



**TOWN OF LEESBURG, VIRGINIA  
REQUEST FOR PROPOSALS**

**COMPREHENSIVE ENGINEERING, ARCHITECTURAL, SURVEYING AND  
RELATED SERVICES**

**RFP NO. 300810-FY15-22**

The Town of Leesburg is accepting proposals for Comprehensive Engineering, Architectural, Surveying and Related Services in support of projects as identified by Town of Leesburg officials. Proposals must be submitted to Ms. Renée LaFollette, Director, Office of Capital Projects, 25 West Market Street, Leesburg, VA 20176, no later than 4:00 p.m., Friday, May 1, 2015. All proposals must indicate RFP title, number and submittal date on the external shipping material.

**All questions regarding this RFP must be received in writing by email at [CapitalBidQuestions@leesburgva.gov](mailto:CapitalBidQuestions@leesburgva.gov) or by fax at 703-737-7065 until but no later than 5:00 P.M. on Friday, April 24, 2015.**

Interested offerors may download a copy of the RFP from the bid board on the Town's website at <http://www.leesburgva.gov/bidboard> and may be obtained beginning Thursday, April 9, 2015. Contact Cindy Steyer at 703-737-2302 or [csteyer@leesburgva.gov](mailto:csteyer@leesburgva.gov) with questions about obtaining these documents. **All addenda issued for this project will only be posted on the Town's Bid Board.**

Renée M. LaFollette, P.E., Director  
Office of Capital Projects



**TOWN OF LEESBURG, VIRGINIA  
REQUEST FOR PROPOSALS  
RFP NO. 300810-FY15-22**

**COMPREHENSIVE ENGINEERING, ARCHITECTURAL, SURVEYING AND  
RELATED SERVICES**

Issue Date: April 9, 2015

Due Date: May 1, 2015 at 4:00 p.m.

RFP No. 300810-FY15-22

Remittance Address: By Mail or Hand Delivered  
Town of Leesburg  
Office of Capital Projects  
25 West Market Street  
Leesburg, VA 20176

## TABLE OF CONTENTS

I.	General Information	4
II.	Contract Period and Award	4
III.	Scope of Services	5
IV.	Proposal Format	6
V.	Proposal/Selection Process	8
VI.	Evaluation of Proposals/Selection Criteria	9
VII.	Terms and Conditions	9
VIII.	Submittal Instructions	15
IX.	Required Forms	15
X.	Standard Contract	18

**COMPREHENSIVE ENGINEERING, ARCHITECTURAL, SURVEYING AND  
RELATED SERVICES  
RFP NO. 300810-FY15-22**

**I. General Information**

The Town of Leesburg, Virginia (Town) is requesting proposals for a wide variety of engineering, architectural, surveying and related professional and non-professional services.

The majority of the services are anticipated to be related to typical civil engineering-type services. However, it is expected that some services will be required for more specialized engineering, architectural, or other related services. Individual firms may qualify for any or all of the services requested.

It is anticipated that one or more contracts will be awarded for each of the following specialties:

- General Civil Engineering and Surveying
- Utility Engineering (Water and Sewer)
- Water Resources Engineering
- Architecture / Mechanical / Electric

Other services as listed in Section III of this RFP may be assigned under the contracts.

The Town expects to award multiple contracts under this solicitation, and reserves the right to determine the exact number of individual contracts based on the responses received from this request. A firm may provide services for more than one of the specialty areas.

Consultant teams may be formed to provide more comprehensive services. However, it is not necessary for firms to have capabilities to provide all services listed.

The contracts awarded under this solicitation will be administered by the Town's Department of Public Works and Capital Projects. However, other Town departments may also assign tasks under the contracts. In those instances, the other department will administer and manage the task.

**II. Contract Terms**

The initial contract period shall be one (1) year. This contract may be renewed for up to four (4) additional one-year terms **upon mutual agreement of both parties**. (Pursuant to the **Virginia Public Procurement Act, Section 2.2-4300 et seq.**, the "VPPA").

The maximum value of an individual task that may be assigned under this contract is \$100,000. The maximum value assigned to each consultant for all tasks is \$500,000 per contract year.

Individual or multiple tasks may be awarded to a firm based on the following criteria:

1. Capabilities and expertise of staff related to the task
2. Availability of staff and ability to meet specific Town schedule requirements
3. Cost effectiveness

When selected for a task assignment, the firm will be required to provide a technical proposal, cost proposal, and project schedule. Negotiations for an assignment will be conducted by competitive negotiation in accordance with the Virginia Public Procurement Act.

### **III. Scope of Services**

The qualified firm will be expected to provide professional consultation and design services. Other professional and technical services, including but not limited to those itemized below may be requested under this contract. Projects may be included in the Town's approved Capital Improvement Program (CIP) (if the size of the project will not exceed the task order limits described in Section II above). However, tasks assigned under these contracts may include studies, surveys, or other projects that are considered to be maintenance, 3R, or other smaller projects that are not included in the CIP.

While other types of services may be requested, it is not anticipated that these services will comprise a substantial volume of the total services requested. The Town reserves the right to expand or delete services as necessary.

There is no assurance that tasks to be assigned under these contracts will be consistent with assignments on past contracts. However, for reference, previous assignments have included the following general types of tasks:

- Topographic and property surveys and plats
- Traffic studies
- Water plant repair and upgrades (i.e. filter crack repair, filter recoating, filter bed study, clearwell leak repair, chloramine equipment, UV disinfection)
- Water supply system hydraulic analysis
- Wetland delineations
- Environmental studies
- Geotechnical studies
- Drainage studies and design
- Bridge inspections and ratings
- Flood studies
- MS4 Permit and SWPPP assistance
- TMDL compliance assistance
- Stream restoration design
- Stormwater pond retrofit design
- Street design
- Parking lot design
- Utility test pits
- Traffic signal design
- Park design

- Sidewalk design and ADA analysis
- Waterline design
- Sanitary sewer line design
- Generator design
- Landscape design
- Fuel farm design

Types of services for the contracts awarded under this RFP may include:

- Technical Studies and Reports (including planning reports, preliminary design reports, etc.)
- Flow analyses, hydraulic calculations, and assessments (for water, sewer and reuse systems)
- Water and sewer treatment process analysis and assessments
- Preliminary and final design, preparation of construction plans, specifications and bid documents (including material quantity takeoffs, cost estimates, and related items). This may include utility related projects, pedestrian and bicycle improvements, drainage improvements, stormwater management and BMP design, building maintenance and upgrades, etc.
- Permit and permit renewal applications and related services (as required by regulatory agencies)
- Advisory services during bidding and bid evaluation
- Construction phase services such as shop drawing and submittal review, responses to RFIs, etc.
- On-site services during construction, such as operational trouble-shooting
- Record drawing and system start-up services (water, wastewater, HVAC)
- Updates and revisions to the Town Design and Construction Standards Manual
- Grant writing assistance

It is *not* anticipated that inspection or construction management services will be required under these contracts.

#### **IV. Proposal Format**

Proposals are to be submitted in a format that allows uniform review and easy access to information by the Evaluation Committee. The proposal shall be organized in the following order:

- Letter of Interest
- Table of Contents
- A. Understanding and Approach
- B. Qualifications and Experience
- C. Staffing

#### D. Required Forms

- RFP Submission Form
- Qualifications Form

#### E. Supplemental Materials (Optional)

The items to be addressed in each section of the proposal are described below. Emphasis should be on completeness and clarity of content. Proposals should contain no more than forty (40) individual sheets. Double-sided printed pages are encouraged. **All** sheets in the proposal (i.e. including covers, dividers and tabs, letter of interest, table of contents, etc.) will be counted as part of the sheet count.

The following items should be included in each section of the proposal:

##### A. Understanding and Approach

1. Understanding: Demonstration of the firm's understanding of how the contracts will be utilized by the Town. Discussions of key issues anticipated based on experience with the Town or on similar contracts with other local governments.
2. Approach to comprehensive consulting services on task order contracts
3. Quality assurance program
4. Approach to meeting scheduled commitments, including methods of responding in short time periods, and techniques used to control engineering and construction costs.

##### B. Qualifications and Experience

1. Provide specific information regarding your firm's or team's qualifications related to the services to be provided under this contract.
  - Prime consultant – Primary services offered, firm size, location(s) where work will be performed, history of working directly for local governments, and other related information
  - Sub-consultants – Role of sub-consultant and services to be provided under this contract, location where work will be performed, history of working with the prime consultant, history of working with local governments, and other related information.
2. Provide information on at least five projects completed within the last 10 years. The projects should focus, to the greatest extent possible, on your firm's past or present experience with local government entities on projects similar to the scope of projects described in Section III of this RFP. The projects should demonstrate your firm's ability to ensure the timely completion of the proposed services in the most efficient manner and should represent experience by personnel proposed to be assigned to the Town's projects. **The experience must demonstrate the firm's capabilities to provide the services in each category that is checked on the Qualifications Form.**

The project descriptions should include the following minimum information:

- project name;
- client including contact and telephone number;
- dates;
- description of project (photos may be included) including your firm's role in the project;
- dollar value of project; and
- key personnel involved with project.

C. Staffing

1. Provide an organization chart, including, at a minimum:

- Project Manager
- Key Task Leaders
- Quality Management Team Personnel
- Other Key Staff

For each person shown on the chart, clearly indicate their role and office location. If the person is from a sub-consultant, that should be noted.

2. Provide staff resumes describing the qualifications and specific experience for each project team member listed on the organizational chart. Qualifications and experience should be related to the categories checked on the Qualifications Form.

D. Required Forms (See Section IX)

The two forms included in Section IX of this RFP must be included in this section of the proposal.

1. RFP Submission Form
2. Qualifications Form – This form must indicate the types of services that the firm wishes to be considered under this contract. Qualifications and experience must be described in Section C for each technical area that the firm is proposing to provide services

E. Supplemental Materials (optional)

This optional section can include materials such as technical papers, company brochures/publications, or industry awards that directly relate to the elements of this project. These pages will count toward the 40-page limit.

**V. Proposal/Selection Process**

An Evaluation Committee consisting of representatives of the Office of Capital Projects, Department of Utilities, and Department of Public Works will review the proposals. The Chief Procurement Officer will participate as a non-voting member of this committee. The evaluation and selection of the consulting firm will be based on the criteria set forth below. It is the Town's intention to award multiple contracts under this procurement.



The Town intends to award this contract on the basis of competitive negotiation as outlined in the Virginia Public Procurement Act – Section 2.2-4301.3.a “Competitive Negotiations; Procurement of Professional Services.” Based on the Proposal Evaluation Criteria listed below in Section VI, the committee will determine the highest-ranked offerors. Offerors may be required to make a verbal presentation of their proposal. Offerors may be required to provide non-binding hourly rates at this meeting. The Evaluation Committee will schedule the time and location for this presentation, if it is necessary. After the presentations, the firms will be re-ranked. Negotiations will be conducted with the offeror ranked first. If these negotiations are unsuccessful, they will be formally concluded and the second ranking firm will be contacted.

At the discretion of the Town of Leesburg, tasks assigned under this contract will be based either on hourly rates for services provided with an upper, not to exceed limit for each task or on a lump sum basis.

## **VI. Evaluation of Proposals/Selection Criteria**

The following criteria will be used in the evaluation of proposals and developing a shortlist of Offerors:

### **A. Understanding and Approach**

1. Understanding of Services Required
2. Technical Approach
3. Management Approach
  - a. Quality Assurance
  - b. Schedule
  - c. Cost Control

### **B. Qualifications and Experience**

1. Firm (Team) Capabilities and Experience
2. Projects

### **C. Staffing**

1. Project Manager(s)
2. Technical Staff

## **VII. Terms and Conditions**

**A. Rejection of Proposals** – The Town reserves the right to reject any or all proposals, to waive any informality in any proposals or reject any item or combination of items.

**B. Contract Execution** – In the event that the offerors to whom the proposal is awarded does not execute a contract within 30 days after the award of proposal, the Town may give notice to such offeror of intent to award the proposal to the next most qualified offeror, or to call for new proposals, and may proceed accordingly.

Any exceptions to this contract must be clearly noted in your proposal.

**C. Inquiries** – All inquiries concerning this RFP must be directed, **in writing**, to Tom Brandon, Deputy Director, Office of Capital Projects, either by fax at 703-737-7065

or by email at [CapitalBidQuestions@leesburgva.gov](mailto:CapitalBidQuestions@leesburgva.gov). Questions will be entertained until close of business five (5) days prior to the bid due date. Inquiries sent directly to the Deputy Director or other staff other than via the methods listed above will not be answered. A copy of all written questions received, and subsequent responses provided, will be posted on the Town's Bid Board only. It is the Offeror's responsibility to register with the Bid Board to receive the updates.

- D. **Understanding of RFP** – Offerors shall thoroughly examine and be familiar with the RFP. The failure or omission of any offeror to receive or examine this document shall in no way relieve any offeror of obligations with respect to this proposal or the subsequent contract. The submission of a proposal shall be taken as prima facie evidence of compliance with this paragraph.
- E. **Assignment of Contract** – The firm is prohibited from assigning, transferring, conveying, subletting, or otherwise disposing of this contract or its rights, title or interest therein or its power to execute such contract or its rights, title or interest therein or its power to execute such contract to any other person, company or corporation without the consent and approval in advance and in writing by the Director of Capital Projects.
- F. **Exceptions to RFP** – Offerors taking exception to any part or section of this RFP shall clearly indicate such exceptions in their proposal. Failures to indicate any exceptions shall be interpreted as the offeror's intent to fully comply with the RFP as written. Conditional or qualified proposals are subject to rejection in whole or in part.
- G. **Laws and Regulations** – Any contract awarded shall comply fully with all local, state and federal laws and regulations. Any litigation arising from this contract will be conducted in the Circuit Court of Loudoun County, a court within the Commonwealth of Virginia.
- H. **Collusion among Offerors** – More than one proposal from an individual, firm, partnership, corporation or association under the same or different name will be rejected. Reasonable grounds for believing that an offeror has an interest in more than one proposal for the work contemplated will cause rejection of all proposals in which the offeror is interested. Any or all proposals will be rejected if there is any reason for believing that collusion exists among the offerors. Participants in such collusion may not be considered in future proposals for the same work. Each offeror, by submitting a proposal and the attached RFP Submission Form, certifies that it is not a party to any collusive action.
- I. **Qualification of Offerors** – Each Offeror may be required, before the award of any contract, to show to the complete satisfaction of the Evaluation Committee that it has the necessary facilities, abilities, and financial resources to furnish the service or material specified herein in a satisfactory manner, and the offeror may also be required to show past history and reference which will enable the Evaluation Committee to be satisfied as to the offeror's qualifications. Failure to qualify according to the foregoing requirements will justify proposal rejection.
- J. **Liability** – The successful Offerors will not be held responsible for failure to perform the duties and responsibilities imposed by the contract due to legal strikes, fires, civil disobedience, riots, rebellions, acts of God and similar occurrences beyond the

control of the successful offeror that make performance impossible or illegal, unless otherwise specified in the agreement.

- K. **Relation To Town** – It is the intent of the parties hereto that the successful offeror shall be considered as an independent contractor and that neither it nor its employees shall, under any circumstances, be considered servants or agents of the Town and that these bodies shall be at no time legally responsible for any negligence on the part of said successful offeror, its servants or agents, resulting in either bodily or personal injury or property damage to any individual, firm, or corporation.
- L. **Expenses Incurred In Preparing Proposal** – The Town accepts no responsibility for any expense incurred in the proposal preparation and presentation. Such expenses are to be borne exclusively by the offeror.
- M. **Offeror Responsibility** – Before submitting a proposal, each offeror shall make all investigations and examinations necessary to ascertain all conditions and requirements affecting the full performance of the contract. Before submitting a proposal, each offeror shall make all investigations and examinations necessary to verify any representations made by the Department of Capital Projects that the offeror will rely upon. No pleas of ignorance of such conditions and requirements resulting from failure to make such investigations and examinations will relieve the successful offeror from its obligation to comply in every detail with all provisions and requirements of the contract documents or will be accepted as a basis for any claim whatsoever for any monetary consideration on the part of the successful offeror.
- N. **Protest of Award or Decision to Award** – An Offeror may protest an award or decision to award a contract under procedures as set forth in the Town of Leesburg Procurement Policy.
- O. **Ethics In Public Contracting** – This specification incorporates by reference, but is not limited to, the provisions of law contained in the Virginia Conflict of Interest Act, the Virginia Governmental Frauds Act, Articles 2 and 3 of Chapter 10 of Title 18.2, and the Virginia Public Procurement Act, Chapter 7 of Title 11 of the Code of Virginia, as amended, and the Town of Leesburg Procurement Policy.
- P. **Insurance Requirements** – Offeror shall secure at its own expense general liability insurance in an amount not less than \$2,000,000 solely contained in a Commercial General Liability Policy or in combination with an Umbrella or Excess Policy. Included shall be coverage for Bodily Injury and Property Damage resulting from the operations, products, and completed operations of the contractor.

Offeror shall also carry automobile insurance in an amount not less than \$2,000,000 solely contained in a Commercial Auto Policy or in combination with an Umbrella or Excess Policy.

Offeror shall also carry Workers Compensation insurance, which meets the statutory requirements of the Commonwealth of Virginia.

Offeror shall also carry Professional Liability (E&O) Insurance for any errors or omissions in the services it provides to the Town, in an amount of not less than \$2,000,000.

In addition, offeror shall also carry other insurance coverage deemed by the Town to be appropriate to his agreement.

The above-mentioned coverage shall be placed with an insurance carrier licensed to do business in the Commonwealth of Virginia. The carrier must have an AM Best Rating of A or better.

A Certificate of Insurance identifying coverage and naming the Town of Leesburg as additional insured shall be furnished to the town. A copy of the endorsement to the offeror's policy shall be provided as proof of this requirement.

Liability coverage shall contain wording prohibiting cancellation of coverage, failure to renew, or reduction in limit without the insurer first giving thirty (30) days prior written notice of such action to the town.

- Q. Business, Professional, And Occupational License (BPOL)** – All firms conducting business for the Town of Leesburg are required to be licensed in accordance with the Town's "Business, Professional, and Occupational Licensing (BPOL) Tax" Ordinance (excerpt below). Wholesale and retail merchants without a business location in Leesburg, Virginia are exempt from this requirement. Questions concerning the BPOL Tax should be directed to the Department of Finance, telephone 703-771-2715.

*Town Code, Leesburg, VA, Sec. 17-163 License requirement*

Every person engaging in the Town in any business, trade, profession, occupation or calling (collectively hereinafter "a business") as defined in this article, unless otherwise exempted by law, shall apply for a license for each such business if:

- (1) Such person maintains a definite place of business in the Town of Leesburg;
- (2) Such person does not maintain a definite office anywhere but does maintain an abode in the Town, which abode for the purposes of this article shall be deemed a definite place of business; or
- (3) There is no definite place of business but such person operates amusement machines, is engaged as a peddler or itinerant merchant, carnival or circus as specified in § 58.1-3717, 3718 or 3728, respectively of the Code of Virginia, or is a contractor subject to § 58.1-3715 of the Code of Virginia, or is a public service corporation subject to § 58.1-3731 of the Code of Virginia. A separate license shall be required for each definite place of business. A person engaged in two or more businesses or professions carried on at the same place of business may elect to obtain one license for all such businesses and professions if all of the following criteria are satisfied: (i) each business or profession is licensable at the location and has satisfied any requirements imposed by state law or other provisions of the articles [Code] of the Town of Leesburg; (ii) all of the businesses or professions are subject to the same tax rate, or, if subject to different tax rates the licensee agrees to be taxed on all businesses and professions at the highest rate; and (iii) the taxpayer agrees to supply such information as the assessor may require concerning the nature of the several businesses and their gross receipts.

- R. Other Licenses and Permits** – The Offeror shall pay all Town, County, State, and Federal taxes required by law enacted at the time proposals are received and resulting from the work or traceable work thereto, under whatever name levied.

S. **Ownership of Documents** – The Offeror agrees that all information, finished or unfinished documents, data, studies, surveys, drawings, maps, specifications, models, photographs, records, reports and other material gathered and/or prepared by or for it under the terms of the Contract shall, at the Town’s option, be delivered to, become, and remain the property of the Town. The Town shall also have the right to use and reproduce the data and reports submitted hereunder, without additional compensation to the Offeror.

T. **Employment Discrimination By Contractors Prohibited** – Every contract in excess of \$10,000 shall include the following provisions:

1. During the performance of a contract, the Offeror shall agree that he will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, age, disability or any other basis prohibited by federal or state law relating to discrimination in employment in the solicitation and award of public contracts except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor; that he will post in conspicuous places, available to employees and applicants for employment, notices setting forth nondiscrimination practices, and that he will state, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that he is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient to meet this requirement.
2. The Offeror will include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

U. **Provision for Multiple Projects** – Pursuant to section 2.2-4301 of the VPPA

The resulting contract will allow for work on multiple projects provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the contract term is limited to one year, or a cumulative total project fee sum of \$500,000, whichever comes first, and (iv) the project fee of any single project shall not exceed \$100,000. Such contract may be renewable for two additional one-year terms at the option of the public body. Under such contract, the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed. Any unused amounts from the first contract term shall not be carried forward to the additional term.

In the event that these limits are modified in the VPPA during the initial or renewal terms of this contract, the Town reserves the right to amend the limits of this contract to coincide with the change(s).

V. **Drug Free Workplace** – Pursuant to section 2.2-4312 of the VPPA. Drug-free workplace to be maintained by contractor; required contract provisions.

All public bodies shall include in every contract over \$10,000 the following provisions:

During the performance of this contract, the Offeror agrees to (i) provide a drug-free workplace for the contractor’s employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the

unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Offeror that the Offeror maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a Offeror in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

**W. Payment Clauses** – Pursuant to Section 2.2-4354 of the VPPA –

1. Within seven days after receipt of amounts paid to the Offeror by the Town for work performed by the subcontractor under the resulting contract the Offeror will:
  - a. Pay the subcontractor for the proportionate share of the total payment received from the agency attributable to the work performed by the subcontractor under that contract; or
  - b. Notify the agency and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
2. Individual contractors must provide their social security numbers and proprietorships, partnerships, and corporations to provide their federal employer identification numbers.
3. The Offeror will pay interest to the subcontractor on all amounts owed by the Offeror that remain unpaid after seven days following receipt by the Offeror of payment from the Town for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 1.
4. Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month.

The Offeror will include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the Town. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

**X. Dispute Resolution** – Pursuant to Section 2.2-4363 of the VPPA – 3. Disputes

1. Notwithstanding any provision of law to the contrary, all claims, disputes, and other matters or questions between the Offeror and the Town arising from or relating to this Contract, shall be resolved under this paragraph:

2. The Offeror shall immediately notify the Project Manager in writing of any claim or dispute pertaining to this Contract. Upon receiving notice of a claim, the Project Manager or designated representative will attempt to resolve the dispute. If the Offeror is not satisfied by the Project Manager's decision, the Offeror shall within ten (10) days after receipt of the Project Manager's proposed resolution, submit a written claim to the Director of the Department of Capital Projects. The Director of the Department of Capital Projects shall issue a written decision within ten (10) days after receipt of a claim. If the Offeror is not satisfied with the resolution proposed by the Director of the Department of Capital Projects, the Offeror shall within (10) days after receipt of the Director of the Department of Capital Projects' proposed resolution, submit a written claim the Chief Procurement Officer (CPO). The CPO shall issue a written decision within ten (10) days after receipt of a claim. Any appeal of the decision of the CPO shall follow the provisions of Section 2.2-4364 of the VPPA – 3. Disputes.

**Y. Subject to Appropriations** – The Offeror agrees that any resulting contract shall be subject to annual appropriations of the Leesburg Town Council and that non-appropriation of sufficient funding to continue the contract will result in its automatic termination once existing funding is exhausted.

### **VIII. Submittal Instructions**

- A. One (1) original and four (4) copies of the proposal must be received at the address specified below, not later than the advertised due date. The submittal must include one CD-ROM containing the entire submittal in a single cohesive PDF file.

Proposal submissions shall be addressed to:

Town of Leesburg  
ATTN: Renée LaFollette, Director  
Office of Capital Projects  
25 West Market Street  
Leesburg, VA 20176

Proposals must be placed in a sealed envelope bearing the name of the offeror, the offeror's address and the title and due date of the proposal. The proposal shall be signed in the name of the offeror and bear the signature of the person duly authorized to bind the firm in a contract. The name, address, and phone number of the point of contact shall be identified.

1. Late Proposals - It is the responsibility of the offeror to insure that the proposal arrives on time and at the proper location. Late proposals will not be considered.

### **IX. Required Forms**

The following forms must be included in Section D. Required Forms of this submittal:

1. Bid Form – RFP Submission Form
2. Qualifications Form

**BID FORM – RFP SUBMISSION FORM**

**SECTION I – COMPANY IDENTIFICATION AND OWNERSHIP DISCLOSURE**

Company \_\_\_\_\_  
Address \_\_\_\_\_  
Contact Person \_\_\_\_\_ Title \_\_\_\_\_  
Telephone No. \_\_\_\_\_ Fax No. \_\_\_\_\_ Email \_\_\_\_\_  
Organized under the laws of the State of \_\_\_\_\_  
Principal place of business at \_\_\_\_\_  
Federal Id Number \_\_\_\_\_ Registered Agent \_\_\_\_\_  
State Corp. Commission Registration No. \_\_\_\_\_ (attach Certificate of Good Standing)

List the names and addresses of all persons having ownership of 3% or more in the company:

Name Address  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Town of Leesburg requests, as a matter of policy, that any consultant or firm receiving a contract of award resulting from a formal solicitation issued by the Town shall make certification as specified below. Receipt of such certification, shall be a prerequisite to the award of contract and payment thereof.

SECTION II – EMPLOYEES NOT TO BENEFIT - I (we) hereby certify that if the contract is awarded to our firm, partnership, or corporation, that no employee of the Town of Leesburg, or members of his/her immediate family, including spouse, parents or children has received or been promised, directly or indirectly, any financial benefit, by way of fee, commission, finder’s fee, political contribution or any similar form of remuneration on account of the act of awarding and/or executing this contract.

SECTION III – CONFLICTS OF INTEREST - This solicitation is subject to the provisions of VA Code Ann. Section 2.1-639.2 et seq., the State and Local Government Conflict of Interests Act. The Offeror [ ] is [ ] is not aware of any information bearing on the existence of any potential organizational conflict of interest.

SECTION IV – COLLUSION - I certify that this offer is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting an offer for the same services, materials, supplies, or equipment and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of the State and federal law and can result in fines, prison sentences, and civil damage awards. I hereby certify that the responses to the above representations, certifications, and other statements are accurate and complete. I agree to abide by all conditions of this RFP and certify that I am authorized to sign for my company.

Signature \_\_\_\_\_ Date \_\_\_\_\_  
Name (Printed) \_\_\_\_\_ Title \_\_\_\_\_

**BIDDER MUST RETURN THIS FORM WITH BID**



<b>QUALIFICATIONS FORM</b>	
(check each technical area the firm wishes to be considered)	
<b>PRIMARY SERVICE AREAS</b>	
<b>General Civil Engineering and Surveying</b>	
	Drainage Systems
	Roadway improvements
	Pedestrian and bicycle facilities
	Site Plans
	Topographic surveys
	Water and Sanitary Sewer Lines
	Property surveys and plat preparation
	Traffic counts and studies
	Traffic control device design
<b>Water Resources Engineering</b>	
	MS-4 Permits
	Stormwater Management (quality and quantity)
	Stream Restoration
	TMDL
<b>Utilities Engineering</b>	
	Hydraulic modeling and analysis
	SCADA
	Water distribution systems, wastewater collection systems, reuse water distribution systems & general site development improvements
	New pipe facilities and improvements to existing pipe facilities
	Improvements to water and wastewater treatment facilities and processes
	Condition and capacity assessments
	Improvements to electrical systems, I&C systems, & chemical systems
	Facility planning, permitting and renewals
	Site improvements
<b>Architecture and Mechanical / Electrical Engineering</b>	
	Generator design
	Building upgrades and renovation
	Fuel facilities
	HVAC system modeling, replacement, air balancing, ventilation systems
<b>SECONDARY SERVICE AREAS (separate contracts will <u>not</u> be awarded for these services)</b>	
<b>Structural Engineering</b>	
	Structural Analysis and Design
	Bridge Inspection
<b>Environmental</b>	
	Hazardous Materials Site Assessments
	Environmental studies
	Wetland delineations and permits
<b>Geotechnical Engineering</b>	
	Geotechnical investigations and analyses
	Dam inspection
	Pavement design
<b>Land Acquisition</b>	
	Appraisals
	Appraisal review
<b>Landscape Architecture and Arborist</b>	
	Landscape design
	Tree preservation plans
<b>Subsurface Utility Engineering</b>	
	Utility Designations
	Utility Test Pits

**X. Contract Form**

The following is an example professional services contract and is for information purposes only.

**CONTRACT NO.** \_\_\_\_\_

**COMPREHENSIVE ENGINEERING, ARCHITECTURAL, SURVEYING AND RELATED SERVICES CONTRACT**

This **Contract** (the “**Contract**”) is made this \_\_\_ day of \_\_\_\_\_, 2012, by and between the **Town of Leesburg, Virginia** (the “**Town**”), a municipal corporation, and \_\_\_\_\_ (the “**Professional**”), a corporation having a usual place of business at \_\_\_\_\_, to perform design services on the \_\_\_\_\_ (“**Project**”) under the terms and conditions set forth herein.

**ARTICLE 1**

**GENERAL PROVISIONS**

1.1 Basic Definitions

1.1.1 The “Professional” means the entity identified above as Professional, which entity is responsible for the design of the Project for the Town pursuant to this Contract and where appropriate also includes Lower-tier Entities. For the purposes of this contract, “professional” includes engineers, surveyors, architects, landscape architects, and other related services.

1.1.2 The “Town” or “Owner” means the Town of Leesburg, Virginia, a municipal corporation, unless another agency, commission or agency is identified above.

1.1.3 The “Project” means the “Project” identified above.

1.1.4 The “Construction Contractor” means the entity that shall be responsible for performance of the Construction Work for the Project Town in accordance with the Construction Documents. The Town may choose not to hire a general contractor and may itself act in the capacity of the general contractor in which case Construction Contractor shall also mean the Town.

1.1.5 The terms “Design Services” and “Design” are synonymous, and include all design services required by, reasonably inferable from, or incidental to this Contract and such additional work and services as are required under, reasonably inferable from, or are incidental to, this Contract, as it may be amended from time to time, and as further described in the Town’s Request for Proposal (“RFP”) for the Project Design Services (if applicable) and Professional’s Proposal in response to the RFP (if applicable).

1.1.6 The “Design Materials” are the plans, specifications, drawings and other embodiments of the Design Services required hereunder produced by, or on behalf of the Professional, whether stored in paper, electronic or other media.

1.1.7 “Construction Work” means the construction to be performed by the Construction Contractor or if there is no Construction Contractor performed by the Town.

1.1.8 “Construction Documents” means documents prepared by the Professional consisting of drawings and specifications which set forth in detail the requirements for the construction of the Project and which are fully sufficient for the Construction Contractor to perform its construction obligations under the Construction Contract.

1.1.9 The “Construction Contract” means the agreement between the Town and the Construction Contractor for the construction of the Project.

1.1.10 “Applicable Laws” means laws, ordinances, regulations, codes and orders of any public authority relating to the Project, including the Virginia Public Procurement Act.

“Lower-tier Entities” means the subcontractors, suppliers and consultants of the Professional of any tier.

Professional’s Designated Representative” is \_\_\_\_\_, unless the Professional’s Designated Representative is designated in the Professional’s Proposal.

“Town’s Designated Representative” is the Town Manager unless the Professional is notified in writing of an alternate “Town Designated Representative.”

## 1.2 Contract Term.

The initial contract period shall be one (1) year. This contract may be renewed for up to two (2) additional one-year terms upon mutual agreement of both parties.

## 1.3 Ownership and Use of Documents

1.3.1 All Design Materials and Construction Documents, including but not limited to drawings, specifications, and other documents, including those in electronic form prepared by the Professional and the Professional’s consultants pursuant to this Contract, shall be deemed Instruments of Service and the property of the Town. The Professional hereby assigns to the Town all proprietary rights, except for standard drawings, details and specifications, drawing conventions and “boilerplate” specifications which are not unique to the Project. Upon acceptance of the Project or termination of the Professional’s services pursuant to this Contract, the Professional shall promptly on demand turn over to the Town originals of all Instruments of Service. Any use of Instruments of Service or reuse of such Instruments of Service for extension of the Project or any other project by the Town will be at the Town’s or any other user’s sole risk and shall be without liability or legal exposure to the Professional or its consultants. The Professional and its consultants shall have the right to use the Instruments of Service for preparing or publishing promotional materials including proposals, brochures and advertisements.

1.3.2 The Town, as owner of the Instruments of Service, has the right to use the project documents as a prototype to demonstrate scope, size, functional relationships, etc., to an architect or Professional designing a similar project. The Professional for the original project design shall not be responsible or liable to the Town or second architect, Professional or designer for any such use of the documents.

1.3.3 The Professional shall provide the following documents to the Town at the completion of the Professional's work:

- 1.3.3.1 Original sealed and signed drawings.
- 1.3.3.2 Original copy of the specifications.
- 1.3.3.3 Copy of analyses made for the project.
- 1.3.3.4 Indexed final copies of the calculations made by each discipline for the project.
- 1.3.3.5 Copies of all contractor-provided shop drawings, submittals, cut sheets, operation and maintenance instructions, parts lists, and other material related to the project.

#### 1.4 General

1.4.1 This Contract represents the entire and integrated agreement between the Town and the Professional and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both Town and Professional. Contract Documents consist of this Contract, RFP No. \_\_\_\_\_, and Professional's Proposal, dated \_\_\_\_\_, attached hereto and expressly made a part hereof. In the event of inconsistency between or among the Contract Documents, they shall be given precedence in the order listed in the preceding sentence.

1.4.2 The Design Services are subject to the approval of the Town. The Professional and the Town agree that the Professional and the Town shall work together to achieve a design that will allow the Project to be constructed within the Town's budget for the Project. It is understood that there are certain items within the budget that may be the subject of minor variances; provided, however, the Professional's responsibility to achieve a design within the budget shall not be affected by such minor variances. The parties understand that close cooperation will be required during all phases of the development of the Design in order to allow the Design Services to progress in an orderly manner and agree to use reasonable efforts to insure that the flow of information between the Town and the Professional is conducive to achieving such progress.

1.4.3 In the event that the Professional's performance of, or failure to perform, its obligations hereunder causes the Town and/or the General Contractor, if any, to incur additional construction costs to correct the Professional's deficiencies, the Professional shall be responsible for such costs. In addition, the Professional is required to perform all redesign services necessary to correct any and all errors, omissions and inconsistencies in the Design Materials at no cost to the Town (which responsibility shall not preclude the pursuit of available insurance proceeds on account thereof).

1.4.4 The Town and the Professional intend that their obligations under this Contract will be performed in an open, cooperative and mutually beneficial manner which includes appropriate “real time” participation and involvement in the Project by the Town and the Professional. To accomplish such objective, the Town and the Professional agree to cooperate by keeping each other informed on a reasonably current basis (by a free exchange of information and regular meetings on status) of all significant matters related to the Project which come to the attention of any of them.

1.4.5 If Construction Contract bids exceed the Town’s budget for the Project, then modifications to the Construction Documents necessary to allow the applicable portion of the Construction Work to meet the town’s budget shall be provided at no additional cost to the Town.

1.4.6 Severability. The provisions of this Contract are intended to be severable, and if any provision, including, without limitation, any portion of any subparagraph, is found to be invalid, then full effect shall still be given to the remaining provisions not found to be invalid.

## **ARTICLE 2**

### **RESPONSIBILITIES OF THE PROFESSIONAL**

2.1 The services performed by the Professional, Professional's employees and Professional's Lower-tier Entities shall be as set forth in the Contract Documents.

2.2 The Professional's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Professional shall submit for the Town's approval a schedule for the performance of the Professional’s services which initially shall be consistent with the time periods established in the RFP and the Professional’s Proposal and which shall be adjusted, if necessary, as the Project proceeds. This schedule shall include allowances for periods of time required for the Town's review, for the performance of the Town's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Town shall not, except for reasonable cause, be exceeded by the Professional or Town.

2.3 The Professional's Designated Representative identified in Section 1.1.12 shall be authorized to act on the Professional’s behalf with respect to the Project.

2.4 The Professional shall maintain the confidentiality of information specifically designated as confidential by the Town, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Professional from establishing a claim or defense in an adjudicatory proceeding. The Professional shall require of the Professional’s Lower-tier Entities similar agreements to maintain the confidentiality of information specifically designated as confidential by the Town.

2.5 Except with the Town’s knowledge and consent, the Professional shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Professional's professional judgment with respect to this Project.

2.6 The performance of professional services shall be consistent with the ordinary degree of care and skill of the profession, as applicable, in Virginia existing as of the date such services are rendered. The Professional shall also incorporate in the Instruments of Service those federal, state and local laws, regulations, codes, and standards that are applicable at the time the Professional prepares the Instruments of Service. In the event of a change in laws or regulations of which the Professional becomes aware or reasonably should become aware, that requires an amendment to an Instrument of Service, the Professional shall inform the Town of the change and its impact on work already done or to be done, the fees and costs involved, and scheduling. Should the Professional fail to comply with applicable codes, standards, rules and regulations, the Professional hereby agrees to bear all resulting costs for the full cost of correcting all Instruments of Service and the cost of changing the affected documents of the Town and any other Project consultant, including the replacement of reproducible drawings.

2.7 The Professional shall be entitled to rely on the accuracy and completeness of services and information furnished by the Town. The Professional shall provide prompt written notice to the Town if the Professional becomes aware of any errors, omissions or inconsistencies in such services or information.

2.8 Nothing herein shall be construed so as to prohibit the Professional from entering into subcontracts with Lower-tier Entities for services within the scope of this Contract. The Professional shall bind each and every Lower-tier Entity to the terms stated herein. The Professional shall verify that all persons rendering services under this Contract are properly licensed to provide such services in the place which the Project is located and affirms that it will be fully responsible for the acts, errors, and omissions of its subcontractors and shall fully indemnify, defend and save harmless the Town, its agents, employees, and assigns from any and all claims resulting from services negligently rendered by the Professional's Lower-tier Entities.

2.9 If the Professional becomes aware of any facts, information, or events which have caused, or are likely to cause, a delay in the performance of its services or in the completion of the Project, it shall promptly notify the Town in writing, setting forth the reasons for the anticipated delay, the length of the delay, and steps it is prepared to take to accelerate its services and/or the Project to meet the approved schedule.

2.10 The Professional represents that it, as well as its Lower-tier Entities, are experienced and fully qualified to perform the services contemplated by this Contract, and that it and all of its employees are properly licensed, pursuant to Applicable Law, to perform such services. The Professional acknowledges that the identification of staff members of the Professional designated to work on the Project in the Professional's Proposal or otherwise is a material inducement to the Town in entering into this Contract.

2.11 The Professional shall be solely responsible for the coordination of its services with the work of the Contractor, other consultants, the Town, and other governmental entities having jurisdiction over the Project.

2.12 To the extent the Professional Services include the written or graphic interpretations of the Construction Documents necessary for the proper execution or progress of the Construction Work, Professional shall provide such interpretations within a reasonable time, on all matters

relating to the execution of the Construction Work or the interpretation of the Construction Documents so as not to delay the progress of the Work.

2.13 To the extent the Professional Services include the review, approval or other appropriate action upon the Construction Contractor's submittals, such as shop drawings, product data and samples, the Professional shall perform such review, approval or other appropriate action within a reasonable time, so as not to delay the progress of the Construction Work.

2.14 To the extent the Professional Services so require, the Professional shall prepare, upon request of the Town, drawings and specifications with respect to change orders and change order proposals, for review and approval by the Town for execution in accordance with the Construction Contract.

2.15 Professional's Additional Services. The Professional shall obtain the written approval of the Town prior to performing any Additional Services. Compensation for Additional Services shall be made as provided in Article 4 hereof. Such prior written approval is a condition precedent to payment for Additional Services.

2.16 Unless otherwise provided in this Contract, the Professional shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

2.17 To the fullest extent permitted by law, the Professional shall be liable to the Town for all damages attributable to any acts of commission or omission by the Professional, its employees, agents and Professional's Lower-tier Entities resulting from the failure of the Design Services to comply with Applicable Laws, including but not limited to, any fines, penalties or corrective measures, and reasonable attorney's fees in connection therewith. The Professional shall not be responsible for the Construction Work or work performed by others which is nonconforming or contrary to the Construction Documents. This provision shall survive completion or termination of this Contract. The availability of insurance is not a limitation on the amount of damage recoverable hereunder.

2.18 To the fullest extent permitted by law, the Professional shall defend, indemnify and hold harmless the Town from and against all damages, including but not limited to reasonable attorney's fees, to the extent arising out of or resulting from (i) the Professional's negligent acts or omissions in carrying out its obligations under this Contract; (ii) its breach of this Contract; and (iii) its failure to comply with any Applicable Law, including, but not limited to, liability incurred by the Town or liability incurred by those within the control of or under contract with the Town, but excluding any damages arising out of or resulting from the negligent acts or omissions of the Town or others outside the control of the Professional. The indemnification obligations under this Article shall not be limited with respect to amount or type of damages, compensation or benefits required to be paid under worker's or compensation acts, disability benefit acts or other employee benefit acts. The indemnification obligations set forth herein shall survive completion or termination of this Contract.

2.19 The Professional shall pay all applicable royalties and license fees on any and all matters arising in connection with the Design Services unless such matters arise from materials, systems

or products specified by someone other than the Professional. The Professional shall hold harmless, indemnify and defend against all suits or claims for infringement of patent, trademark or copyrights against the Town and its respective agents, officers, directors and employees with respect to the matters specified in the preceding sentence.

2.20 It is the intent of the parties hereto that the Professional be considered as an independent consultant and that neither it nor its employees shall, under any circumstances, be considered servants or agents of the Town, and that the Town shall be at no time legally responsible for any negligence on the part of the Professional, its servants or agents, resulting in either bodily or personal injury or property damage to any individual, firm, or corporation.

### **ARTICLE 3**

#### **RESPONSIBILITIES OF THE TOWN**

3.1 Unless otherwise provided under this Contract, the Town shall provide full information in a timely manner regarding requirements for and limitations on the Project.

3.2 The Town's Designated Representative identified in Article 1.1.13 shall be authorized to act on the Town's behalf with respect to the Project. The Town or the Town's Designated Representative shall render decisions in a timely manner pertaining to documents submitted by the Professional in order to avoid unreasonable delay in the orderly and sequential progress of the Professional's services.

3.3 The Town shall provide prompt written notice to the Professional if the Town becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Professional's Instruments of Service.

3.4 The Town shall not significantly increase or decrease the overall budget, the portion of the budget allocated for the Construction Contract, or contingencies included in the overall budget or a portion of the budget, without consulting with Professional regarding a corresponding change in the Project scope and quality.

### **ARTICLE 4**

#### **CHANGES IN SERVICES**

4.1 After the execution of this Contract, the Town may issue written modifications reasonably related to the original Project parameters without invalidating the Contract. Such modifications may consist of additions, deletions or other revisions. Professional agrees to perform such services promptly and to continue performance of additional services related to such modifications pending final resolution of any claims or disputes regarding the modifications. Except for a change due to the fault of the Professional, a written modification shall entitle the Professional to an equitable adjustment in compensation.



## **ARTICLE 5**

### **DISPUTE RESOLUTION**

5.1 Notwithstanding any provision of law to the contrary, all claims, disputes, and other matters or questions between the Offeror and the Town arising from or relating to this Contract, shall be resolved under this paragraph:.

5.2 The Offeror shall immediately notify the Project Manager in writing of any claim or dispute pertaining to this Contract. Upon receiving notice of a claim, the Project Manager or designated representative will attempt to resolve the dispute. If the Offeror is not satisfied by the Project Manager's decision, the Offeror shall within ten (10) days after receipt of the Project Manager's proposed resolution, submit a written claim to the Director of the Department of Capital Projects. The Director of the Department of Capital Projects shall issue a written decision within ten (10) days after receipt of a claim. If the Offeror is not satisfied with the resolution proposed by the Director of the Department of Capital Projects, the Offeror shall within (10) days after receipt of the Director of the Department of Capital Projects' proposed resolution, submit a written claim the Chief Procurement Officer (CPO). The CPO shall issue a written decision within ten (10) days after receipt of a claim. Any appeal of the decision of the CPO shall follow the provisions of Section 2.2-4364 of the VPPA – 3. Disputes.

## **ARTICLE 6**

### **DEFAULT AND TERMINATION**

6.1 The Town may terminate the Contract for cause or for convenience after giving thirty (30) days written notice to the Professional. The written notice shall include a statement of reasons for the termination.

6.2 If the Professional should breach the Contract or fail to perform the services, or any portion thereof, required by the Contract, the Town may terminate the Contract for cause by giving thirty days' written notice or may give the Professional a stated period of time within which to remedy its breach of contract. If the Professional shall fail to remedy the breach within the time allotted by the Town, the Contract may be terminated by the Town at any time thereafter upon written notice, effective immediately upon receipt. The Town's forbearance in not terminating the contract shall not constitute a waiver of the Town's right to terminate in the future for similar breaches or failures to perform. If the Contract is terminated for cause, the Professional shall be responsible for all damages incurred by the Town as a result of the Professional's breach of contract or failure to perform, including but not limited to, all costs and expenses incurred in securing a replacement Professional to fulfill the obligations of the Contract.

6.3 Any termination by the Town for default, if determined by a court of competent jurisdiction not to have been justified as a termination for default, shall be deemed a termination for the convenience of the Town.

6.4 The Town may terminate the Contract in whole or in part for convenience by delivering to Professional a written notice of termination as set forth above, specifying the extent to which

performance under the contract is terminated and the effective date of the termination. Upon receipt of such notice, the Professional must stop Work, including but not limited to Work performed by Lower-tier Entities, at such time and to the extent specified in the notice.

6.5 If the contract is terminated for convenience, the Professional shall be entitled to those fees earned for Work performed in accordance with the Contract prior to the notice of termination. Thereafter, the Professional shall be entitled to any fees earned for work not terminated, but shall not be entitled to lost profits for the portions of the Contract which were terminated.

6.6 Any termination shall not relieve the Professional of the obligation to deliver to the Town all Design Materials for which the Professional has been or will be compensated, including, but not limited to, the original drawings and specifications, copies of CADD diskettes or tapes, calculations, and analyses. Unless otherwise agreed to in writing, the Professional shall deliver the Design Materials to the Town within thirty (30) days of receipt of the notice of termination. Failure to do so shall result in the withholding of final payment and shall constitute a material or substantial breach of contract.

6.7 When the Professional is terminated for convenience, the following method shall be utilized in computing amounts due the Professional for services prior to termination:

6.7.1 If terminated at the completion of a phase, the amount due shall be the cumulative total of the fees for the phases completed according to the Contract.

6.7.2 If terminated prior to completion of a phase, the amount due shall be the sum of the previously completed phase fees plus a negotiated amount based on the portion of services provided for the phase not completed.

6.7.3 Payment for the Additional Services portion of the fee shall be any portion of those services provided up through the notice of termination.

6.7.4 The Professional shall submit invoices for all such amounts in accordance with the normal billing process, but in no event later than 60 days after the last Work is performed. All amounts invoiced are subject to deductions for amounts previously paid or for amounts due the Town.

## **ARTICLE 7**

### **INSURANCE**

7.1 Professional shall secure at its own expense general liability insurance in an amount not less than \$2,000,000 solely contained in a Commercial General Liability Policy, or in combination with an Umbrella or Excess Policy. Included shall be coverage for Bodily Injury and Property Damage resulting from the operations, products, and completed operations of the Professional.

7.2 Professional shall carry automobile insurance in an amount not less than \$2,000,000 solely contained in a Commercial Auto Policy, or in combination with an Umbrella or Excess Policy.

7.3 Professional shall carry Workers Compensation Insurance that meets the statutory requirements of the Commonwealth of Virginia.

7.4 Professional shall carry Professional Liability Insurance for any errors or omissions in the services it provides to the Town in an amount not less than \$2,000,000 and with a deductible no greater than \$500,000.

7.5 The above-mentioned coverage shall be placed with an insurance carrier licensed to do business in the Commonwealth of Virginia. The carrier must have an AM Best Rating of A or better.

7.6 A Certificate of Insurance identifying coverage and naming the Town of Leesburg as additional insured with respect to the General and Automobile Liability Policies shall be furnished to the Town. Liability coverage including, without limitation, general liability and professional liability coverage, shall contain wording prohibiting cancellation of coverage, failure to renew, or reduction in limit without the insurer first giving thirty (30) days prior written notice of such action to the Town.

## **ARTICLE 8**

### **COMPENSATION AND PAYMENT**

8.1 Services provided will be on a project-by-project basis. A proposal for the tasks involved for a specific project will be prepared together with a cost proposal and schedule. The Town agrees to pay the Engineer at the hourly rate listed in Attachment "A" plus direct expenses not to exceed maximum amount specified in the task order. Each individual task shall not exceed \$100,000 according to Section 2.2-4301.03 of the Virginia Public Procurement Act and the annual aggregate sum of tasks shall not exceed \$500,000. Should the need arise to exceed \$100,000 per task, Town Council approval will be required.

8.2 The Professional shall submit for approval by the Town a payment schedule for the services, which, when approved, shall become the basis for payment hereunder.

8.3 Payments are due and payable thirty (30) days from the date of the Professional's invoice. Amounts unpaid sixty (60) days after the invoice date shall bear interest at the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled The Wall Street Journal.

8.4 Acceptance by the Professional of the final payment under this Contract shall operate as, and be a release to, the Town and every officer, employer, and agent thereof, from all claims by and liabilities to the Professional, except for pending written claims.

8.5 Within seven (7) days after receipt of amounts paid to the Professional by the Town for work performed by Lower-tier Entities under the Contract the Professional will:

8.5.1 Pay the Lower-tier Entity for the proportionate share of the total payment received from the agency attributable to the work performed by the Lower-tier Entity under the Contract; or

8.5.2 Notify the Town and Lower-tier Entity, in writing, of its intention to withhold all or a part of the Lower-tier Entity's payment with the reason for nonpayment.

8.6 Professional must provide its Federal Employer Identification Number to the Town.

8.7 The Professional will pay interest to the Lower-tier Entity on all amounts owed by the Professional that remain unpaid after seven (7) days following receipt by the Professional of payment from the Town for work performed by the Lower-tier Entity under that contract, except for amounts withheld as allowed in Article 8.5.2.

8.8 The Professional will include in each of its subcontracts a provision requiring each Lower-tier Entity to include or otherwise be subject to the same payment and interest requirements with respect to each Lower-tier Entity.

8.9 The Construction Manager's obligation to pay an interest charge to a Lower-tier Entity pursuant to the payment clause in this section shall not be construed to be an obligation of the Town. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

8.10 All funds for payments by the Town under this Contract are subject to the availability of an annual appropriation for this purpose by the Leesburg Town Council. In the event of nonappropriation of funds by the Leesburg Town Council for the Work required under this Contract, the Town will terminate the Contract in accordance with Article 6.4, on the last day of the then current fiscal year or when the appropriation made for the then current year for the services covered by this Contract is spent, whichever event occurs first.

## **ARTICLE 9**

### **OTHER PROVISIONS**

9.1 Should any provision of this Contract require interpretation or construction, it is agreed by the parties that the court interpreting or construing this Contract shall not apply a presumption that the provision 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 the same, it being agreed that the parties hereto and their respective attorneys and agents have fully participated in the preparation of all provisions hereof.

9.2 This Contract shall not be assignable by the Professional in whole or in part without the prior written consent of the Town, which the Town may withhold in its sole discretion.

9.3 Ethics in Public Contracting – This Contract incorporates the provisions of law contained in the Virginia Conflict of Interest Act, the Virginia Governmental Frauds Act, Articles 2 and 3 of Chapter 10 of Title 18.2, and the Virginia Public Procurement Act, Article 6, of Chapter 43 of Title 2.2 of the Code of Virginia.

9.4 Business, Professional, and Occupational License (BPOL) – All firms doing business for the Town of Leesburg are required to be licensed in accordance with the Town's "Business, Professional, and Occupational Licensing (BPOL) Tax" Ordinance.

9.5 Employment Discrimination by Professional Prohibited:

9.5.1. During the performance of a contract, the Professional shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, age, disability, or any other basis prohibited by federal or state law relating to discrimination in employment in the solicitation and award of public contracts except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Professional; that it will post in conspicuous places, available to employees and applicants for employment, notices setting forth nondiscrimination practices, and that it will state, in all solicitations or advertisements for employees placed by or on behalf of the Professional, that it is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient to meet this requirement.

9.5.2. The Professional will include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of \$10,000 so that the provisions will be binding upon each Lower-tier Entity.

9.6 Drug-Free Workplace – Pursuant to Section 2.2-4312 of the VPPA, the Professional agrees as follows:

9.6.1 During the performance of this contract, the Professional agrees to (i) provide a drug-free workplace for the Professional's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Professional 's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Professional that the Professional maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each Lower-tier Entity.

9.6.2 "Drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to the Professional in accordance with this paragraph, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

9.7 Faith-Based Organizations – Pursuant to Section 2.2-4343.1 of the VPPA – The Town of Leesburg does not discriminate against faith-based organizations.

9.8 No Third Party Beneficiary. The Town and Professional hereby acknowledge and agree that no person receives any rights or benefits hereunder, either expressly or by implication, from this Contract.

9.9 Unauthorized Aliens – In accordance with Section 2.2 – 4311.1 of the Code of Virginia, the Offeror agrees that it does not, and shall not during the performance of the contract, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1980.

9.10 Notice. The following persons shall be contact persons for the parties, and notice given them, by certified return receipt requested mail to the addresses shown, shall constitute valid notice under the requirements of this Contract:

For Town:

Renée LaFollette, Director  
Office of Capital Projects  
25 West Market Street  
Leesburg, VA 20176

For Professional:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The parties may amend such addresses by written notice to the opposite party at the given address.

In witness whereof, the parties below, execute this contract as the date first above written.

Town of Leesburg

Professional:

Authorized  
Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

Authorized  
Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
TOWN ATTORNEY