingsport Community that will affect Parks and Recreation planning and programming considerations for the future. The primary objectives of the plan are to create a consensus among stakeholders regarding future Parks and Recreation programming and facilities development within Kingsport, the establishment of long-term objectives, and the development of achievable implementation plans.

It is envisioned that the Parks and Recreation Master Plan will include opportunities for public involvement throughout the planning process. Broad based areas of focus that the Parks and Recreation Master Plan will address include:

- The creation of a comprehensive inventory of current parks and recreation programs and facilities
- An analysis of the overall maintenance of existing parks and recreation facilities.
- An examination of neighborhood parks, the Kingsport riverfront, and community parks. Recommendations for future park development, enhancements, and additions.
- An analysis of existing facilities and programming.
- Evaluate and recommend changes to staffing, programming, and budgets.
- Evaluate and recommend modifications/additions to existing City trail systems and networks.

The department works with a number of citizen committees that will serve as a major component for community consensus building. Public meetings will also be required to obtain citizen input concerning existing conditions of facilities and programs, potential future parklands, potential new recreation facilities, programming interests, open space needs, greenway/trail priorities, and environmental issues. Preliminary findings will be presented in a meeting with the appointed Parks and Recreation Advisory Committee. Finally, a presentation of the plan to the Board of Mayor and Aldermen will be made.

The consultant will provide the city with a final work plan including a timeline within fifteen (15) business days of the award of contract. The consultant shall complete the services outlined in the scope and final work plan within one hundred – eighty days (180) days. The city's review of the plan will be excluded from this one hundred-twenty (180) day period. The first of these one hundred-eighty (180) days will commence with the execution date of the contract or approved purchase order and after the initial planning meeting is held among the consultant and city staff.

## **BACKGROUND**

In the early 20<sup>th</sup> century, renowned architect John Nolen created the design template that would become the City of Kingsport. Historically known as the “Model City,” Nolen’s plan designated a park space within each of Kingsport’s neighborhoods. For over one hundred years, the City of Kingsport has endeavored to stay faithful to Nolen’s original vision with a commitment to sound planning methods and principles.

With a population of just over 53,000 residents, the City of Kingsport Parks and Recreation Department annually has 527,000 in attendance (programs/facilities), 7,000 program participants, 2,800 volunteers, 16,000 hours of volunteer support, 1,400 rentals/reservations, \$1.3M in revenue/donations and generates \$11M in economic impact. The Parks and Recreation Department is the area leader in offering Kingsport citizens a wide variety of recreational and leisure time activities. The Department is responsible for the development of a complete municipal recreation program capable of meeting the recreational needs of Kingsport citizens, budget management and analysis, personnel management, capital projects, short and long-term planning of the park system, general promotions, grants, special events, general maintenance, and facility management. Staff also provide support for advisory committees, tenants, volunteers, and community groups.

Kingsport Parks and Recreation currently manages 30 community and/or neighborhood parks with approximately 300 acres of parkland, 8 tennis courts, 10 miles of greenbelt trail, 15 play structures, 23 picnic shelters and gazebos, a splashpad, an outdoor amphitheater, 4 gymnasiums, 7 outdoor basketball courts, a dog park, two baseball softball field complexes (13 total baseball/softball fields), a soccer complex (6 total soccer fields) a skatepark, an 18 hole disc golf course, a Veterans Memorial, 2 community centers, one football field, a sand volleyball court, a civic center, a Southern mansion style facility/grounds, competition horseshoe pits, a riverfront area (with two boat ramps), 3 fishing ponds, 2 water features, historic grounds, and 9 community walking paths .

Additionally, the City of Kingsport provides quality of life facilities and programs through other municipal departments. These include an 18 hole golf course, an indoor/outdoor aquatic center, Bays Mountain Park (3,300 acres preserve, nature center, animal habitats, planetarium, observatory, walking trails, mountain bike trails, lake front, outdoor amphitheater, picnic spaces, gazebo), a comprehensive senior center, a full service library, a carousel, a farmers market, cultural arts, a convention center, a semi pro baseball stadium, and school facilities (playgrounds, gymnasiums, sports fields).

In March 2019, the Kingsport Board of Mayor and Alderman approved to move forward with the creation of a Parks and Recreation Master Plan. The plan is intended as a tool to be used in guiding city decision-making related to Parks and Recreation planning, programming, and funding on a long-term basis. The end result will provide a roadmap for improvements to existing parks, maintenance, future park space, and meeting citizen recreation activity needs within Kingsport.



## **SCOPE OF WORK AND SERVICES REQUIRED**

The selected consulting firm will work closely with Parks and Recreation staff, other city staff and an advisory committee to prepare the City of Kingsport Parks and Recreation Master Plan. The plan should examine and include best practices from communities of similar composition with innovative approaches to parks and recreation planning.

The Scope of this project shall include, but not limited to, the following major work components:

- ❖ Work Plan with Timeline
- ❖ Community Profile Development, Trends, and Standards
- ❖ Background information review
- ❖ Inventory and Assessment - Parks, Programs, and Facilities
- ❖ Assessment – Recreation Programs and Services
- ❖ Financial Analysis and Practices
- ❖ Staff and Community Involvement
- ❖ Presentation to Kingsport Parks and Recreation Advisory Committee
- ❖ Presentation to Kingsport Board of Mayor and Aldermen
- ❖ Findings, Recommendations, and Executive Summary

### **\*Work Plan with Timeline**

A detailed outline of the work to be performed with a project timeline will be submitted to the city within (15) days following the award of contract.

### **\*Community Profile Development, Trends and Standards**

Research, identify, and document the city's unique qualities, geography, demographics, and community trends that affect recreation services now and potentially in the future. Provide additional analysis of emerging parks and recreation trends and current state and national standards that will have an influence on Kingsport Parks and Recreation.

### **\*Background Information Review**

The consultant will review all existing plans, documents, and other background information from the City of Kingsport and will refine and incorporate all appropriate information from these sources into the Parks and Recreation Master Plan.

### **\*Inventory and Assessment – Parks, Programs, and Facilities**

A. Evaluate and create a community inventory which includes recreation programming and facilities offered by both public and non-public providers within Kingsport's City limits and within a 10 mile radius. Also determine presence of duplication, identify gap areas, and provide analysis of both demand and needs.

B. Make specific recommendations of future City of Kingsport needs for new parks, parkland acquisition, facility renovations, and overall park system development.

C. Identify and rank open green space resources for potential park system acquisition and/or park development.

D. Review/assess walking, hiking, multi-use, and bike trails within Kingsport. Recommend where to expand existing trails, locations for future trails and any unmet alternative transportation service needs.

E. Visit each City Park and Recreation Facility. Prioritize in list form any maintenance or safety concerns identified.

F. Evaluate and assess the city's maintenance delivery system for parks, recreation facilities, and community recreation buildings. To include review of staffing structures, staffing levels, contract labor programs, equipment, funding, work order systems, and inspection processes.

G. Make specific maintenance delivery system improvement recommendations based on best practices, industry standards, safety, and financial considerations. To include priorities, maintenance standards, and implementation plan strategies.

**\*Assessment – Recreation Programming and Services**

A. Evaluate existing levels of recreation program services provided by the city and determine adequacy of current recreational opportunities for all city residents. To include comparisons to regional levels of service, recognized national/state guidelines, NRPA PRORAGIS standards, and best practices.

B. Recommend priorities and implementation strategies for programming and services to meet current and future needs of Kingsport residents, including special populations.

C. Evaluate and recommend marketing strategies to provide residents with information needed for recreation programs, and services.

**\*Financial Analysis and Practices**

A. Create and recommend a parks and facilities development Capital Improvement and Investment Plan (CIP) and implementation schedule for 5, 10 and 15 years. Include short and long range budget projections. This should include projections and all costs associated with capital improvements within existing parks, facilities and/or acquisition and development of future park sites and related facilities. New development should include an estimated annual maintenance cost. The CIP Plan should include graphics and maps adequate to explain the components of the plan.

B. Evaluate existing Parks and Recreation staffing levels and department budget in relation to current and future service delivery needs.

C. Provide a fees/charges analysis for facilities, programs, and services. To include recommendations for changes to meet market pricing, community economics, competitor fees/prices, and service values.

### **\*Staff and Community Involvement Plan & Presentations**

The consultant will work with City of Kingsport Officials, the Parks and Recreation Advisory Committee, and city Staff.

Community engagement and public involvement throughout the process is critical. Public meetings and workshops will be held to obtain citizen input into the plan at key points within the process. One on one meetings with stakeholders, community partners and other service providers will also be important. The consultant will be responsible for establishing the means and methods to gain input and community buy in for the Kingsport Parks and Recreation Master Plan.

The consultant will hold regular monthly meetings with city Staff to review progress, present information, and recommend direction for the remaining portions of the project. These meetings should occur as needed but not less than once a month throughout the project. Completed portions of the project should be submitted in draft form to city Staff for review.

The consultant shall be responsible for providing meeting agendas for all public meetings related to the plan process. Consultant shall provide and review with city Staff all meeting agendas for all public meetings at least five (5) business days prior to the meeting.

The consultant shall review with City Staff all prepared information for public meetings at least five (5) business days prior to the scheduled meetings. **NOTE:** The City of Kingsport shall be responsible for the arrangements, notice, and any other costs associated with public meetings.

The consultant shall be responsible for conducting all public meetings, workshops, and public presentations.

The consultant shall be responsible for providing meeting minutes for all public meetings related to the Plan process. Draft minutes shall be submitted to city Staff within five (5) business days of the meeting.

Preliminary findings will be presented to staff as well as to the appointed Parks and Recreation Citizen Advisory Committee.

A presentation of the final plan, for adoption, will be made to the appointed Parks and Recreation Citizen Advisory Committee.

A presentation of the final plan, for adoption, will be made to the Kingsport Board of Mayor & Aldermen, at a public meeting.

### **\*Findings, Recommendations, and Executive Summary**

- A. Compile findings and recommendations from above study components into one or more documents, which together, identify community priorities and serve to define and describe the City of Kingsport's Parks and Recreation Master Plan.
- B. A separate executive summary of the Plan report shall be provided. An executive summary narrative will be included within all study component documents including references to the existing plans.

## **DELIVERABLES FROM CONSULTANT**

The consultant shall deliver the following items related to the Master Plan within the timeframes outlined below.

1. Detailed plan of work within fifteen (15) business days after contract issued.
2. Summary of existing conditions, inventories, analysis, and data.
3. Budget and CIP planning documents.
4. Examples of programs, marketing, planning documents, facilities, and other related materials as appropriate to support recommendations.
5. Twelve (12) copies of DRAFT Master Plan to be used for distribution and review + one (1) black and white copy + one (1) color reproducible copy for public distribution.
6. Appropriate written material and graphics (maps, slides, etc.) to be used for public presentations – to include a current map and final map plan outlining park and trail development opportunities.
7. Final Master Plan –five (5) bound copies to include all elements listed in the scope of work + one (1) unbound color copy appropriate for reproduction.
8. Final Parks & Recreation Master Plan MAP(s) – to include all parks, trails, green space, recreation facilities, provided in **color poster format**.
9. Color copy of Master Plan Executive Summary.
10. **Electronic/digital copies of all above and configured in a “web-friendly” platform.**

## **PROPOSAL ELEMENTS**

Each proposal shall identify and include the following:

1. Cover letter
2. The Project Team, including sub-consultants (if proposed), expertise, and experience with similar Parks and Recreation Master Plan projects. Include the following:
  - Project name
  - Project cost estimates and actual cost
  - A brief description of the project (including the public input process).
  - The firm's role in the project
  - Project Team member roles in the project
  - A project reference and contact phone number
3. The Project Team's approach to the project (including methodology and general plan for public input).
4. The Project Team's anticipated project schedule.
5. The Firm's history and executive profile.
6. The firm's process/procedures for providing quality assurance/quality control throughout the life of the project.
7. A description of experience in working with the public sector and elected officials.
8. A description of projects in which the firm has worked with the sub-consultants proposed for this project.
9. A description of any legal action in which the firm or its executives have been involved in the last five (5) years.

## **SELECTION CRITERIA**

The following will be used to evaluate the applicants:

- A. Qualifications of firm, specifically as they relate to this project. Demonstrated experience and expertise in preparing Parks and Recreation Master Plans.
- B. Extensive experience in developing concept plans, modeling, community outreach, preparing preliminary plans, specifications and engineering documents necessary to develop accurate cost estimates, permitting and construction requirements.
- C. Available resources to complete the project, including analytical design tools, software, personnel, resources or methodologies commonly used by the firm that may be applicable to the project.
- D. Ability of firm to complete tasks quickly and on time.
- E. References and previous experience working on similar projects and past work with similar cities. Related project experience of the individuals who would be assigned to this project.
- F. Project team success of providing accurate cost estimates and examples of actual cost compared to cost estimates of implemented suggestions.
- G. Extensive experience preparing and presenting materials before elected officials and community groups.
- H. Responsiveness to the RFQ and compliance with instructions.
- I. Schedule and availability.
- J. General impressions and presentation of qualifications.

## **AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT, effective on \_\_\_\_\_, by and between \_\_\_\_\_, hereinafter referred to as "CONSULTANT" and the CITY OF KINGSFORT, hereinafter referred to as "OWNER".

### **WITNESSETH:**

WHEREAS, OWNER has need for professional services and other adjunct services as may be authorized by OWNER for \_\_\_\_\_, and;

WHEREAS, CONSULTANT desires to provide such services and being competent to do so;

NOW THEREFORE, OWNER and CONSULTANT in consideration of the mutual covenants and agreements herein contained, do hereby agree as follows:

### **ARTICLE I SCOPE OF SERVICES AND SCHEDULE**

- 1.1 The work and services to be performed (hereinafter referred to as "Services") by CONSULTANT shall be in accordance with CONSULTANT's Scope of Work, as detailed in Appendix A attached hereto and made a part hereof as though fully set out in the body of this Agreement.
- 1.2 On receiving authorization to proceed with the work, CONSULTANT shall proceed with the Scope of Work contained in Appendix A.
- 1.3 CONSULTANT shall proceed on a schedule mutually agreed with OWNER.

### **ARTICLE II INDEPENDENT CONTRACTOR**

2.1 CONSULTANT warrants to be an independent contractor and responsible for its Services, and not as the agent of OWNER, in performing the Agreement, maintaining complete control over its employees and all of its subcontractors. Nothing contained in this Agreement or any subcontract awarded by CONSULTANT shall create any contractual relationship between any such subcontractor and OWNER. CONSULTANT shall provide services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. The CONSULTANT shall review State of Tennessee and City of Kingsport laws and regulations applicable to its services. CONSULTANT agrees to comply with all applicable Federal, State and Local codes and

ordinances, including all applicable requirements of the Americans with Disabilities Act, in the design or implementation of the Project.

### **ARTICLE III COMMITMENT OF PERSONNEL**

- 3.1 CONSULTANT represents that it has, or will secure at its own expense, the qualified personnel required in performing the Services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with OWNER.
- 3.2 All the Services required hereunder will be performed by CONSULTANT or subcontractors under their supervision and all personnel engaged in the Services shall be fully qualified and shall be authorized or permitted under State of Tennessee and local laws to perform such Services.

### **ARTICLE IV COMPENSATION**

- 4.1 OWNER agrees to compensate CONSULTANT for Services performed pursuant to Article I, which Services are identified in Appendix A, for an amount not to exceed \_\_\_\_\_. Said fee is inclusive of all labor, expenses and subcontracts to complete all elements of the Services for the Scope of Work, (Appendix A) except as may be identified in OWNER'S Responsibilities section of Appendix A, if such is included.
- 4.2 CONSULTANT shall submit periodic invoices in a form consistent with OWNER'S needs. Invoices for work performed shall indicate the time period during which the work was performed. The invoices are to be signed and certified as to their accuracy.
- 4.3 OWNER will promptly review monthly invoices. OWNER may require any additional information deemed necessary and appropriate to substantiate the invoice. OWNER shall have ten (10) work days from date of receipt from CONSULTANT of an invoice to reject all or any part of the invoice. OWNER shall pay the undisputed amounts to CONSULTANT within thirty (30) days of receipt of the invoice. The invoice shall show the percentage of completion of the Services as of the end of the period covered by the invoice. OWNER is not required to pay more than 90% of the compensation set out in 4.1 above until approval of Final Payment. Final payment, constituting the entire unpaid balance of the amount set out in 4.1 above, shall be made by OWNER to CONSULTANT only after CONSULTANT has fully performed and achieved Final Completion of the Services, and has provided OWNER all documents required by this Agreement.
- 4.4 CONSULTANT shall be responsible for alerting OWNER in any instance when it anticipates exceeding the budget amount; shall provide justification for same; and shall do so prior to expending 100% of the amount set out in 4.1 of this Agreement. The



Agreement may be amended as the work progresses, provided CONSULTANT receives written authorization from OWNER to make such amendments.

## **ARTICLE V PERIOD OF PERFORMANCE**

- 5.1 The Scope of the Services to be performed by CONSULTANT shall be fully and finally completed within \_\_\_\_\_ calendar days from the date of this Agreement. Final completion is the completion of all Services and all contract requirements by CONSULTANT.

## **ARTICLE VI LIABILITY AND INSURANCE**

- 6.1 Public and Professional Liability - CONSULTANT shall fully indemnify, defend and save harmless OWNER, its Board of Mayor and Aldermen, employees and agents from and against damages, liabilities, expenses, compensations, claims, demands, suits or judgments of sums of money, including but not limited to court costs and reasonable counsel fees, to any party for loss of life or injury or damage to persons or property to the extent caused by, any negligent act, error, omission, of CONSULTANT, its agents, servants, or employees while engaged upon or in connection with the Services required or performed by CONSULTANT. The provisions of this Article VI shall survive the termination or expiration of this Agreement.
- 6.2 Insurance - Prior to beginning these Services, CONSULTANT shall, at CONSULTANT'S expense, obtain, keep in force during the term of this Agreement the following minimum amounts of insurance:
1. General Liability - occurrence basis bodily injury, personal injury and property damage - \$500,000 – \$1,000,000 combined single limit per occurrence;
  2. Automobile liability - owner, hired, and non-owned bodily injury and property damage - \$500,000 – \$1,000,000 combined single limit per occurrence;
  3. Workmen's compensation with statutory limits and employer's liability insurance with minimum limits of \$500,000, to provide for the payment of employees of CONSULTANT employed on or in connection with the work and/or to their dependents, of worker's compensation benefits, including when required, occupational disease benefits in accordance with the U. S. Longshoremen's and Harbor Worker's Compensation Act and the Jones Act. With the prior approval of OWNER, CONSULTANT may substitute different types of coverage for those specified as long as the total amount of required protection is not reduced.

OWNER, its Board of Mayor and Aldermen, its employees, and agents shall be named as additional insured on the certificates of insurance (General Liability or Automobile Liability) for

such policies, and a certified copy of such certificates shall be provided to OWNER by CONSULTANT prior to the start of Services. CONSULTANT shall provide OWNER, upon its request, a certified copy of any insurance policy required by this Agreement. Any failure or non-coverage by such policy or the limit of any such insurance shall not limit the liability of CONSULTANT to OWNER. The policy, or policies, shall contain a provision that such policy or policies may not be cancelled without thirty (30) days prior written notice of such cancellation to OWNER. Insurance required hereunder shall be in companies reasonably acceptable to OWNER.

## **ARTICLE VII TERMS AND CONDITIONS**

- 7.1 Successors and Assigns - This Agreement and all of its terms and conditions shall extend to and be binding upon the parties hereto and upon their respective heirs, executors, administrators, successors, and assigns.
- 7.2 Subletting, Assignment, or Transfer - This Agreement may not be sublet, assigned or transferred, changed, modified, or amended, in whole or in part, except as may be agreed, in writing, and signed by all the parties hereto.
- 7.3 Extent of Agreement - This Agreement constitutes the entire and integrated agreement between OWNER and CONSULTANT and no other written or oral understanding shall constitute part of this Agreement.
- 7.4 Severability - To the extent that any provision of this Agreement is finally adjudged invalid or unenforceable by a tribunal of competent jurisdiction, such provision shall be deemed modified to the extent necessary to make it enforceable.
- 7.5 Compliance of Laws - CONSULTANT shall comply with applicable laws, ordinances, rules, regulations and requirements of all federal, state and local governments, courts, boards, commissions or any other body exercising functions similar to the foregoing insofar as carrying out the provisions of this Agreement.
- 7.6 Termination – If through any cause, either party shall fail to fulfill in timely and proper manner the obligations, agreements or stipulations of this Agreement, the other party shall thereupon have the right to terminate this Agreement by filing written notice to the party in breach of such termination and specifying the effective date thereof, at least five days before the effective day of such termination.

In such event, all finished or unfinished documents, data, studies, and reports prepared by CONSULTANT under this Agreement shall, at the option of OWNER, become its property and CONSULTANT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents. Notwithstanding the foregoing, CONSULTANT shall not be relieved of liability to OWNER for damages sustained by

virtue of any breach of the agreement by CONSULTANT and OWNER may withhold any payments to CONSULTANT for the purpose of set off until such time as the exact amount of damages due OWNER from CONSULTANT is determined.

- 7.7 Governing Law - This Agreement shall be interpreted under and governed by the laws of the state of Tennessee.
- 7.8 Right to Rely – The CONSULTANT shall have the right to reasonably rely upon the accuracy and completeness of the services and information furnished by the OWNER. The CONSULTANT shall provide prompt written notice to the OWNER if the CONSULTANT becomes aware of any errors, omissions or inconsistencies in such services or information. Nothing herein shall be construed so as to release CONSULTANT from its responsibility or liability.
- 7.9 Dispute Resolution – In the event that a conflict arises that cannot be resolved between the parties, OWNER and CONSULTANT agree that all disputes arising out of or relating to this Agreement or the Project shall be first submitted to non-binding mediation, unless the parties mutually agree otherwise. The mediation shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period of agreement of the parties or court order.
- 7.10 Waiver of Consequential Damages – Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the OWNER nor the CONSULTANT, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty.

## **ARTICLE VIII OWNERSHIP OF DOCUMENTS**

- 8.1 All documents, reports and material prepared by CONSULTANT in the performance of this Agreement shall become the sole property of OWNER upon payment in full of all monies owed the CONSULTANT, provided CONSULTANT is not in breach of this Agreement. CONSULTANT hereby acknowledges that all right, title, and interest in the documents and all related reports, plans, drawings, technical memoranda and other directly related documents of any kind prepared or made by CONSULTANT or its subcontractors

in the performance of or in connection with CONSULTANT'S Services and duties under this Agreement shall be vested solely with OWNER, including the right to hold, use, or dispose of same as OWNER deems appropriate in its sole discretion, but if OWNER uses such documents for other than intended purpose, OWNER assumes any and all liabilities for such use of the documents and CONSULTANT waives any property rights and copyright to such documents.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound have caused their duly authorized representative to, set their hand this day, month, and year first above written.

\_\_\_\_\_

CITY OF KINGSPORT

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

WITNESS:

ATTEST:

\_\_\_\_\_

\_\_\_\_\_

City Recorder

APPROVED AS TO FORM:

\_\_\_\_\_

City Attorney