



Invitation to Bid

Bid Title: LED Baseball Field Lights at McEver Baseball Fields
Project Number: 376-20260520

Notice is hereby given that the Town of Davidson, North Carolina is seeking sealed bids for athletic field lighting replacement.

SEALED BIDS WILL BE ACCEPTED UNTIL 2:00 PM (EST), Tuesday, June 2, 2026

Sealed Bids should be addressed to:
Davidson Town Hall
attn: Kayla Kovach, Sustainability Manager

Hand-Deliver to: 251 South Street, Davidson, NC 28036

Mail to: PO Box 579, Davidson, NC 28036

REQUEST FOR BIDS
for
the Town of Davidson, North Carolina
Furnish and install LED Baseball Field Lights at McEver Baseball Fields

SCOPE OF WORK:

Install LED baseball field lights at two baseball fields at the McEver Baseball Fields facility to replace the existing lights currently being used and add remote monitoring systems and controls. The two fields (Field 1 and 2) at the McEver Baseball Field facility are located at 626 South Street, Davidson, NC 28036. Currently, Field 1 has four light posts and 26 total lights and Field 2 has four light posts and 45 total lights. Only the lighting fixtures will be replaced during this project. The baseball fields are largely used for middle through high school age groups and should meet applicable local, regional, and national lighting standards and requirements. A photometric layout for each field shall be provided with sealed bid. All items and products proposed in response to this Request for Bids are to be new, in un-used condition. Bidders must submit product literature and manufacturer's specifications with their bid documents. All supplies, equipment, and apparatus must meet all Federal, State, and Local safety regulations, requirements, and guidelines, such as OSHA, EPA, US DOT, NC-DOT, NFPA, UL, etc., if so regulated.

Respondents should be familiar with Duke Energy utility and selected lights must be on Duke Energy's DesignLights Consortium (DLC) Qualified Products List (QPL). Due to the nature of this site, the Town has the right to limit work when baseball fields are in use. Locations of the work are shown on the attached map of this Request for Bids package.

The project is funded through a North Carolina Department of Environmental Quality (NCDEQ) Energy Efficiency and Conservation Block Grant (EECBG), and subject to Uniform Guidance requirements. The chosen team and any subcontractors will need to comply with the terms, conditions, restrictions, and requirements set forth in the subgrant documentation including, but not limited to, Davis Bacon Requirement, Buy American Requirement, and 2 CFR 200.323 Procurement of recovered materials. At the September 23, 2025 meeting, the Board of Commissioners accepted the grant funding. The grant agreement documents can be found at the link below.

<https://davidsonnc.portal.civicclerk.com/event/209/files/attachment/992>

NOTICE TO BIDDERS:

Sealed bids for this work will be received up to **2:00 PM, on June 2, 2026**

Sealed bids can be delivered to Davidson Town Hall, 251 South Street, Davidson, NC beginning Friday, May 29, 2026 and delivered to the reception area or hand delivered at the time of the bid opening at 2:00 pm on Tuesday, June 2, 2026 at Davidson Town Hall. No bids will be accepted after 2:00 pm on June 2, 2026.

Mail or Hand-Deliver to:

attn: Kayla Kovach, Sustainability Manager
Davidson Town Hall
251 South Street (PO Box 579)
Davidson, NC 28036

Include all required information on the envelope and within the sealed bid as stated in the “General Conditions and Instructions” section of this package.

This project is intended to promote diversity, inclusion, and local business opportunities in the Town’s contracting and procurement process for minority, women and small businesses.

For information regarding the Invitation to Bid, contact:

Kayla Kovach, Sustainability Manager

Town of Davidson

251 South St

Davidson, NC 28208

sustainability@townofdavidson.org

Additional information related to the bid process can be found in the “General Conditions and Instructions” section of this package.

GENERAL CONDITIONS & INSTRUCTIONS

GENERAL

It is understood and agreed that by submitting a bid that the Bidder has examined this request for bids package including the documents, drawings, and specifications within and has satisfied themselves relative to the Work to be performed. It is strongly encouraged that the Bidder visit the site to become familiar with site conditions.

BIDDER'S REPRESENTATIONS

Contractor's License

Bidders shall be properly licensed under North Carolina state law to perform the work specified in the Bidding Documents. Bids received from bidders not meeting the applicable licensure requirements as required by law and as determined by the Town's Sustainability Manager may be considered non-responsive and may not be considered for award.

Bidder Qualifications

Bidders must be experienced in the class of work that is proposed who can refer to projects of similar magnitude and scope that have been successfully completed by them within the last three (3) years. Bidder's to whom award of the Contract is under consideration may be required to submit to the Town, upon request, a properly executed Contractor's qualification statement. The Town reserves the right to request any and all such qualification information from Bidder's to evaluate the bidder's qualifications. The Bidder's failure to submit the requested Qualifications Statement within the timeframe specified by the Town may be grounds for bid rejection.

Site Investigation and Conditions Affecting the Work

By submitting a bid, Bidders certify to have carefully examined the documents, drawings, and specifications within this request for bids package and have familiarized themselves with the project, affecting the cost and execution of the work.

BIDDING PROCEDURES

Bid Contact

Any and all questions, concerns, or request for additional information shall be directed to Kayla Kovach, Sustainability Manager: sustainability@townofdavidson.org.

Bid Schedule

Listed below are the dates and times by which stated actions must be taken or completed. The Town may determine, in its sole discretion, that it is necessary to change any of these dates and times. All listed times are Eastern standard times.

Action	Time	Date
Bid issued	NA	May 20, 2026
Deadline for questions to be submitted	5:00 PM	May 26, 2026
Addenda reflecting questions and answers posted (if any)	5:00 PM	May 28, 2026
Sealed bids due	2:00 PM	June 2, 2026

Pre-Bid Conference

No pre-bid conference is scheduled for this project.

Bidder Questions

The Town is not liable for interpretations/misinterpretations or other errors or omissions made by the Bidder in responding to this bid. The Bidder shall examine this Request for Bids package to determine if the Town's requirements and terms and conditions are clearly stated. If, after examination of the various requirements and terms and conditions of this bid, the Bidder may request, in writing, that the Town clarify the requirement(s) and terms(s) and condition(s) specified by the Bidder. The Bidder must provide the Section(s), Subsection(s), Paragraph(s), and page number(s) that identify the requirements or conditions questioned by the Bidder. Submit questions to sustainability@townofdavidson.org.

Requests for clarification and technical questions to this bid must be received by the Town not later than the bid schedule shown above entitled "Bid Schedule", for the submittal of written inquiries. The Bidders' failure to request clarification and submit questions by the date in the bid schedule above shall be considered to constitute the Bidders' acceptance of all Town's requirements and terms and conditions. The Town shall issue addenda reflecting questions and answers to this bid, if any, and shall be posted at the [North Carolina electronic Vendor Portal](#).

Addendum

Bidders are solely responsible for making sure that any and all addenda have been received prior to submission of their bid. All addenda to this bid issued by the Town shall be posted to the North Carolina electronic Vendor Portal website. All such addenda shall become part of the bid.

Bid Forms & Supplements

Bidders shall complete and submit the bid forms and supplements provided herein in their entirety for bid consideration. Bidders shall submit Bids using bid forms provided in the bidding documents. The Bid Form must be completed in its entirety with all entries including signatures written legibly in ink. Unit prices shall be entered where required and applicable. Do not include taxes in bid prices. Taxes must be itemized and added to invoices separately when invoicing the Town. Incomplete bid forms shall be subject to rejection at the discretion of the Town.

How to Submit Bid

- a) Submit sealed bids on the bid form provided herein. Include supplemental forms provided herein with sealed bids. Items to be included for bid consideration include:
 - a. Bid Response Form
 - b. Bid Form
 - c. Non-Discrimination Certification
 - d. Execution of Bid Form
 - e. Photometric Layout for each field
 - f. Materials cut sheets
 - g. A 5% bid security is required for each bid.
- b) Provide (2) complete sets of your bid on the bid form provided herein in hard copy paper format (on 8-1/2" x 11" size paper, only bound with a single staple in the upper left corner or with a single removable clip – no 3-ring binders) and must be SEALED in an envelope. NO EMAIL OR FAX BIDS WILL BE ACCEPTED. All formal bids (estimated to be greater than \$90,000) must be submitted in a sealed envelope, plainly marked with the bid number, and date and time to be opened.
- c) All bids must be mailed or delivered as follows in sufficient time to ensure receipt by the Town on or before the time and the date specified on the Bid Schedule. Bids not received by the time

and date specified on the Bid Schedule will not be opened or considered.

Mailing Address:

Town of Davidson
attn: Kayla Kovach, Sustainability Manager
PO Box 579, Davidson, NC 28036

Delivery Address:

Town of Davidson
attn: Kayla Kovach, Sustainability Manager
251 South Street, Davidson, NC 28036

Bid Opening

- a) A public bid opening will be held at 251 South Street, Room 120, Davidson, NC 28036 on June 2, 2026 at 2:00 PM (Eastern standard time). No official award will be made at the Bid Opening. All bidders are welcome to attend the bid opening.
- b) Bidders may not review or request copies of bids at the Bid Opening. A time must be scheduled to meet with the Sustainability Manager for this purpose.
- c) Bids will be examined by the Sustainability Manager or other designated Town staff promptly after the opening and an award made at the earliest possible date. No bids may be withdrawn after bid opening.

Rejection of Bids and Disqualification of Bidders

Bidders must complete each form and supplemental document provided in the Bidding Documents and as outlined in the “How to Submit Bid” section above. Failure to complete and submit the required forms, certifications, and Execution of Bid may be grounds for bid rejection.

The Town of Davidson reserves the right to reject any and all bids and to waive any informalities or technicalities as it may deem to be in its best interest. No bid may be withdrawn after the opening of bids for a period of 30 days. The Owner reserves the right to reject any or all bids and waive informalities. Bids shall be made only on the form provided herein with all blank spaces for bids properly filled in and all signatures properly executed.

Award and Execution of the Contract

The Town will award contracts conditioned upon funding available for the project and other governmental approvals as may be required.

Quantities

The Town reserves the right to adjust quantities as needed, and to add additional items and/or products as needed, as determined to be in the best interest of the Town.

Bid Security

A 5% bid security is required for each bid.

Trade Secrets

This Bid documents, supplemental documents, and all Bidders’ responses received are considered public information, except for trade secrets specifically identified in writing by the Bidder, which will be handled according to State Statute or other laws. Any section of the bidder’s response package that is deemed to be a trade secret by the bidder shall be submitted in an envelope clearly marked “TRADE SECRET INFORMATION- DO NOT DISCLOSE.” The Town shall make a good faith effort to protect such confidential information.

Contract Term

The contract resulting from this Invitation to Bid will begin upon the issuance of the Notice to Proceed and will extend until December 31, 2026.

Terms and Conditions

Acceptance of the Town’s Purchase Order includes acceptance of all applicable Terms and Conditions. The Town’s Purchase Order Terms & Conditions are provided below for your information.

POST-AWARD

Bonds and Insurance

The selected bidder will be required to obtain a performance and payment bond on the contractor’s part for one hundred (100) percent of the contract price.

Payment and performance bonds shall be submitted to the Town upon ten (10) calendar days of award of the Contract and shall be in conformance with NC-GS 44A-33. Failure to provide acceptable bonds within ten (10) calendar days of award of the Contract shall be just cause for forfeiture of the bid bond or bid deposit and rescinding the award of the Contract. Award may then be made to the next lowest responsive, responsible bidder or the Project may be re-advertised at the Town’s sole discretion.

The Contractor shall submit to the Town within three (3) calendar days of recommendation of award of the Contract a certificate of insurance in the minimum amounts required in the Contract Documents.

Notice to Proceed

The Town will issue a Notice to Proceed (NTP) to the Bidder upon award and execution of the contract. The Bidder shall not perform any Work prior to the date on which the NTP commences. The Town reserves the right to issue an Administrative Notice to proceed authorizing the Bidder to place orders for products requiring long lead times, or to obtain certain permits prior to beginning any Work. If an Administrative Notice to Proceed is issued, the Bidder shall not perform any Work prior to the date on which the Notice to Proceed commences.

Submission of Bids

Bids shall be submitted in an opaque, sealed envelope, and printed with the following information on the outside of the envelope:

BID FOR:	_____	<i>(Enter the Project Name as shown in the Bidding Documents)</i>
BIDDER’S NAME:	_____	<i>(Enter Full Name of Bidder submitting the bid)</i>
PROJECT NUMBER:	_____	<i>(Enter the Project Number as shown in the Bidding Documents)</i>
DO NOT OPEN UNTIL:	_____	<i>(Enter the Date and Time as shown in the Bidding Documents)</i>

All Bids must be delivered prior to the bid opening date and time specified in the Invitation for Bids.

Bidders shall be responsible for the timely delivery of Bids at the bid opening location specified.

BID RESPONSE FORM

Bid Title: LED Baseball Field Lights at McEver Baseball Fields

Pursuant to General Statutes of North Carolina, Section 143-129, as amended, sealed bids are invited and, subject to the conditions herein, will be received by the Town of Davidson. The sealed bids will be publicly opened.

In compliance with this Invitation for Bids, and subject to all the conditions thereof, the undersigned Supplier offers and agrees, if this bid be accepted, to furnish, deliver, and execute this project at the prices set opposite each item within the time specified herein. By executing this bid, the undersigned Bidder certifies that this bid is submitted competitively and without collusion. Furthermore, by executing this bid, the undersigned certifies to the best of Bidder's knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal or State department or agency.

Failure to execute/sign bid prior to submittal shall render the bid invalid and it will be deemed non-responsive and will be rejected. Late bids cannot be accepted.

Responder's Name:	
Street Address:	
City:	
State:	
Zip Code:	
Print Name & Title of Person Signing on Behalf of Responder:	
Responder's Authorized Signature:	Date of Signature:
Contact Name (if different from above):	
Contact Email Address:	
Contact Telephone Number:	

NON-DISCRIMINATION CERTIFICATION

Project: LED Baseball Field Lights at McEver Baseball Fields

Name of Company (Bidder): _____

The undersigned Bidder hereby certifies and agrees that the following information is correct:

1. In preparing the enclosed bid, the Bidder has considered all bids submitted from qualified, potential subcontractors and suppliers and has not engaged in discrimination as defined in Section 2.
2. For purposes of this certification *discrimination* means discrimination in the solicitation, selection, or treatment of any subcontractor, vendor or supplier on the basis of race, ethnicity, gender, age, religion, national origin, marital status, familial status, sexual orientation, gender identity, gender expression, or disability or any otherwise unlawful form of discrimination. Without limiting the foregoing, *discrimination* also includes retaliating against any person or other entity for reporting any incident of discrimination.
3. Without limiting any other remedies that the Town may have for a false certification, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the Town to reject the bid submitted with this certification and terminate any contract awarded based on such bid. It shall also constitute a violation of the Town's Commercial Non-Discrimination Ordinance and shall subject the Bidder to any remedies allowed thereunder, including possible disqualification from participating in Town contracts or bid process for up to two years.
4. As part of its bid, the Bidder shall provide to the Town a list of all instances within the past five years where a complaint was filed or pending against the Bidder in a legal or administrative proceeding alleging that the Bidder discriminated against its subcontractors, vendors or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.

By: _____

Signature of Company's Authorized Representative

Title: _____

Date: _____

EXECUTION OF BID
NON-COLLUSION AFFIDAVIT, DEBARMENT CERTIFICATION, AND GIFT BAN
CERTIFICATION

The person executing the bid, on behalf of the Bidder, being duly sworn, solemnly swears (or affirms) that neither he, nor any official, agent or employee of the Bidder has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of free competitive bidding in connection with any bid or contract, that the Bidder has not been convicted of violating North Carolina General Statute 133-24 within the last three years, and that the Bidder intends to do the work with its own bona fide employees or subcontractors and is not bidding for the benefit of another contractor.

In addition, execution of this bid in the proper manner also constitutes the Bidder's certification of status under penalty of perjury under the laws of the United States in accordance with the Debarment Certification attached, provided that the Debarment Certification also includes any required statements concerning exceptions that are applicable.

NC General Statute 133-32 prohibits the offer to, or acceptance by, any Town employee of any gift from anyone with a contract with the Town or State, or from any person seeking to do business with the Town of Davidson. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

In the event the Bidder is awarded the Contract, execution of the Bid by the Bidder is considered the same as execution of the Contract. Affixing the corporate seal to this document is only intended to verify the officer signing on behalf of the corporation has the authority to do so.

The undersigned, having carefully familiarized himself with the existing conditions on the Project area affecting the cost of work and hereby proposes to furnish all supervision, labor, equipment, materials and services required to complete the Project in accordance with the bid specifications at and for the Total Amount Bid, excluding any Allowances, such as contingency, which may be used by the Contractor only upon written instructions from the Town in accordance with the terms of this Contract.

By: _____

Signature of Company's Authorized Representative

Title: _____

Date: _____

BID FORM

Project Name:		LED Baseball Field Lights at McEver Baseball Fields		
Project Number:		376-20260520		
Item No.	Quantity	Description	Unit Price	Total Price
1	26	LED Baseball Field Lights for Field 1 Details (such as manufacturer and item #): _____	\$	\$
2	45	LED Baseball Field Lights for Field 2 Details (such as manufacturer and item #): _____	\$	\$
3	NA	Remote monitoring and controls of lights at Field 1 and 2 Details (such as manufacturer and item #): _____	\$	\$
4	NA	Labor	\$	\$
Total Price for All Items:			\$	

Do not include taxes in bid prices.

Taxes must be itemized and added to invoices separately when invoicing the Town.

FIELD LOCATIONS MAP



STANDARD TERMS AND CONDITIONS

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. **Compliance with All Laws; Use of Federal Funds.** The Service Provider warrants that all performance hereunder shall be in accordance with all applicable federal, state and local laws, regulations and orders. The right of the Service Provider to proceed may be terminated immediately by written notice if the Town determines that the Service Provider, its agent or another representative, has violated any provision of law. Without limiting the foregoing, If the source of funds for this Contract is federal funds, then the Service Provider agrees to comply with 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).
3. **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.
4. **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.
5. **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.
6. **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.

7. E-Verification. The Service Provider shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

8. Indemnification/Hold Harmless. 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, code, ordinance, regulation, or industry standard, or (b) arising as a result of negligence and/or intentional acts by the Service Provider, its employees, agents, subcontractors and/or lower tier subcontractors. 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 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.

9. 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.

10. 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 ten (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.

11. 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.

12. 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.

13. **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.

14. **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.

15. **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.

16. **Contract Modifications.** The Contract may be amended only by written amendment duly executed by both the Town and the Service Provider.

17. **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.

18. **Advertisement.** The Contract will not be used in connection with any advertising by the Service Provider without prior written approval by the Town.

19. **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.

20. **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.

21. **Confidential Information.** the Service Provider shall safeguard and protect Sensitive and Confidential Information of the Town, including all information pertaining to program participants and attendees, in accordance with all applicable laws and regulations and consistent with information security best practices. "Sensitive and Confidential Information" means any of the following: "Personal Information" under the North Carolina Identity Theft Protection Act of 2005, confidential "personnel information" under in the State Personnel Act, "Protected Health Information" under the Health Insurance Portability and Accountability Act (HIPAA), student "education records" under Family Educational Rights and Privacy Act (FERPA), "customer record information" under Gramm Leach Bliley Act (GLBA), "card holder data" under the Payment Card Industry Data Security Standard (PCI-DSS) and the Payment Application Data Security Standard (PA-DSS), and any information protected from disclosure under the North Carolina Public Records Act. If the Service Provider becomes aware of a confirmed or suspected exposure of Sensitive and Confidential Information of the Town, then the Service Provider shall notify the Town as promptly as possible.

22. **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.

23. **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.

24. **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.

25. 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.

26. 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.

27. 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.

28. 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.

ADDITIONAL STANDARD TERMS AND CONDITIONS FOR PRODUCTS (GOODS, SUPPLIES, AND EQUIPMENT)

1. Quantities. Shipments must equal exact amounts ordered unless otherwise agreed in writing by the Town. The award of a term contract neither implies nor guarantees any minimum or maximum purchases. Materials received in excess of quantity specified on the purchase order , at the Town option's, may be returned at the Vendor's expense.

2. Prices. If Vendor's price or the regular market price of any of the Products covered hereunder is lower than the price stated in the Contract Documents on the date of shipment of such Products, Vendor agrees to give the Town the benefit of such lower price on any such Products. In no event shall Vendor's price be higher than the price last quoted or last charged to the Town unless otherwise agreed in writing. No charges for transportation, boxing, crating, etc. are allowable unless such charges are included in the Contract Documents.

3. Invoices. It is understood and agreed that orders will be shipped at the established Contract prices in effect on dates orders are placed. Invoicing at variance with this provision may subject the Contract to cancellation. Applicable North Carolina sales tax shall be invoiced as a separate item. Invoices shall be sent to the Town's accounts payable department with a copy to the Town Project Coordinator.

4. Freight on Board. All shipments of Products are FOB destination unless otherwise stated in the Contract Documents. Any freight charges prepaid by Vendor are to be itemized on the invoice unless stated otherwise in writing by form of quote, bid, contract. In instances where Products are shipped against this order by parties other than those specified on the Purchase Order, the third-party shipper must be instructed to list the Town purchase order number on all packages, bills of lading, etc. to insure prompt identification of order.

5. Taxes. Taxes are included in the Contract Price. Applicable taxes shall be invoiced as a separate item for the Town's records.

6. Payment Terms. Payment terms are Net 30 days after receipt of correct invoice or acceptance of Products, whichever is later.
7. Condition and Packaging. Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.
8. Safety Data Sheets. Safety Data Sheets must be provided with shipment of all chemicals.
9. Delays in Shipment. Time and date of delivery are of the essence, except when delay is due to causes beyond Vendor's reasonable control and without Vendor's fault or negligence.
10. Risk of Loss. Vendor shall have the risk of loss of and damage to the Products subject to the Contract Documents until such Products are delivered to the destination and accepted by the Town or its nominee.
11. Rejection. All Products shall be received subject to the Town's inspection. Products that are defective in workmanship or material or otherwise not in conformity with the requirements of the Contract Documents may be rejected and returned at Vendor's expense or may be accepted at a reduced price. the Town may require Vendor to promptly replace or correct any rejected Products Services and, if Vendor fails to do so, the Town may contract with a third party to replace such Products and charge Vendor the additional cost.
12. Warranties. Vendor warrants that all Products delivered hereunder will be free from defects in materials and workmanship and will conform strictly to the specifications, drawings, or samples specified or furnished. This warranty shall survive any inspection, delivery, acceptance or payment by the Town of the Products and shall run to the Town and any user of the Products. This express warranty is in addition to Vendor's implied warranties of merchantability and fitness for a particular purpose which shall not be disclaimed. In addition to any other rights available at law or equity, the Town shall be entitled to all rights and remedies provided by the Uniform Commercial Code, Chapter 25 of the North Carolina General Statutes, for breach of express warranties and implied warranties of merchantability or fitness for a particular purpose, including but not limited to consequential and incidental damages.

ELECTRICAL DOCUMENTS

(see following pages – plans are only available for Field 1)

