

Addendum No. 02

Issue Date: 4/18/2024

Project Name: City of Asheville Design-Build Upfit

RFQ Number: 298-CP24-B2202.DB

TO: Prospective Submitters

This addendum forms a part of the Request for Qualifications and modifies the original RFQ #298-CP24-B2202.DB only to the extent specifically noted below. Failure to acknowledge this addendum in the SOQ Letter of Interest may subject the bidder to disqualification. The official source of this solicitation is found on the City procurement website at www.ashevillenc.gov/bids. All updates to this solicitation shall come in the form of published addenda and shall be published to the same location.

This Addendum consists of One (1) page plus attachments

This Addendum consists of the following information:

1. **NOTE:** The MEP drawings for the Jackson Annex space have been requested from the Property Owner. If you would like to receive a link to these drawings, please complete the Non-Disclosure linked here and e-mail the completed form to ngeorge@ashevillenc.gov
 - [City of Asheville Non Disclosure Agreement](#)

Attachments include:

- Non Disclosure Agreement (4 pages)

-End of Addendum No. 02-

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

City of Asheville Confidentiality and Non-Disclosure Agreement (NDA)

Contract or Solicitation # 298-CP24-B2202.DB

The Confidentiality and Non-disclosure Agreement (“Agreement”), is entered into by and between the City of Asheville, a municipal corporation existing under the laws of the State of North Carolina (“Disclosing Party” or “Discloser”) and _____ (“Receiving Party” or “Receiver”), effective as of ____th day of _____, 2024 (“Effective Date”). The Disclosing and Receiving Parties are sometimes referred to collectively as the “Parties.”

WHEREAS, the Disclosing Party desires to disclose to the Receiving Party certain confidential and proprietary information protected under N.C. Gen. Stat. § 132-1.7, for the purpose of facilitating the Receiving Party’s response to the City Bid solicitation number 298-CP24-B2202.DB.

WHEREAS, the Parties desire to make an agreement with each other to protect the confidentiality of such disclosed information.

NOW, THEREFORE, the Parties, in consideration of the mutual covenants and conditions set forth below, do hereby agree as follows.

1. CONFIDENTIAL INFORMATION. Confidential Information shall mean confidential or proprietary information of Discloser, whether disclosed orally, graphically, in writing, or electronic form to the Receiving party under this Agreement. Confidential Information is all information furnished by the Disclosing Party and labeled as confidential, trade secret, or proprietary information, and if disclosed orally or summarized in written format and information that the Receiving Party knows or has reason to know is confidential, trade secret or proprietary information of the Disclosing Party. This information may include, but is not limited to, information about (i) department policies, practices, operating procedures or strategies; (ii) financial and business information; (iii) sensitive public security information as defined by N.C. Gen. Stat. § 132-1.7 and (iv) information about ongoing or future projects. Confidential Information under this agreement is provided, but not limited to the information, in Attachment B entitled “Confidential Information”. The Disclosing Party shall retain all ownership rights over its Confidential Information.

2. EXCLUSIONS FROM CONFIDENTIAL INFORMATION. Receiving Party’s obligation under this agreement does not extend to information that (i) is already in the possession of the Receiver without obligation of confidentiality at the time of receipt by and from the Discloser; (ii) is independently developed by the Receiver, as evidenced by appropriate documents; (iii) is or becomes publicly available without breach of this Agreement by the Receiver; (iv) is rightfully received, free of restrictions and without breach of this Agreement, by the Receiver from a third party; (v) is released by Discloser to any third party without similar restrictions; or (vi) is approved for release by the prior written approval of the Discloser.

3. **THE RECEIVING PARTY'S OBLIGATIONS.** The Receiving Party shall hold and maintain the Confidential Information in the strictest confidence for the sole exclusive benefit of the Disclosing Party (in direct support of the project in question, or as authorized in writing by the Disclosing Party). Receiving Party shall carefully restrict access to Confidential Information to employees, contractors and third parties as is reasonably required and shall require those persons to sign nondisclosure restrictions at least as protective as this agreement. Receiving Party shall not copy, reproduce, or duplicate Confidential Information except to the extent required for the purpose for which Discloser has contracted with Receiver; and shall notify Discloser as promptly as practicable of any unauthorized use or disclosure of the Confidential Information.

4. **DISCLOSURE UPON WRITTEN CONSENT.** Without Discloser's prior written consent, except as required by law, Receiving Party, its agents, representatives, and employees shall not disclose to any person the fact that the Confidential Information has been made available to Receiving party.

5. **LEGAL DISCLOSURE.** In the event that Receiver or anyone whom the Receiver transmits the Confidential Information pursuant to this Agreement becomes legally compelled to disclose any of the Confidential Information, Receiver will provide Discloser with prompt notice so that Discloser may seek a protective order or other appropriate remedy and/or waiver compliance with the provisions of this Agreement. In the event that such protective order or other remedy is not obtained, or that Discloser waives compliance with the provisions of this Agreement, Receiver will furnish only that portion of the Confidential Information which Receiver is advised by opinion of counsel is legally required, and will exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Confidential Information.

6. **OWNERSHIP OF CONFIDENTIAL INFORMATION.** Nothing in this Agreement shall create, by express grant, implication, estoppel or otherwise, in the Receiving Party any right, title, interest, or license in or to Confidential Information of the Disclosing Party.

7. **BREACH.** If there is a breach of security or privacy of the disclosed Confidential Information, Receiving Party shall notify Discloser without necessary delay. The Receiving Party agrees to cooperate with Discloser in identifying the extent of which Confidential Information has been exposed and the measures necessary to limit further exposure of Confidential Information. The Receiving Party shall be responsible for any breach of this Agreement by Bidder's agents, representatives, or employees.

8. **GOVERNING LAW.** This Agreement is entered into in North Carolina, and shall be construed and interpreted under North Carolina law.

9. **SEVERABILITY.** Should any provision or provisions contained in this agreement be declared by a court of competent jurisdiction to be void, unenforceable or illegal, such provision or provisions shall be severable and the remaining provisions hereof shall remain in full force and effect.

10. **MODIFICATION.** No modification, amendment, or waiver or any provision of this Agreement shall be effective unless in writing, specifically referring hereto and signed by the Parties.

11. **TERMINATION.** A Party may terminate this Agreement by giving ten (10) days' prior written notice to the other party. Notice shall be served under this Agreement by registered mail, certified mail

or by other means. Any duty or obligation created by this Agreement requiring that the Receiving Party retain the confidentiality of the Confidential Information shall survive any termination of this Agreement.

12. INDEMNIFICATION. Receiving Party shall indemnify, defend and hold harmless the Disclosing Party and its subsidiaries, officers, directors and employees from all liability, loss, costs, claims, damages, expenses, attorney fees, judgments and awards arising or claimed to have arisen, from any injury caused by, or allegedly caused by, either in whole or in part, any act or omission of Receiving Party or any employee, agent or assign of Receiving Party. This provision is not applicable to any claim arising out of or related to any active or primary negligence of or by the Disclosing Party, its agents or employees.

13. IMMUNITY. Nothing herein shall be construed as a waiver of the Disclosing Party to any defense of any claim, including, but not limited to the defense of governmental immunity.

14. WAIVER. The failure to exercise any right provided in this Agreement shall not be a waiver of prior or subsequent rights.

15. ASSIGNABILITY. This Agreement is not assignable by either party without prior written consent of the other party.

16. ENTIRE AGREEMENT. This Agreement represents the entire agreement of the Parties pertaining to the subject matter of this Agreement, and supersedes any and all prior oral discussions and/or written correspondence or agreements between the Parties with respect thereto.

This Agreement and each Party's obligations shall be binding on the representative, assigns, and successors of each party. This agreement is effective as of the Effective Date as evidenced by the signatures of the Parties' duly authorized representatives below.

AGREEMENT SIGNATURE PAGE

DISCLOSING PARTY (CITY)

Signature: _____ Date _____

Typed or Printed Name: Nicole George

Title: Project Manager

City Department: Capital Projects, Building Construction

RECEIVING PARTY

Signature: _____ Date _____

Typed or Printed Name: _____

Entity Name: _____

Title: _____

Email: _____ Phone Number: _____

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Return completed and signed form to the Project Manager:

Nicole George

ngeorge@ashevillenc.gov