



TOWN OF LEESBURG, VIRGINIA
REQUEST FOR PROPOSALS (RFP)

ENGINEERING DESIGN SERVICES FOR MORVEN PARK ROAD AND
WEST MARKET STREET SIDEWALKS

RFP NO. 14301-FY18-06

The Town of Leesburg requests proposals for engineering design services for two improvement projects: Morven Park Road Sidewalk and West Market Street Sidewalk between Ayr Street and Morven Park Road.

Proposals shall be submitted no later than 4:00 p.m., Friday, September 29, 2017, to Mr. Thomas Brandon, Manager, Office of Capital Projects, Town of Leesburg, 25 West Market Street, Leesburg, VA 20176. All proposals must indicate RFP title, number and proposal date on the external shipping material.

All questions regarding this request for proposal must be received in writing by email at CapitalBidQuestions@leesburgva.gov until but no later than 5:00 P.M. on Friday, September 22, 2017.

Interested offerors should download a copy of the RFP from the bid board on the Town's website: <http://www.leesburgva.gov/bidboard>, or contact Cindy Steyer at 703-737-2302 for additional information. **All addenda issued for this project will only be posted on the Town's bid board and eVA (<https://eva.virginia.gov>).**

Thomas Brandon, Manager
Office of Capital Projects

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WEST MARKET STREET SIDEWALKS
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I. PURPOSE

The Town of Leesburg (the “Town”) is seeking sealed proposals from qualified engineering firms to provide engineering design services for two separate improvement projects: Morven Park Road Sidewalk and West Market Street Sidewalk between Ayr Street and Morven Park Road. The Town reserves the right to award a single engineering contract for both projects to one engineering consultant, or may award two separate engineering contracts to two different engineering consultants. The decision on the award of contract(s) will be based on criteria described in Sections V and VI of this RFP.

A. Project Description

1. Morven Park Road Sidewalk:

The project includes constructing missing segments of sidewalk along the west side of Morven Park Road to provide a continuous pedestrian access route between West Market Street and Old Waterford Road. This area is partially within the Leesburg Old and Historic District. The project will also improve drainage and provide a generally uniform roadway section by completing the curb and gutter on both sides of the street and extending the storm drain system as needed. The length of the project is approximately 0.5 miles. The construction cost is estimated to be approximately \$1,300,000.

The project schedule established is for construction to begin in summer 2019. All design, right-of-way acquisition, and utility relocation must be completed prior to beginning construction. The Engineer is expected to perform its work in a timely manner in order to meet this schedule.

2. West Market Street Sidewalk between Ayr Street and Morven Park Road:

The project includes the upgrade of an existing sidewalk located at the north side of West Market Street between Ayr Street and Morven Park Road within the Leesburg Old and Historic District. The existing sidewalk (1) is not considered to be safe due to significant unprotected drop-offs from the edge, and (2) does not meet ADA accessibility standards with the existing concrete steps at the northwest corner of Ayr Street and West Market. The Town commissioned an engineering study on a portion of this sidewalk and approved a concept to provide curb and gutter and sidewalk at street level with retaining walls providing the existing and proposed grade differentials. The length of the project is approximately 0.2 miles. The construction cost is estimated to be approximately \$1,175,000. The engineering study will be provided to the highest rated firms when they are notified that they have been shortlisted for interviews.

The project schedule established is for construction to begin in early 2019. All design, right-of-way acquisition, and utility relocation must be completed prior to beginning construction. The Engineer is expected to perform its work in a timely manner in order to meet this schedule.

B. General Information

This Section of the RFP sets forth the general information to all potential Offerors to facilitate preparation of suitable proposals for the services identified in the RFP. The proposal submission requirements are addressed in Section IV of this RFP. The Town’s process and criteria for evaluating proposals, selecting a consultant or consultants and developing a contract are summarized in Sections V and VI. The requirements and process set forth therein shall be binding on all Offerors.

II. CONTRACT PERIOD

The period of services under these contracts shall begin on the date of award(s) by the Town Council, shall extend through the construction phases and final acceptance of the improvements by the Town, and shall terminate one (1) year after final completion or expiration of the warranty period of the projects, whichever is later.

III. SCOPE OF SERVICES AND DELIVERABLES

The design engineer(s) shall provide comprehensive engineering design services, including, but not limited to, surveys, geotechnical investigations and analysis, environmental document preparation and permitting, preparation of construction bid documents, assistance in public participation and utility relocations, and engineering assistance during bidding and construction.

The Town does not convey to the Engineer(s), guarantee nor make any promise that work on the project shall be authorized to the Engineer(s).

The requirements identified herein are for informational purposes only and the Town reserves the right to add and/or delete services based on specific tasks.

All personnel shall be knowledgeable of applicable documents and standards, including but not limited to:

- Town of Leesburg Design and Construction Standards Manual (DCSM)
- VDOT Manuals and Documents
 - Road Design Manual
 - Road and Bridge Specifications
 - Road and Bridge Standards
 - Drainage Manual
 - BMP Design Manual of Practice
 - Survey Manual
 - Virginia Work Area Protection Manual
 - Virginia Supplement to the Manual on Uniform Traffic Control Devices (MUTCD)
 - Instructional and Informational Memoranda
 - Traffic Engineering Manual
 - Traffic Engineering Memoranda
- American Association of State Highway and Transportation Officials Manuals
 - A Policy on Geometric Design of Highways and Streets
 - Manual on Uniform Traffic Control Devices (MUTCD)
- Virginia Department of Environmental Quality Manuals
 - Virginia Erosion and Sediment Control Handbook
 - Virginia Stormwater Management Handbook

Services required under this contract include, but are not limited to:

- Surveys, mapping and plat preparation
- Selected environmental investigations and studies as required to meet federal and state permitting requirements
- Roadway design, including design of associated pedestrian facilities
- Retaining wall design
- Geotechnical investigations and analysis
- Drainage and stormwater management design
- Erosion and sediment control design

- Arborist studies
- Utility designation, locating and test pits
- Coordination with utility companies regarding relocations
- Town utility (water and sewer) relocation design as required
- Public involvement assistance, including with the Town's Board of Architectural Review.
- Assistance to the Town as needed in advertising for construction bids and analysis of bids
- Assistance as needed during construction (i.e. response to RFIs, submittal reviews, etc.)

The Town reserves the right to expand or delete services as necessary.

This project is being administered by the Town. Funding for the project may be from state, regional, and local sources.

IV. PROPOSAL FORMAT

Proposals are to be submitted in a format which allows uniform review and easy access to information by the evaluation committee. All proposal pages shall be printed in vertical format to the extent possible. No other information (supplemental qualifications, etc.) in addition to what has been requested should be provided in the proposal. Dividers must be provided to separate sections of the proposal. An electronic version of the proposal in Adobe Acrobat (.pdf) format on a CD or flash drive must be included with the proposal submission.

The items to be addressed in the proposal are listed below. All proposals shall provide a delineation of capabilities to satisfy the requirements of this request. Emphasis should be on completeness and clarity of content.

Each section of the proposal must be limited to the number of pages specified below. Double-sided printed pages are encouraged.

Introductory Letter of Interest (limit to one sheet single-sided or double-sided)

Section 1. Understanding and Approach (maximum of 10 single-sided or 5 double-sided sheets)

- Briefly provide an understanding of each of the two projects.
- Describe issues that can be anticipated that are unique to each project, and provide an approach to resolving those issues.
- Discuss the firm's approach to keeping the project on schedule and within the established budget.
- Discuss the firm's quality control processes.

Section 2. Qualifications and Experience (maximum of 20 single-sided or 10 double-sided sheets)

- Description of firm, with emphasis on the staffing and capabilities of the office where the work will be performed
- Prime consultant experience in performing all phases of local road and pedestrian facilities design. Experience in design of similar projects using Town of Leesburg and VDOT design standards should be noted.
- Subconsultant role on the project team, and experience on similar projects
- Description of **three (3)** projects similar in scope and size to these projects, completed within the past five (5) years. The project descriptions should include the following information:
 - Project Name
 - Client reference (name, title, address and telephone)
 - Design completion date vs. the scheduled design completion date
 - Estimated construction cost
 - Project description
 - Firm's role on the project

Key firm personnel

The project descriptions should emphasize the relevancy of the experience to each project, specifically pertaining to type of design, location, funding source, project issues, design staff, etc.

Section 3. Staffing (maximum of 10 single-sided or 5 double-sided sheets)

- 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.

- Provide staff resumes describing the qualifications and specific experience for each project team member listed on the organizational chart.

Section 4. Forms (no limit on number of sheets)

- RFP Submission Form
- SCC registration for firm (prime consultant and subconsultants) – multiple registration certifications may be copied on a single sheet
- DPOR registration for key personnel in responsible charge of portions of the work – multiple registration certifications may be copied on a single sheet

V. PROPOSAL/SELECTION PROCESS

An Evaluation Committee consisting of the Town staff appointed by the Manager of Capital Projects will review the proposals. The Chief Procurement Officer will participate as a non-voting member of this committee. The evaluation and selection of the engineering design firm or firms will be based on the criteria set forth in this RFP.

The Town intends to award either one or two contracts on the basis of competitive negotiation for professional services as outlined in Section 2.2-4302.2 of the Virginia Public Procurement Act (VPPA). 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 an oral presentation of their proposal. 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 for each of the two projects based on the criteria contained in Section VI of this RFP.

Negotiations will be conducted with the offeror ranked first for each project. Scope of services, estimated manhours and prices will be discussed at this stage. If these negotiations are unsuccessful, they will be formally concluded and the second ranking firm for each project will be contacted.

The contract or contracts for these services will be based on hourly rates for services provided with an upper, not to exceed limit for each task.

VI. EVALUATION OF PROPOSALS/SELECTION CRITERIA

The following criteria and scoring will be used in the evaluation of proposals and developing a short list of qualified firms:

- A. History of Services on Similar Projects (35 points)
- B. Personnel Experience/Capabilities (30 points)

- C. Firm/Team Capabilities (15 points)
- D. Availability/Accessibility to Town (10 points)
- E. Project Understanding and Approach (10 points)

VII. SUBMITTAL INSTRUCTIONS

- A. One (1) original, three (3) copies and one (1) electronic copy on CD or flash drive in Adobe Acrobat (.pdf) format of the proposal must be received by Mr. Tom Brandon, Capital Projects Manager, at the address specified below, no later than the advertised proposal due date.

Proposal submissions shall be addressed to:
By Mail or Hand Delivered
ATTN: Tom Brandon, Manager, Office of Capital Projects
Town of Leesburg
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.

- B. 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.
- C. RFP SUBMISSION FORM, VDOT FIRM DATA, SCC AND DPOR REGISTRATION - Each Offeror submitting a proposal must complete and include the RFP Submission Form regarding company identification and ownership disclosures, conflict of interests, collusion and the VDOT Firm Data Sheet. The certification on this form must bear an original signature.

Failure of the Offeror to include this RFP Submission Form with its proposal may be cause for rejection of the proposal.

It is incumbent upon each firm conducting business in Virginia to be in compliance with state law and regulations. To ensure firms are in compliance Offerors shall furnish with proposal submission supporting evidence with their SCC and DPOR registration. Copies of on-line confirmation are acceptable documentation.

The Department of Professional and Occupational Regulation's mission is to protect the health, safety and welfare of the public by licensing qualified individuals and businesses and enforcing standards of professional conduct for professions and occupations as designated by statute.

The SCC acts as one of Virginia's primary regulatory agencies, with oversight of varied business and economic interests throughout the Commonwealth. The SCC's authority encompasses utilities, insurance, state-chartered financial institutions, securities, retail franchising, and railroads. The Commission also serves as the Commonwealth's central filing office for corporations, limited partnerships, limited liability companies, business trusts, and Uniform Commercial Code filings.

Each business entity (prime and subconsultants) on the proposed team who is practicing or offering to practice professional services in Virginia, including, but not limited to, those practicing or offering to practice engineering, surveying, hydrologic and hydraulic analysis, geotechnical analysis and landscape architecture, should provide evidence including copies of appropriate commercial professional registrations and licenses for all main and branch offices proposed for this Project, as well as providing copies of appropriate individual registrations/licenses for those professional occupations per the requirements listed below.

Failure to comply with the law with regard to applicable requirements in Virginia (whether federal or state) regarding organizational structure, any required registration with governmental agencies and/or entities, and any required governmental licensure, whether business, individual, or professional in nature may render Offerors' submittal(s), in the sole and reasonable discretion of the Town, as non-responsive and returned without any consideration or evaluation.

VIII. 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 offeror 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.

The contents of the proposal submitted by the successful firm and this RFP shall become part of any contract awarded as a result of these specifications. The successful firm shall be expected to sign a contract with the Town.

- C. INQUIRIES - All inquiries concerning this RFP must be directed, **in writing only**, to Thomas Brandon, Manager, Office of Capital Projects, 25 West Market Street, Leesburg, VA 20176, by e-mail at CapitalBidQuestions@leesburgva.gov. Questions will be entertained until close of business five (5) business days prior to the proposal due date. A copy of all written questions received and subsequent responses provided, will be posted on the Town's Bid Board and eVA in the form of an addendum.
- 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 writing by the Manager of Capital Projects.
- F. LAWS AND REGULATIONS - It shall be understood and agreed that any contract awarded on this proposal 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.
- G. 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.
- H. TOWN EMPLOYEES - No employee of the Town shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

- 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 offeror 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 Office 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, 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** – Engineer 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.

Engineer 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.

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

Engineer 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, engineer 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. Liability coverage shall contain wording prohibiting cancellation of coverage, failure to renew, or reduction in limit without the insurer first giving 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 Engineer 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 Engineer 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 Engineer.

- T. EMPLOYMENT DISCRIMINATION BY CONTRACTORS PROHIBITED – Every contract in excess of \$10,000 shall include the following provisions:
- a. During the performance of a contract, the Engineer 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 Engineer; 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 Engineer, 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.
 - b. The Engineer 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. FAITH BASED ORGANIZATIONS – The Town of Leesburg does not discriminate against faith-based organizations.
- V. UNAUTHORIZED ALIENS – In accordance with Section 2.2 – 4311.1 of the Code of Virginia, the Engineer 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.
- W. 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 Engineer 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 Engineer that the Engineer 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 Engineer 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.

- X. PAYMENT CLAUSES – Pursuant to Section 2.2-4354 of the VPPA
1. Within seven days after receipt of amounts paid to the Engineer by the Town for work performed by the subcontractor under the resulting contract the Engineer 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 Engineer will pay interest to the subcontractor on all amounts owed by the Engineer that remain unpaid after seven days following receipt by the Engineer 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 Engineer 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.

Y. DISPUTE RESOLUTION – Pursuant to Section 2.2-4363 Contractual Disputes of the VPPA

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 2.2-4365 Administrative Appeals Procedure of the VPPA.

Z. 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.

AA. TERMINATION – Subject to the provisions below, the contract may be terminated by either party upon ninety (90) days advanced written notice to the other party; but if any supply or service hereunder is in progress, but not delivered or completed as of the date of termination, then this contract may be extended upon written approval of the Director of Finance until said supplies or services are either delivered or completed and accepted.

1. Termination for Convenience - In the event that this contract is terminated or cancelled upon request and for the convenience of the Town without the required ninety (90) days advance written notice, then the Town shall reimburse the bank for the reasonable value

of any non-recurring costs incurred but not amortized in the price of the services delivered under the contract.

2. Termination for Cause, Default or Negligence - Termination by the Town for cause, default or negligence on the part of the bank shall be excluded from the foregoing provision; reimbursement of costs, if any, shall not apply. Termination shall also occur if the bank fails to sustain the minimum Sheshunoff Bank quarterly rating for two (2) consecutive quarterly publications which also may result in the immediate transfer of Town funds to an institution meeting the qualifications. The ninety (90) days advance notice requirement is waived in the event of termination for cause.
3. Termination Due to Unavailability of Funds in Succeeding Fiscal Years – When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the contract shall be cancelled and the Consultant shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract.

- AB. DISPOSITION OF PROPOSALS - All materials submitted in response to this RFP will become the property of the Town. One (1) electronic copy of each proposal shall be retained for official files and will become a public record. These records will be available for public inspection after award of the contract. It is understood that the proposal will become a part of the official file on this matter without obligation on the part of the Town except as to the disclosure restrictions contained in Section AE. “Trade Secrets and Proprietary Information Disclosure”.
- AC. TRADE SECRETS AND PROPRIETARY INFORMATION DISCLOSURE - In compliance with the Town’s Procurement Policies, all proposals will be available for public inspection. Trade secrets and proprietary information submitted by an offeror in connection with procurement shall not be subject to public disclosure under the Virginia Freedom of Information Act. However, the offeror must invoke the protection of this section before or upon submission of the data or other materials, and must identify the specific area or scope of data or other materials to be protected and state the reasons why protection is necessary. An all-inclusive statement that the entire proposal is proprietary is unacceptable. A statement that the costs are to be protected is unacceptable.
- AD. ADA REASONABLE ACCOMMODATION CLAUSE - If you need any reasonable accommodation for any type of disability in order to participate in this procurement, please contact the Procurement Officer at least ten (10) business days before the proposal due date.
- AE. SAFETY - All contractors and subcontractors performing services for the Town are required and shall comply with all Occupational Safety and Health Administration (OSHA), State and County Safety and Occupation Health Standards and any other applicable rules and regulations. Also, all contractors and subcontractors shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site area under this contract.
- AF. NON-ASSIGNMENT OF CONTRACT - The contractor shall not assign the contract, or any portion thereof, without the advanced written permission of the Procurement Officer, such permission not to be unreasonably withheld.
- AG. MODIFICATION OF THE CONTRACT - This contract may be modified by approved a contract modification or change order signed by both parties in accordance with the VPPA.
- AH. PRIME VENDOR RESPONSIBILITIES - Offerors may propose services that are provided by others, but any services proposed must meet all of the requirements of this RFP. If the offeror’s proposal includes services provided by others, the offeror will be required to act as the prime vendor for all such items and must assume full responsibility for the procurement

delivery and quality of such services. The offeror will be considered the sole point of contact with regard to all stipulations, including payment of all charges and the meeting of all requirements of this RFP.

-END OF SECTION-

**RFP SUBMISSION FORM
ENGINEERING DESIGN SERVICES FOR MORVEN PARK ROAD AND
WEST MARKET STREET SIDEWALKS**

RFP NO. 14301-FY18-06

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. _____ (or attach Certificate of Good Standing)

Town of Leesburg BPOL No. (if required) _____

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 _____

OFFEROR MUST RETURN THIS FORM WITH PROPOSAL

STANDARD CONTRACT

CONTRACT NO. XXXXX-FYXX-XX

**ENGINEERING DESIGN SERVICES
[PROJECT NAME]**

This **Contract** (the “**Contract**”) is made this _____ day of _____, 20___, by and between the **Town of Leesburg, Virginia** (the “**Town**”), a municipal corporation, and _____ (the “**Designer**”), a [state] _____ corporation having its usual place of business at _____, to perform design services on the _____ Project (“**Project**”); and under the terms and conditions set forth herein.

ARTICLE 1

GENERAL PROVISIONS

1.1 **Basic Definitions**

1.1.1 The “**Designer**” means the entity identified above as Designer, 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.

1.1.2 The “**Town**” means the Town of Leesburg, Virginia, a municipal corporation.

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 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, and Designer’s Proposal in response to the RFP, and the Designer’s Scope of Services and Cost Proposal.

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 Designer, 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 Designer 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 (VPPA).

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

1.2 Ownership and Use of Documents

1.2.1 All Design Materials and Construction Documents, including but not limited to drawings, specifications, and other documents, including those in electronic form prepared by the Designer and the Designer’s consultants pursuant to this Contract, shall be deemed Instruments of Service and the property of the Town. The Designer 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 Designer’s services pursuant to this Contract, the Designer 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 Designer or its consultants. The Designer and its consultants shall have the right to use the Instruments of Service for preparing or publishing promotional materials including proposals, brochures and advertisements.

1.2.2 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 engineer designing a similar project. The Designer for the original project design shall not be responsible or liable to the Town or second architect, engineer or designer for any such use of the documents.

1.2.3 The Designer shall provide the following documents to the Town at the completion of the Designer’s work:

1.2.3.1 Original sealed and signed drawings.

1.2.3.2 Original copy of the supplemental specifications.

1.2.3.3 Copy of analyses made for the project.

1.2.3.4 Indexed final copies of the calculations made by each discipline for the project.

1.3 General

1.3.1 This Contract represents the entire and integrated agreement between the Town and the Designer 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 Designer. Contract Documents, attached hereto and expressly made a part hereof, consist of this Contract, RFP No. _____, [all addenda and date of addenda] _____, and Designer’s Cost and Scope Proposal dated _____. In the event of inconsistency between or among the Contract Documents, they shall be given precedence in the order listed in the preceding sentence.

1.3.2 The Design Services are subject to the approval of the Town. The Designer and the Town agree that the Designer 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 Designer'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 Designer is conducive to achieving such progress.

1.3.3 In the event that the Designer'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 Designer's deficiencies, the Designer shall be responsible for such costs. In addition, the Designer 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).

1.3.4 The Town and the Designer 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 Designer. To accomplish such objective, the Town and the Designer 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.

1.3.5 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.

ARTICLE 2

RESPONSIBILITIES OF THE DESIGNER

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

2.2 The Designer's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Designer shall submit for the Town's approval a schedule for the performance of the Designer's services which initially shall be consistent with the time periods established in the RFP and the Designer'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 Designer or Town.

2.3 The Designer's Designated Representative identified in Section 9.15 shall be authorized to act on the Designer's behalf with respect to the Project.

2.4 The Designer 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 Designer from establishing a claim or defense in an adjudicatory proceeding. The Designer shall require of the Designer'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 Designer shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Designer's professional judgment with respect to this Project.

2.6 The Designer's professional services shall be consistent with the ordinary degree of care and skill of the architectural or engineering profession, as applicable, in Virginia existing as of the date such services are rendered. The Designer shall also incorporate in its work those federal, state and local laws, regulations, codes, and standards that are applicable at the time the Designer prepares the design. In the event of a change in laws or regulations of which the Designer becomes aware or reasonably should become aware, that requires an amendment to the design, the Designer 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 Designer fail to comply with applicable codes, standards, rules and regulations, the Designer hereby agrees to bear all resulting costs for the full cost of correcting all design documents 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 Designer shall be entitled to rely on the accuracy and completeness of services and information furnished by the Town. The Designer shall provide prompt written notice to the Town if the Designer 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 Designer from entering into subcontracts with Lower-tier Entities for services within the scope of this Contract. The Designer shall bind each and every Lower-tier Entity to the terms stated herein. The Designer 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 Designer's Lower-tier Entities.

2.9 If the Designer 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 Designer 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 Designer acknowledges that the identification of staff members of the Designer designated to work on the Project in the Designer's Proposal or otherwise is a material inducement to the Town in entering into this Contract.

2.11 The Designer 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 Design Services include the written or graphic interpretations of the Construction Documents necessary for the proper execution or progress of the Construction Work, Designer 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 Design Services include the review, approval or other appropriate action upon the Construction Contractor's submittals, such as shop drawings, product data and samples, the Designer 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 Design Services so require, the Designer 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 Designer's Additional Services. The Designer 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 To the fullest extent permitted by law, the Designer shall be liable to the Town for all damages attributable to any negligent acts of commission or omission by the Designer, its employees, agents and Designer'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 Designer 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.

2.17 To the fullest extent permitted by law, the Designer 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 Designer's negligent acts or omissions in carrying out its obligations under this Contract;
- (ii) Its breach of this Contract; and
- (iii) Its negligent 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 Designer.

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.

2.18 The Designer 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 Designer. The Designer 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.

2.19 It is the intent of the parties hereto that the Designer 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 Designer, 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 9.16 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 Designer in order to avoid unreasonable delay in the orderly and sequential progress of the Designer's services.

3.3 The Town shall provide prompt written notice to the Designer if the Town becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Designer'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 Designer regarding a corresponding change in the Project scope and quality.

ARTICLE 4

CHANGES IN DESIGN 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. Designer 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 Designer, a written modification shall entitle the Designer to an equitable adjustment in compensation.

4.2 Contract modifications or change orders shall be signed by both parties in accordance with the VPPA.

ARTICLE 5

DISPUTE RESOLUTION

5.1 Notwithstanding any provision of law to the contrary, all claims, disputes, and other matters or questions between the Designer and the Town arising from or relating to this Contract, shall be resolved under this paragraph. Dispute resolution shall be pursuant to Section 2.2-4363 Contractual Disputes of the VPPA.

5.2 The Designer 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 Designer is not satisfied by the Project Manager's decision, the Designer 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 Public Works and Capital Projects. The Director of the Department of Public Works and Capital Projects shall issue a written decision within ten (10) days after receipt of a claim. If the Designer is not satisfied with the resolution proposed by the Director of the Department of Public Works and Capital Projects, the Designer shall within (10) days after receipt of the Director of the Department of Public Works and 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 2.2-4365 Administrative Appeals Procedure of the VPPA.

ARTICLE 6

DEFAULT AND TERMINATION

6.1 Subject to the provisions below, the contract may be terminated by either party upon ten (10) days advanced written notice to the other party; but if any services hereunder are in progress, but not delivered or completed as of the date of termination, then this contract may be extended upon written approval of the Town until said supplies or services are either delivered or completed and accepted.

6.1.1 By Town without Cause. The Town may terminate this Contract for any reason upon ten (10) days' notice, and upon payment of any and all sums already earned under the terms of Article 8 of this Contract and reasonable expenses incurred in reliance upon the Contract.

Notwithstanding the foregoing, Designer 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.

6.1.2 By Town for Cause. The Town may terminate this Contract for cause if the Designer is in material breach of this Contract and fails to adequately remedy such a breach after written notice from the Town, and a 14-day period to cure the breach. If this Contract is terminated by the Town for cause, the Town may withhold any further payments to the Designer until it determines its damages and may sue the Designer for any damages caused by the breach.

6.1.3 If this Contract is terminated by the Town, the Designer shall, within seven (7) days thereafter, deliver to the Town all Contract Deliverables, as specified in paragraph 1.2, regardless of the current state of completion. In such case, the Designer grants an irrevocable right to the Town to use the Contract Deliverables without additional compensation to the Designer, but the Designer will

not be liable for any change or alterations to the Contract Deliverables, or for their use in an incomplete state.

6.1.4 If the Town terminates this Contract for cause and it is later determined that such termination was not justified, then the termination shall be converted into one for without cause under paragraph 6.1.1, and any liability of the Town shall be limited solely to the liability

ARTICLE 7

INSURANCE

7.1 Designer 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 Designer.

7.2 Designer 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 Designer shall carry Workers Compensation Insurance that meets the statutory requirements of the Commonwealth of Virginia.

7.4 Designer 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.

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 Except as specifically provided otherwise herein, the Designer shall be paid fees at the unit prices set forth in the proposal in an amount not to exceed of [Dollar amount in words] (dollar amount in numbers).

8.2 Invoices with all supporting documentation shall be submitted monthly by the Designer to the Town in the Designer's standard invoice format detailing the hours worked and services performed. Invoices must reference the Town of Leesburg Purchase Order number on their first page. Invoices shall be mailed to the Town's project manager at: Town of Leesburg, Department of Public Works and Capital Projects, Office of Capital Projects, 25 West Market Street, Leesburg, Virginia 20176.

8.3 Payments are due and payable forty-five (45) days from the date of the Designer'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 Designer 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 Designer, except for pending written claims.

8.5 Within seven (7) days after receipt of amounts paid to the Designer by the Town for work performed by Lower-tier Entities under the Contract the Designer 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 Designer must provide its Federal Employer Identification Number to the Town.

8.7 The Designer will pay interest to the Lower-tier Entity on all amounts owed by the Designer that remain unpaid after seven (7) days following receipt by the Designer 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 Designer 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 Designer'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 non-appropriation of funds by the Leesburg Town Council for the Work required under this Contract, the Town will terminate the Contract in accordance with Article 6.1.1, 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 Assignment of Contract. This Contract shall not be assignable by the Designer 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 VPPA, 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 Designer Prohibited:

9.5.1. During the performance of a contract, the Designer 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 Designer; 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 Designer, 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 Designer 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 Designer agrees as follows:

9.6.1 During the performance of this contract, the Designer agrees to (i) provide a drug-free workplace for the Designer'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 Designer '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 Designer that the Designer 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 Designer 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 Designer hereby acknowledge and agree that no person receives any rights or benefits hereunder, either expressly or by implication, from this Contract.

9.9 Relation to Town. It is the intent of the parties hereto that the Designer 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 Designer, its servants or agents, resulting in either bodily or personal injury or property damage to any individual, firm, or corporation.

9.10 Town Employees. No employee of the Town shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

9.11 Laws and Regulations. It shall be understood and agreed that any contract awarded on this proposal 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.

9.12 Licenses and Permits. The Designer shall pay all Town, County, State and Federal taxes required by law resulting from the Designer's work or traceable thereto, under whatever name levied.

9.13 Audit. The Designer shall retain all books, records, and other documents relative to this Contract for five (5) years after final payment, or until audited by the Town, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.

9.14 Unauthorized Aliens. In accordance with Section 2.2 – 4311.1 of the Code of Virginia, the Designer 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.

9.15 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:

1. For Town:

Thomas H. Brandon, Capital Projects Manager
Department of Public Works and Capital Projects
25 West Market Street
Leesburg, VA 20176

And

Barbara Notar, Esq.
Town Attorney
Town of Leesburg
25 West Market Street
Leesburg, VA 20178

2. For Designer:

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

9.16 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.

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

Town of Leesburg

[Engineering Design Firm]

**Authorized
Signature**

**Authorized
Signature**

Name

Name

Title

Title

Date

Date

APPROVED AS TO FORM:

TOWN ATTORNEY