



HOLLY SPRINGS
North Carolina

CONTRACT FOR PROFESSIONAL SERVICES
SUBJECT TO Q.B.S.

THIS AGREEMENT dated _____, between the **Town of Holly Springs**, North Carolina, for itself and its Successors & Assigns (hereinafter called the "Town") and _____ (herein after called the "Contractor").

Town hereby desires to enter into a contract for services with the Contractor and the Contractor agrees to enter into this contract and perform the Services as set forth below, in the manner and time hereinafter described, and both parties do hereby agree as follows:

SERVICES OF CONTRACTOR

The services of the Contractor shall be performed in the manner as described in **Exhibit A** (the "Proposal") as attached hereto and incorporated by reference. Contractor agrees to employ such personnel as may be needed to deliver services in the manner and time prescribed herein. Such personnel shall be employees of the Contractor, said Contractor being an independent contractor of the Town.

BRIEF SUMMARY OF SERVICE(S): _____

TOWN'S RESPONSIBILITIES

The Town shall make available the facilities and information to the Contractor and shall not impede the work of the Contractor except as necessary. Any additional Town responsibilities shall be listed in **Exhibit A**.

BIDDING COMPLIANCE:

The Town shall comply with the bidding laws of the State of North Carolina. Failure to do so shall make this Contract void. The Town's Contract Manager for this Contract is:

Email: _____
Phone: _____

(Name, Department)

1. Standards of Performance.

- 1.1** The standard of care for all services performed or furnished by Contractor under this Agreement will be the care and skill ordinarily used by members of the Contractor's profession practicing under similar circumstances at the same time and in the same locality.
- 1.2** Contractor represents that, prior to submitting the Bid and executing this Contract, Contractor became and remains thoroughly acquainted with all matters relating to the performance of this Contract, all applicable laws and all of the terms and conditions of this Contract. All Services under this Contract shall be coordinated under and performed to the satisfaction of the Town Contact, taking into consideration the standard of care listed above. Town is authorized to withhold payment of any funds under this Contract until periodic performance of the Services has been inspected, accepted, and approved by the Town Contact.
- 1.3** Contractor shall be responsible for the technical accuracy of its services and documents resulting therefrom, and Town shall not be responsible for discovering deficiencies therein. Contractor shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in Town furnished information.
- 1.4** Contractor and Town shall comply with applicable Laws or Regulations and Town mandated standards. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to Town's responsibilities or to Contractor's scope of services, times of performance, or compensation.
- 1.5** Contractor is an independent contractor of the Town. The Town and the Contractor mutually agree to indemnify and hold harmless each party from any claims of negligence brought forth. Contractor is familiar with the property and its condition.

2. Term and Termination.

- 2.1** The term for this contract is as long as necessary to complete the scope of work agreed to, but in no event shall it exceed two (2) years.
- 2.2** The mutual obligations of the Parties contained in this Agreement may be terminated:
- 2.2.1** For cause by either party upon 30 days written notice in the event of a failure by the other party to perform in accordance with the terms hereof.
 - 2.2.2** For failure to consistently satisfy the Standards of Performance in the opinion of the Town Contract.
 - 2.2.3** Upon mutual agreement.

3. Controlling Law.

3.1 This agreement is to be governed by the law of the State of North Carolina, regardless of any language in any quote, contract, agreement supplied by the Contractor.

3.2 Venue and jurisdiction are proper in the 10th Judicial District of North Carolina (Wake County).

4. Notices.

4.1 Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address below, or given personally, or by regular, registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of the receipt.

4.1.1 For the Town:

_____	(Name, Title)
_____	(Department)
P.O. Box 8	(Address)
Holly Springs, NC 27540	
_____	(Phone)
_____	(e-mail)

4.1.2 For the Contractor/Vendor:

_____	(Name, Title)
_____	(Company)
_____	(Address)

_____	(Phone)
_____	(e-mail)

5. Severability.

5.1 Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Town and Contractor, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

6. Waiver.

6.1 Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

7. Attorney's Fees.

7.1 In the event of a breach of this Agreement, the substantially prevailing party shall be entitled to an award of reasonable attorney's fees and costs relating to compelling performance under this Agreement.

8. Insurance & Indemnification Requirement.

8.1 Contractor shall provide professional liability insurance for a minimum of \$1,000,000 per occurrence, \$2,000,000 aggregate, for the complete term of the contract. Additionally, the Contractor shall supply workman's compensation insurance coverage to all employees within the statutory limits, as necessary. Contractor shall supply proof of coverage to the Town, which shall list "Town of Holly Springs" as additional insured, to all professional liability policies for the duration of the contract term. Any waiver of the insurance requirement, or an acceptance of lower limits shall be stated on the **Exhibit B** cover page and a certificate of insurance shall be attached hereto as **Exhibit B**.

8.2 The Contractor agrees to waive any and all claims against the Town from itself or its employees arising from work performed by the Contractor pursuant to this Contract, except for claims related to non-payment of amounts. The Contractor shall protect, defend, indemnify and hold the Town and its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of actions of every kind and character in connection with or arising out of this Agreement and/or the performance hereof, that are proximately caused by the negligence, willful or wanton conduct, or breach of contract by the Contractor, except to the extent that the same are proximately caused by the negligence or willful misconduct of the Town. For such claims, the Contractor/Licensee further agrees to investigate, handle, provide defense for and respond to, any such claims at its sole expense and agrees to bear all other costs and expenses related thereto, even if such claims are groundless, false, or fraudulent. For the purpose of clarity, any indemnification provision contained in this Agreement shall require the Contractor to indemnify the Town only for the actions of the Contractor in the performance of the work described in this Agreement, and not for the actions of others.

9. E-Verify.

9.1 Contractor hereby agrees to comply with N.C.G.S. § 64-25, et. seq. regardless of Contractor's status as an independent contractor and not an employee with the Town. The E-Verify Affidavit shall be attached hereto as **Exhibit C**.

10. Independent Contractor.

10.1 Contractor's status shall be that of an independent contractor and not an agent, servant, employee, or representative of Town in the performance of the Services. Contractor shall exercise independent judgment in performing duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the workflow and determining how the work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of Town, or making

Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which Town provides its employees.

10.2 Contractor's Control Over Services Provided. Contractor shall retain the unqualified right of control over the means, manner and methods by which the Services are performed, and the right to perform such Services at the locations and times that Service Provider independently determines, as approved by the Town. Contractor shall be responsible for providing all equipment, materials and supplies that Contractor determines are needed to timely provide the Services.

10.3 Contractor shall be responsible for the technical accuracy of its services and documents resulting therefrom, and Town shall not be responsible for discovering deficiencies therein. Contractor shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in Town furnished information.

11. Non-Discrimination.

11.1 As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any operations under this Contract, Contractor, its officers, employees and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, sexual orientation, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of Town, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

12. Contractor's Employees.

12.1 Contractor agrees and consents that the Town is allowing access to the Contractor to both publicly used and private sensitive Town facilities. Contractor, and any employee, agent, subagent, volunteer, or any person authorized to act on behalf of the Contractor shall maintain a professional demeanor at all times during the interaction with the Town's patrons and visitors to Town facilities. Contractor shall refrain from other commercial or political activity while performing this contract on Town Facilities. Contractor shall undergo criminal background checks on all employees and subcontractors working at the direction of the Contractor in this contract, and shall exclude any employees from working in any Town facility any employees that:

- 1) had a conviction of any felony within the past 10 years;
- 2) has a conviction in the past 10 years of any violent crime or crime involving theft or dishonesty; or
- 3) is currently a registered sex offender.

13. Assignment.

13.1 Contractor shall not sell, assign, transfer or convey this Contract, in whole or in part, without the prior written consent of the Town. As an express condition of consent to any assignment, Contractor shall remain liable for completion of the Contract work in the event of default by the successor contractor or assignee.

14. Right of Review and Audit.

14.1 Town may review any and all of the services performed by Contractor under this Contract. Town is granted the right to audit, at Town's election, all of Contractor's records and billings relating to the performance of this Contract. Contractor agrees to retain such records for a minimum of three (3) years following completion of this Contract. Any payment, settlement, satisfaction, or release made or provided during the course of performance of this Contract shall be subject to Town's rights as may be disclosed by an audit under this section.

15. Non-Appropriations.

15.1 No provision of this agreement shall be construed or interpreted as creating a pledge of the faith and credit of the town within the meaning of any constitutional debt limitation. No provision of this agreement shall be construed or interpreted as creating a delegation of governmental powers nor as a donation by or a lending of the credit of the town within the meaning of the constitution of the state. This agreement shall not directly or indirectly or contingently obligate the town to make any payments beyond those appropriated in the sole discretion of the town for any fiscal year in which this agreement is in effect; provided, however, that any failure or refusal by the town to appropriate funds which results in the failure by the town to make any payment coming due hereunder will in no way obviate the occurrence of the event of default resulting from such nonpayment. No deficiency judgment may be rendered against the town in any action for breach of a contractual obligation under this agreement and the taxing power of the town is not and may not be pledged directly or indirectly or contingently to secure any moneys due under this agreement.

16. Full Agreement. This Contract is the full agreement of the parties, and neither has, or is relying on any information not contained in this Contract or its Exhibits. The terms of this Contract supersede any conflicting terms which may be contained in any Exhibit attached hereto and incorporated by reference.

17. Modification. The Contract may not be modified except by either a Change Order or an Amendment. Any Change Order or Amendment must be made in writing, utilizing the appropriate Town form, approved by the Town (and Town Council, if necessary) and executed with the same formalities as this original contract.

18. Exhibit List. The following documents shall be attached hereto and incorporated by reference.

Exhibit A – Proposal and Scope of Work

Exhibit B – Certificate of Insurance

Exhibit C – E-Verify Affidavit

Exhibit D – QBS Exemption Memorandum, if applicable

[Signature Page Follows]

TOWN OF HOLLY SPRINGS:

CONTRACTOR:

BY: _____
Randy J. Harrington, Town Manager
Date:

Signature _____

Name: _____

Title: _____

WITNESS:

Linda McKinney, Town Clerk
Date:

Contract Manager: _____ Date:

Purchasing Manager: _____ Brettany DeVold
Date:

Purchase Order No.: _____ (if applicable)

Approved as to form:

John Schifano, Town Attorney Date:

This instrument has been pre-audited in the manner
Prescribed by the Local Government Budget and Fiscal
Control Act.

Tina Stroupe, Director of Finance Date:

EXHIBIT A

EXHIBIT B

_____ **Insurance requirement waived**

_____ **Lower Insurance Limit Approved**

Approved by: _____

Printed Name: _____

_____ **Certificate of Insurance attached**

COI Expires: _____

EXHIBIT D