

**CONTRACT NAME: On-Call Park Planning Services**  
**CONTRACT NO. 17-1002A**

**CITY OF ALPHARETTA**  
**STANDARD CONTRACT FOR PROFESSIONAL SERVICES**

This Contract for Professional Services for the City of Alpharetta is made and entered into and is effective 10/7/2016, by and between **Pond & Company**, a Georgia corporation with its principal office located at 3500 Parkway Lane, Suite 600, Norcross, Georgia 30092 (the "Contractor"), and the **City of Alpharetta, Georgia**, a municipal corporation of the State of Georgia (the "City").

1. Contract Documents. The Contract Documents consist of this Contract, the City's Request for Qualified Contractors dated June 30, 2016, including any addenda thereto (the "RFQ"), and the Contractor's Statement of Qualifications dated July 28, 2016 (the "SOQ"), all of which collectively are incorporated herein by reference (collectively, the "Contract Documents"). In the event of any conflict in the Contract Documents, the provisions and requirements set forth in this Contract shall govern; provided however, to the extent any of Contractor's obligations or duties set forth in the SOQ exceed the requirements provided within the RFQ or this Contract, or the City finds any of the terms set forth in the SOQ more desirable, the terms set forth in the SOQ shall control. Subject to the foregoing, in the event of a conflict between the language in the RFQ and the SOQ, the language in the former shall govern.
  
2. Scope of Services. The Contractor's duties and scope of services are specifically set forth in the RFQ and SOQ (the "Work") and, in general, include the following:

The provision of park master planning services and the development of park master plans on a task order basis, including, but not limited to, the provision of design and planning services and the development of design documents, construction documents, and phased development plans.

Park master planning services include, without limitation, the following types of services:

- (a) Computations, modeling, regulatory review and consultation, and other background work necessary to ensure deliverables that satisfy compatibility with all applicable standards;
- (b) Perform all design and permitting as needed to produce construction plans for the subject project; and
- (c) Assist the City in conveying project scope and details to the public through the preparation of colored renderings (plan views, typical sections, and perspective) and similar graphic items and public meetings; and

Subject to the performance of such planning services to the City's satisfaction and as provided by task order, the Work further includes Contractor's development and completion of concept plans, construction plans, quantities, cost estimates, and other construction documents. The development and completion of design documents, construction documents, phased development plans, and other deliverables shall be accomplished in accordance with all standards, guidelines and specifications applicable to the subject project. Contractor will furnish all labor, materials, equipment, superintendence, and other incidentals to fully perform the Work as requested by task order. Contractor acknowledges that the award and execution of this Contract by the City does not guarantee the subsequent assignment of any portion of the Work by the City.

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3. Contract Prices. As finally awarded by the City, the City shall pay Contractor in accordance with the unit prices/rates set forth in Contractor's Hourly Rates Schedule, which is attached hereto and incorporated herein as **Exhibit "A,"** for Contractor's performance of Work.

This price includes the full development and provision of all deliverables as specified in the RFQ and SOQ and/or subject task order, as further supplemented or modified by the City's requirements. The City will process approved payment requests under this project to the Contractor. Payment to sub-contractors and suppliers is the responsibility of the Contractor. The City will not entertain any other payment arrangements.

Invoices shall be submitted to:

City of Alpharetta  
Department of Recreation and Parks  
1825 Old Milton Parkway  
Alpharetta, Georgia 30009  
Attn: Mike Perry

Payments may be made in the manner and on the periodic basis agreed to by the City prior to the commencement of the Work. Upon completion of the Work or, if agreed to by the City, upon completion of certain portions thereof, the Contractor shall submit an invoice detailing the appropriate charges as currently allowed. Upon receipt of Contractor's invoice and following inspections and confirmation of the performance of the subject portion of the Work, the City will render payment. Upon receipt of Contractor's final invoice and following final inspection and final acceptance of the Work, the City will render final payment. Subject to the withholding of any amounts due to the City as further set forth herein, all such invoices will be paid within forty-five (45) days by the City unless any items thereon are questioned, in which event payment will be withheld pending verification of the amount claimed and the validity of the claim. The Contractor will provide complete cooperation during any such investigation. No price adjustments shall be made during the term or any extension of this Contract except upon mutual consent of the parties. Notwithstanding any other provision of this Contract, and without prejudice to any of City's other rights and remedies, City shall have the right at any time or times to deduct and withhold from any payment for services that may become due under this Contract, such amount or amounts as may reasonably appear necessary to compensate the City for any portion of the Work that is defective, damaged, flawed, unsuitable, non-conforming or incomplete. Acceptance of final payment shall constitute a waiver of all claims against the City by the Contractor except for those claims previously made in writing against the City by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final payment.

4. Commencement of Work; Time for Performance.
- (a) Commencement of Work. The City shall not become obligated to pay for the Work prior to execution of this Contract and the Contractor shall only proceed to perform the Work as requested by task order
- (b) Time for Performance. Contractor's time for performance of each portion of the Work shall conform to the time requirements set forth in the subject task order.

- (c) Time is of the Essence. All limitations of time set forth in this Contract are of the essence.
5. Duration of Contract.
- (a) Contract Term. The term of this Contract shall be for a five (5) year period commencing October 1, 2016, and terminating September 30, 2021, as further set forth herein and in accordance with O.C.G.A. § 36-60-13.
  - (b) Contract Extension. If the completion of this Contract is delayed by actions of the City, then and in such event the term of this Contract shall be extended for such additional time within which to complete the performance of the Contract as is required by such delay. This Contract may be extended by mutual consent of both the City and the Contractor for reasons of additional time, additional services and/or additional areas of work.
6. Termination. This Contract may be terminated prior to the term ending by either party in the event of substantial failure or default of the other party to fulfill its obligations under this Contract. Prior to such termination, the non-defaulting party shall give notice to the defaulting party of the failure or default. Such party shall have fifteen (15) days from the date of the notice to cure the default or failure if such default or failure is capable of being cured. Upon failure to cure the default or failure within fifteen (15) days, or if such failure or default is not capable of being cured, the non-defaulting party may terminate the Contract effective immediately upon the provision of written notice as provided in Section 15 (*Notices*). The Contract may also be terminated prior to expiration of the term by the City for City's convenience upon the provision of not less than fourteen (14) days written notice to the Contractor. In the event of such termination, the Contractor shall be compensated for services performed prior to termination. Such amount shall be paid by the City upon the Contractor's delivering or otherwise making available to the City, all data, drawings, specifications, reports, estimates, summaries and other information and materials as may have been accumulated by the Contractor in performing the services included in this Contract, whether completed or in progress. All unperformed obligations incurred by Contractor prior to such date shall survive termination of this Contract.
7. Representations and Warranties. Contractor represents and warrants that:
- (a) Contractor has full power and authority to perform its obligations hereunder and to deliver the products and services set forth in the Contract Documents to the City without the consent of any other person or entity, and the products and services shall be delivered free and clear of any lien, encumbrance, security interest or other claim, of whatever nature;
  - (b) Contractor shall comply with all applicable statutes, rules, regulations and requirements of any governmental agency or authority, whether now or hereafter enacted, in performing its obligations hereunder, and the products and services shall comply with all such statutes, rules, regulations and requirements in effect at the time of delivery to and acceptance by the City;
  - (c) Contractor shall perform its obligations hereunder in a good, professional and workman-like manner, and in strict accordance with City's specifications and the terms of this Contract;
  - (d) All services performed by the Contractor under this Contract shall be conducted in a manner consistent with the level of care and skill ordinarily exercised by other members of Contractor's profession or trade currently practicing in the same or similar locality under the same or similar conditions; and
  - (e) Contractor, in the performance of its duties under this Contract, including but not limited to, its dealings with property owners, developers, contractors, consultants, architects and

any local, state or federal governmental agency or political subdivision, shall owe its primary duty of loyalty to the City.

8. Licenses, Registrations, Certifications and Permits. The Contractor shall be responsible for obtaining and maintaining in a valid status, all licenses, registrations, certifications and permits necessary to perform the Work as required by law. Contractor represents to the City that the Contractor and its employees are properly licensed and/or registered within the State of Georgia for the performance of the services required herein, provided such licensure and/or registration is required by applicable law. Contractor shall provide copies of any such licenses, certifications or permits to the City upon request.

9. Insurance.

(a) Insurance Generally. Contractor shall obtain and continuously maintain during the term of this Contract (and as otherwise required) insurance policies with coverage and limits no less than:

- i. Statutory Worker's Compensation and Employers Liability Insurance in the minimum amount of Five Hundred Thousand Dollars (\$500,000) or as required by applicable law, whichever is greater, for all employees and other persons as may be required by Georgia law. If Contractor is self-insured, Contractor shall additionally provide the City with a certificate from the Georgia Board of Workers' Compensation stating that the Contractor qualifies to pay its own workers' compensation claims.
- ii. Comprehensive General Liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000) per occurrence and in the aggregate. The policy shall be applicable to all premises and all operations of the Contractor. The policy shall provide comprehensive coverage, including coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, and products/completed operations. Completed operations coverage shall be maintained for a minimum period of two (2) years following completion of the Work. Further, coverage shall be written on an "all risk" (open perils) form. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the City, and its elected officials, officers, employees and agents, as additional insured parties.
- iii. Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury of not less than One Million Dollars (\$1,000,000) per occurrence and property damage of not less than One Hundred Thousand Dollars (\$100,000) per occurrence with respect to each of the Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the Work. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all of Contractor's subcontractors. Such coverage must include all automotive equipment used in the performance of the Contract, both on and off any work site, and such coverage shall include non-ownership and hired cars (vehicles and equipment) coverage. Such insurance shall be endorsed to name the City, and its elected officials, officers, employees and agents, as additional insured parties.

- iv. Umbrella/Excess Liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000) per occurrence and in the aggregate in excess of the underlying primary Commercial General Liability described above. Such policy shall be no more restrictive and provide the same or greater coverage as said underlying policy (written on no less than a follow form basis). Such insurance shall be endorsed to name the City, and its elected officials, officers, employees and agents as additional insured parties.
- v. Professional Liability (Errors & Omissions) insurance with minimum combined single limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, covering professional services rendered by the Contractor to the City, including, but not limited to, design, engineering, planning, consulting, and construction management services. Such coverage shall be maintained and remain in force for the term of this Contract and for a period of two (2) years following completion of the Work. The policy shall have a retroactive date that precedes the effective date of this Contract or the commencement of services under this Contract, whichever is earlier, and such retroactive date shall not be advanced when the policy renews. If the policy is cancelled or non-renewed for any reason and not replaced with a policy providing coverage for prior acts, which include Contractor's performance of the professional services under this Contract, Contractor shall purchase extended reporting period or tail coverage to cover claims reported for no less than two (2) years after completion of the Work. The policy shall include such other coverage as reasonably required by the City.

(b) Requirements of Insurance.

- i. Insurance shall be procured and maintained with insurers with an A- or better rating as determined by Best's Key Rating Guide. All insurance shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor.
- ii. No policy of insurance shall contain any exclusion for bodily injury or property damage arising from completed operations.
- iii. Every policy of insurance shall provide that the City will receive notice no less than thirty (30) calendar days prior to any cancellation, termination, or a material change in such policy.
- iv. Proof of required insurance shall be maintained in all equipment and motor vehicles insured in accordance with the provisions of this Contract.
- v. Contractor will ensure that any and all policies of insurance procured hereunder shall provide for a waiver of subrogation against the City, and Contractor waives any claim against the City arising in contract or tort which is covered by its insurance hereunder.

(c) Failure to Obtain or Maintain Insurance. The Contractor's failure to obtain and continuously maintain policies of insurance in accordance with this Section and its subsections shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Contract. Failure on the part of the Contractor to obtain and to

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continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Contract upon which the City may immediately terminate this Contract without advance notice.

- (d) Insurance Certificates. Contractor shall provide proof of such insurance to the City contemporaneously with the execution of this Contract. Prior to commencement of the Work, Contractor shall submit to the City certificates of insurance for all required insurance. Insurance limits, term of insurance, insured parties, and other information sufficient to demonstrate conformance with this Section and its subsections shall be indicated on each certificate of insurance. Acceptance of a certificate or proof of insurance does not constitute approval or agreement by the City that the insurance requirements have been satisfied.
  - (e) Other Insurance. Contractor shall maintain such other types and/or amounts of insurance as reasonably required by the City from time to time.
10. Indemnification. Contractor shall, to the fullest extent permitted by law, indemnify and hold harmless the City, including its elected officials, officers, employees, and agents, from and against any and all claims, demands, losses, liabilities, suits, actions, costs, expenses (including expenses of litigation and attorneys' fees) and damages ("Claims") of any type or nature, including, but not limited to, Claims for injury to person or property, arising out of or related to any error, omission, willful misconduct, negligent act, or breach of this Contract by Contractor, or any of its officers, agents, employees or subcontractors, in the performance of this Contract; provided, however, that this indemnification obligation shall not apply to any Claims arising from the sole negligence of the City. Nothing in this Section or this Contract shall be deemed to constitute a waiver of the City's sovereign immunity, create rights in any third party, or create any third party beneficiaries.
11. Subcontractors and Contractor Personnel.
- (a) No Subcontractors. No subcontractor or consultant shall be retained by Contractor to perform services under this Contract without the prior written consent of the City, except for those subcontractors previously identified in the SOQ.
  - (b) Subcontractor Requirements. Administration of any approved subcontractor shall be the Contractor's responsibility and all subcontracts shall require each subcontractor to be bound by all pertinent portions of this Contract and to assume all applicable obligations and responsibilities which the Contractor by this Contract assumes toward the City. In particular, and not by way of limitation, all indemnification and insurance provisions shall be fully binding upon any subcontractor providing a portion of the services, for all intents and purposes as if said subcontractor were a party to this Contract.
  - (c) Key Staff. Where Contractor has specifically identified certain personnel in the SOQ for the performance of certain portions of the Work (such personnel hereinafter referred to as "Key Staff"), Contractor shall assign and furnish such Key Staff to perform the respective tasks and responsibilities as set forth in the SOQ. Contractor agrees not to transfer or reassign any member of its Key Staff or the respective tasks or responsibilities of a member of Key Staff without the prior written consent of the City, except for the following reasons, as applicable:

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- (i) Situations where a member of Key Staff requests a transfer from his or her respective employer in order to accept a promotion or special assignment, which has been offered to him or her by such employer based upon his or her special education, qualifications or career path;
- (ii) Disciplinary reasons;
- (iii) Failure of the member of Key Staff to perform his or her respective tasks or responsibilities; or
- (iv) At the request of the member of Key Staff.

In the event Contractor permanently transfers or reassigns a member of Key Staff or the respective tasks or responsibilities of a member of Key Staff for any of the foregoing reasons, Contractor shall provide the City Administrator with prompt written notice of such transfer or reassignment and explain the basis of the transfer or reassignment. In the event of a vacancy in the position of any member of Key Staff, Contractor agrees to cooperate with the City in providing a replacement and make selection of a replacement without undue delay, in good faith, and in the best interests of the City.

Further, the City shall have the right, utilizing an objective standard based on current and past performance of the subject Work, to require Contractor to reassign the tasks and/or responsibilities of any member of Key Staff to a different representative of Contractor. Contractor agrees to permanently transfer the tasks and responsibilities of any member of Key Staff as soon as reasonably possible upon notification by the City Administrator.

12. Independent Contractor. The Contractor shall at all times be acting as an independent contractor and not be considered or deemed to be an agent, employee, joint venture or partner of the City. Contractor shall have no authority to contract for or bind City in any manner. Contractor shall have and maintain the responsibility for and control of the rendition of the Work, the discipline of its employees, and other matters incident to the performance of the Work (services, duties and responsibilities as described and contemplated herein). Notwithstanding the provisions of Section 11 (*Subcontractors and Contractor Personnel*) hereof or any other provision(s) of this Contract to the contrary, no employee, contractor or subcontractor of Contractor shall be considered an "employee" of the City during the performance of this Contract (the term "employee" shall have the same meaning as provided in IRS Publication No. 15 (2014)(Circular E).
13. Conflict of Interest. The Contractor represents that it has not, within two (2) years preceding the execution of this Contract, made or agreed to make any valuable gift, whether in the form of service, loan, thing, or promise, to any person (including any member of such person's immediate family) having the duty to recommend, the right to vote upon, or any other direct influence on the selection of the Contractor to provide products and services to the City. This provision shall not apply to legal campaign contributions, provided that such contributions have been disclosed in Contractor's response to the City's RFQ.
14. Ownership of Work Product. In the event Contractor prepares, pursuant to the performance of this Contract, any drawings, plans, studies, reports, specifications, other documents (the "Work Product"), the City shall be deemed the owner of the original of all

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such Work Product, and all statutory and common law rights with respect to such Work Product shall accrue to the City, provided the City has paid for the services in full.

15. Notices. All contractual notices and communications under this Contract shall be deemed sufficient if given by certified mail or statutory overnight mail with return receipt requested, or hand delivered:

- (a) If to the Contractor, at the following address:

Pond & Company  
3500 Parkway Lane  
Suite 600  
Norcross, Georgia 30092  
Attn: Ronald W. Osterloh, PE

- (b) If to the City, at the following address:

City of Alpharetta  
Department of Recreation and Parks  
1825 Old Milton Parkway  
Alpharetta, Georgia 30009  
Attn: Mike Perry

- (c) With a copy to:

C. Sam Thomas, P.C.  
Alpharetta City Attorney  
Bovis, Kyle, Burch & Medlin, LLC  
200 Ashford Center North, Suite 500  
Atlanta, Georgia 30338-2668

For the purposes of this Contract, the effective date of notice shall be the date that the notice is placed in certified or statutory overnight mail, or placed with a courier for hand delivery.

16. Public Records. Contractor understands that in accordance with O.C.G.A. § 50-18-70, *et seq.*, the public has a right of reasonable access to all public records of the City, subject to certain exceptions set forth therein or as otherwise provided by law, and agrees to allow access by the City to all documents subject to disclosure under applicable law. Contractor's willful failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Contract by the City. Further, Contractor agrees to retain all public records in accordance with the City's records retention and disposal policies, O.C.G.A. § 50-18-92, *et seq.*, and the Georgia Administrative Code. Notwithstanding the foregoing, nothing contained herein shall limit the Contractor's or the City's right to defend against disclosure of records alleged to be public.

17. Confidential Information.

- (a) Access to Confidential Information. The Contractor's employees, agents and subcontractors may have access to confidential data or information maintained by the City to the extent necessary to carry out the Contractor's responsibilities under the Contract. The Contractor shall presume that all information received pursuant to



the Contract is confidential unless otherwise designated by the City. If it is reasonably likely the Contractor will have access to the City's confidential information, then:

- i. The Contractor shall provide to the City a written description of the Contractor's policies and procedures to safeguard confidential information;
  - ii. Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;
  - iii. The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract; and
  - iv. The Contractor shall provide adequate supervision and training to its agents, employees, and subcontractors to ensure compliance with the terms of the Contract. The private or confidential data of the City shall remain the property of the City at all times. In order to obtain access to certain data in order to perform certain portions of the Work, Contractor may be required to sign a nondisclosure agreement. Contractor understands and agrees that refusal or failure to sign such a nondisclosure agreement, if required, may result in termination of the Contract.
- (b) No Dissemination of Confidential Data. No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated, unless otherwise required by law, without the written consent of the City, either during the period of the Contract or thereafter. Subject to Section 18 (*Rights in Proprietary Data*) hereof, as between the parties, any data supplied to or created by the Contractor shall be considered the property of the City, and Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract, in whatever form it is maintained, promptly at the request of the City.
- (c) Subpoena. In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the City and cooperate with the City in any lawful effort to protect the confidential information.
- (d) Reporting of Unauthorized Disclosure. The Contractor shall immediately report to the City any unauthorized disclosure of confidential information.
- (e) Survives Termination. The Contractor's confidentiality obligation under the Contract shall survive termination of the Contract.

18. Rights in Proprietary Data; Intellectual Property; Nondisclosure and Confidentiality.

- (a) Data of Contractor. The capitalized term "Proprietary Data" as used in this Section 18 shall mean commercial proprietary written reports, studies, drawings, trademarks, specifications, designs, models, processes, systems, photographs, reports, plans, surveys, software, or other graphic, electronic, chemical or mechanical representations of the Contractor, and further includes Proprietary Data provided to Contractor by a third party pursuant to a non-disclosure agreement or covenant or

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which constitutes a trade secret pursuant to Georgia law. Proprietary Data does not include public records information compiled on the City's behalf for the purpose of performing the Work under this Contract or any written reports, studies, drawings, specifications, photographs, CADD disks, reports, surveys or other representations prepared by Contractor for the City in performance of the Work provided pursuant to this Contract.

- (b) Rights in Data. As between the parties, all Proprietary Data shall be the property of the Contractor. No title or ownership or any intellectual property or proprietary rights of Contractor, including licensed software code copyrights and licensed software documentation, are transferred to the City under this Contract. The City shall have the limited right to use such Proprietary Data, without any additional payment to or approval by the Contractor, as necessary to provide for full use of the Work and project deliverables.
- (c) Copyrights. No project deliverables developed or prepared in whole or in part under this Contract shall be subject to copyright protection owned by a third party in the United States of America or other country. Contractor shall not include in the project deliverables any copyrighted matter owned by a third party unless Contractor obtains the written approval of the City Administrator or designee and provides said City Administrator or designee with the written permission of the copyright owner allowing Contractor to use such copyrighted matter in the manner provided herein.
- (d) Confidentiality. To the extent allowed by law, City will treat any information received under or through this Contract regarding Contractor's Intellectual Property, which Contractor has marked and identified as "Confidential Intellectual Property," in strictest confidence and will not disclose such information to third parties except where such information: (a) was part of the public domain when received, or becomes a part of the domain through no action or lack of action by City; (b) prior to disclosure was already in City's possession and not subject to an obligation of confidence imposed in another relationship; (c) subsequent to disclosure is obtained from a third party whom is lawfully in possession of such information and not subject to a contractual relationship to Contractor with respect to such information; (d) is in the form of a record which is otherwise subject to required disclosure as an open record under applicable Federal and state laws; or (e) is ordered to be disclosed by a court of competent jurisdiction. In regard to other Proprietary Data received under or through this Contract, the City will work with Contractor on implementing a process designed to protect proprietary and confidential information and keep any employee receiving such information from unauthorized publication and disclosure of such information. City agrees that access to and dissemination of such information shall be limited to its employees having a need to know. City shall continue to maintain appropriate internal policies and procedures which in its judgment are reasonably sufficient to protect the confidential nature of such information.
- (e) Limitation. Except as otherwise provided for herein, nothing in this Contract shall be interpreted as granting any rights to the City under any pre-existing patent, copyright, know-how, or any other intellectual or proprietary rights of the Contractor.

19. Compliance with Illegal Immigration Reform and Enforcement Act:

E-Verify Program: The City is committed to compliance with Federal and State laws requiring the verification of newly hired employees to ensure they are lawfully entitled to

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work in the United States. As such, the City shall not enter into a contract for the “physical performance of services” (as defined in O.C.G.A. § 13-10-90) unless the Contractor registers and participates in a federal work authorization program (E-Verify). The E-Verify affidavit or the secure identifiable document submitted by the Contractor will become part of the Contract Documents.

(a) Requirement to Participate in a Federal Work Authorization Program (E-Verify):

- i. Pursuant to O.C.G.A. § 13-10-91, Contractor represents, warrants, acknowledges, and/or agrees that:

The Contractor has registered and participates in a federal work authorization program to verify the employment eligibility of all newly hired employees;

Subcontractors shall not enter into any contract with the Contractor for the physical performance of services within the State of Georgia unless such subcontractor registers and participates in a federal work authorization program to verify the employment eligibility of all newly hired employees; and

Sub-subcontractors shall not enter into any contract with a subcontractor or sub-subcontractor for the physical performance of services within the State of Georgia unless such sub-subcontractor registers and participates in a federal work authorization program to verify the employment eligibility of all newly hired employees.

- ii. As of the date of enactment of O.C.G.A. § 13-10-91, the applicable federal work authorization program is “E-Verify” (<https://e-verify.uscis.gov/enroll/StartPage.aspx?JS=YES>) operated by the United States Citizenship and Immigration Services Bureau of the United States Department of Homeland Security. Information and instructions regarding E-Verify program registration, corporate administrator registration, and designated agent registration can be found at that website address.

(b) Contractor, Subcontractor, and Sub-subcontractor Evidence of Compliance:

- i. Contractor, if providing the physical performance of services under this contract, shall comply with the requirements of O.C.G.A. § 13-10-91.
- ii. Pursuant to O.C.G.A. § 13-10-91, in the event the Contractor employs or contracts with a subcontractor in connection with the covered contract, the Contractor shall secure from such subcontractor attestation of the subcontractor’s compliance with O.C.G.A. § 13-10-91 by the subcontractor’s execution of the subcontractor affidavit, the form of which is included in Appendix A of the RFQ, and will maintain a record of such attestation for inspection by the City at any time. Such subcontractor affidavit shall become a part of the Contractor/subcontractor agreement. Further, it shall be the duty of the Contractor to submit copies of all affidavits, drivers’ licenses, and/or identification cards required pursuant to this Section, as applicable, to the City within five (5) business days of receipt.
- iii. Pursuant to O.C.G.A. § 13-10-91, in the event the Contractor employs or contracts with a subcontractor that employs or contracts with any sub-subcontractor, the

subcontractor will secure from such sub-subcontractor attestation of the sub-subcontractor's compliance with O.C.G.A. § 13-10-91 by the sub-subcontractor's execution of the sub-subcontractor affidavit, the form of which is included in Appendix A of the RFQ, and maintain records of such attestation for inspection by the City at any time. Such sub-subcontractor affidavit shall become a part of the subcontractor/sub-subcontractor agreement. Any subcontractor receiving an affidavit from a sub-subcontractor shall forward notice to the Contractor of the receipt, within five (5) business days of receipt, of such affidavit. Further, it shall be the duty of any sub-subcontractor to forward notice of receipt of any affidavit from a sub-subcontractor to the subcontractor or sub-subcontractor with whom such receiving sub-subcontractor has privity of contract. Any subcontractor receiving notice of receipt of an affidavit from any sub-subcontractor that has contracted with a sub-subcontractor shall also forward, within five (5) business days of receipt, a copy of such notice to the Contractor.

- iv. In lieu of the affidavit required by this Section, if Contractor, or any subcontractor or sub-subcontractor, as applicable, has no employees and does not hire or intend to hire employees for purposes of satisfying or completing the terms and conditions of the Contract (or the subcontractor's or sub-subcontractor's portion of work utilized to perform part of the Contract with the City), such party shall instead provide a copy of his or her state issued driver's license or state issued identification card.
- (c) The Contractor shall comply with any and all other applicable requirements and provisions of O.C.G.A. § 13-10-91 and other applicable rules and regulations promulgated in relation thereto.
- (d) All portions of contracts pertaining to compliance with O.C.G.A. § 13-10-91 and these rules, and any affidavit related hereto, shall be open for public inspection in this State at reasonable times during normal business hours.

20. Miscellaneous.

- (a) Compliance with Laws; No Discrimination. The Contractor, including any approved subcontractors, shall, in performance of the Work, fully comply with all applicable federal, state, or local laws, rules, and regulations, including, but not limited to, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. In performance of the Work, the Contractor shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age or disability and shall further ensure that Contractor's agents and/or subcontractors comply with same. Further, Contractor, its agents and subcontractors shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any employee, applicant or person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot lawfully be used as a basis for the provision or denial of employment or service delivery.
- (b) Governing Law. This Contract is executed and shall be performed in the State of Georgia, and this Contract shall be construed and enforced in accordance with the laws of the State of Georgia. Subject to Subsection (j) below (*Arbitration*), venue for

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**CONTRACT NO. 17-1002A**

any action arising out of this Contract shall lie in the appropriate court of Fulton County, Georgia.

- (c) Captions. Titles or captions of sections contained in this Contract are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or prescribe the scope of this Contract or the intent of any provision.
- (d) Counterparts. This Contract may be executed in three (3) or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one (1) and the same instrument.
- (e) Severability. In the event that any provision hereof is held to be invalid or unenforceable, such provision shall be severed from this Contract and shall not affect the validity or enforceability of the remainder of this Contract.
- (f) Entire Agreement. This Contract supersedes all prior discussions and agreements between the parties with respect to the subject matter contained herein and constitutes the sole and entire agreement between the parties with respect to such subject matter.
- (g) Persons Bound. This Contract shall be binding upon and shall inure to the benefit of the parties, their respective successors, successors in title, legal representatives, heirs and permitted assigns. This Contract may not be assigned by the Contractor without the prior written consent of the City.
- (h) Amendment. No term or provision of this Contract may be amended, waived, supplemented, modified or terminated except by an instrument in writing signed by the party against whom the enforcement of the amendment, waiver, supplement, modification or termination is sought.
- (i) Waiver. The City's failure or forbearance to enforce any term hereof shall not be deemed to be a waiver of such right or claim, or any right of claim hereunder. Moreover, the City's waiver of any term hereof shall not operate or be construed as a waiver of any subsequent breaches of the same or any other term.
- (j) Arbitration. Any dispute arising out of this Contract shall, at the option of the City of Alpharetta, be submitted to binding arbitration conducted in Atlanta, Georgia in accordance with the rules of the American Arbitration Association.
- (k) Annual Appropriation and Renewal. Notwithstanding any other provision of this Contract, in compliance with the requirements of O.C.G.A. § 36-60-13 governing the terms and conditions of multiyear contracts, this Contract shall be effective for a term commencing on October 1, 2016, and terminating at midnight on September 30, 2017 (the "initial term"), without further obligation on the part of either party other than outstanding obligations incurred prior to the expiration of such term. Thereafter, in accordance with O.C.G.A. § 36-60-13 and subject to the further conditions provided in this Paragraph, this Contract shall be automatically renewed for up to four (4) successive one (1) year terms (each one year term occurring after the initial term shall be referred to as a "renewal term") unless the City delivers written notice of non-renewal to Contractor at least thirty (30) days prior to the expiration of the initial term. At the expiration of each renewal term, this Contract shall be automatically renewed for an additional one (1) year term, unless the City furnishes

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Contractor written notice of its intent not to renew this Contract not less than thirty (30) days prior to the expiration of such renewal term. If written notice of non-renewal is given, this Contract will terminate upon expiration of the then existing term. Nothing stated herein shall obligate the City to extend this Contract beyond the initial term or any renewal term. Further, this Contract shall terminate absolutely and without further obligation of the City at the close of the fiscal year in which it was executed and at the close of each succeeding fiscal year if the City Council fails to appropriate funding for the Contract for any such succeeding fiscal year. Notwithstanding any other provision or provisions of this Contract, pursuant to O.C.G.A. § 36-60-13, this Contract will terminate immediately and absolutely if the City determines that adequate funds are not appropriated or granted or funds are de-appropriated such that the City cannot fulfill its obligations under the Contract, which determination is at the City's sole discretion and shall be conclusive.

- (k) Additional Terms of Contractor. The City shall not be bound by any terms and conditions included in any Contractor invoice, packaging, catalog, brochure, technical data sheet, or other document which attempts to impose any condition in variance with or in addition to the terms and conditions contained herein.
- (l) Presumptions and Interpretations. The parties further agree that should any provision of this Contract require interpretation or construction, the court, administrative body or other entity interpreting or construing this Contract shall not apply a presumption that the provisions hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agents prepared same, it being agreed that all parties and/or their respective attorneys and agents have been fully afforded the opportunity to review all provisions of this Contract.
- (m) No Third Party Beneficiaries. Nothing contained in this Contract is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or sub-contractor of the Contractor. Absolutely no third party beneficiaries are intended by this Contract. Any third-party receiving a benefit from this Contract is an incidental and unintended beneficiary only.
- (n) No Waiver of Governmental Immunity. Nothing in this Contract shall be construed to waive, limit, or otherwise modify any governmental or sovereign immunity that may be available by law to the City, its elected officials, officers, employees, contractors, or agents, or any other person acting on behalf of the City and, in particular, governmental or sovereign immunity afforded or available pursuant to Georgia Statutes.
- (o) Publicity Provision. Contractor shall not use any trademarks, service marks, or logos of the City without the City's express prior written consent. In particular, Contractor shall not identify or make reference to the City in any advertising or other promotional modality regardless of its form without the express prior written consent of the City.
- (p) Survival. Any and all provisions of this Contract creating obligations extending beyond the term of this Contract, including, without limitation, the insurance and indemnification provisions contained herein, shall survive the expiration or termination of this Contract, regardless of the reason for such termination.

**CONTRACT NAME: On-Call Park Planning Services**  
**CONTRACT NO. 17-1002A**

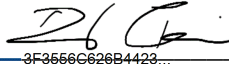
- (q) Special Stipulations. Contractor shall be required to comply with the special stipulations set forth below. Notwithstanding the provisions of Section 1 (*Contract Documents*) hereof, the following special stipulations shall supersede and control over any conflicting provisions set forth in the RFQ, SOQ or any preceding section of this Contract:

Notwithstanding the provisions set forth in Subsection 20(f) (*Entire Agreement*) hereof, unless otherwise expressly agreed to in writing, the parties agree that this Contract is not intended to amend, substitute, extinguish or constitute a novation of any existing and currently effective written agreement previously entered between the parties providing for the provision of (i) services for a specific project for a certain fee or (ii) for other types of on-call design, engineering or planning services, which contains terms and conditions that directly conflict with the terms and conditions hereof.

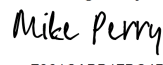
IN WITNESS WHEREOF, the parties to these presents have executed this Contract in three (3) counterparts, each of which shall be deemed an original.

Executed 10/7/2016

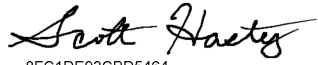
**CITY OF ALPHARETTA, GEORGIA**

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By:   
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David Belle Isle, Mayor

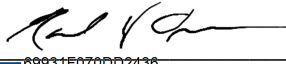
Approved as to Content:

DocuSigned by:  
  
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Mike Perry, Director of Recreation and Parks

Approved as to form:

DocuSigned by:  
  
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Scott T. Hastey, Asst. City Attorney

**POND & COMPANY**

DocuSigned by:  
By:   
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Ronald W. Osterloh, PE  
Vice President

**CONTRACT NAME: On-Call Park Planning Services**  
**CONTRACT NO. 17-1002A**

**EXHIBIT "A"**

**Contractor's Hourly Rates Schedule**

POND  
August 26, 2016  
*RFP #17-1002 - Request for Qualifications: On-call Park Planning Services*

**Hourly Staff Billing Rates Schedule**

Below is a list of billing rates for each staffing position:

**BASIC SERVICE RATES**

Principal	\$ 200
Design Director	\$ 150
Project Manager	\$ 120
Senior Landscape Architect	\$ 110
Landscape Architect	\$ 90
Engineer	\$ 100
Senior Planner	\$ 110
Planner	\$ 95
Irrigation Designer	\$ 85
Senior Architect	\$ 125
Architect	\$ 95
Technician/Drafter	\$ 80
Administrative Assistant/Clerical	\$ 60

**COST/FEE PROPOSAL QUALIFICATIONS:**

The hourly rates listed above are inclusive of overhead, profit, and indirect costs. All other direct project expenses such as mileage, postage, reproduction, etc. will be billed to the City at the actual cost.

If the scope of a task order requires Irrigation Design, we will utilize a subconsultant to provide those services. Survey, geotechnical and any other field services will also be subcontracted; however, Pond will solicit the most cost proposals from qualified subconsultants to provide the City the best value and quality.