



**REQUEST FOR PROPOSAL (RFP)
VETERANS PARK AT BALLS BLUFF ENGINEERING DESIGN SERVICES**

ISSUE DATE: June 25, 2020

RFP NO.: 21203-FY20-53

QUESTION DEADLINE: July 9, 2020; 5:00 p.m.

PROPOSAL DUE DATE: July 21, 2020; 2:00 p.m.

DELIVERY ADDRESS: Town of Leesburg, Virginia
Procurement Division
25 W. Market Street
Leesburg, VA 20176

CONTACT: Renée LaFollette, P.E.
Director, Public Works & Capital Projects
Phone: 703-737-6071
E-mail: capitalbidquestions@leesburgva.gov

NOTICE OF ADDENDA: Any addenda to this RFP will be posted on the Town's Bid Board (<http://www.leesburgva.gov/bidboard>) and will only be emailed to those firms who have **REGISTERED** on this site. It is the firm's responsibility to provide a correct email address and to be aware of any addenda.

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I. PURPOSE

The Town of Leesburg, Virginia (Town) is requesting sealed proposals from qualified engineering firms to provide engineering design services for the Veterans Park at Balls Bluff project.

The project includes development of a town park on property located adjacent to the Potomac River in northeast Leesburg. The park property was acquired in 2001 for park use. The park facilities will include a new access road, parking, boat launch facilities that include Americans with Disabilities Act access, a dog park, picnic facilities, trails, and other amenities. The construction cost is estimated to be approximately \$3,600,000.

The project schedule established is for construction to begin in summer 2021. All design and permitting 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.

II. BACKGROUND

The Town of Leesburg is located 35 miles west of Washington, D.C. The Town encompasses an area of 12 square miles with an estimated population of approximately 55,000. The Town's fiscal year begins on July 1 and ends on June 30. As a government entity, the Town of Leesburg is exempt from being taxed on goods and services.

The Town of Leesburg is a full-service municipal corporation that provides the following services to Town residents and businesses: police, refuse collection and disposal, water and sewer utilities, storm water management, airport, parks and recreation, and maintenance of streets and roadways.

Over the last 75 years, Leesburg has been one of most rapidly growing jurisdictions in the Virginia. The population of Leesburg was 1,703 in 1950, and has grown to a current population estimated at approximately 55,000. The Town's population has doubled in the past 20 years, and has grown an estimated 30% since the 2010 census, making Leesburg the largest town in the Commonwealth of Virginia. The population is expected to continue to grow but at a somewhat slower pace due to the limited growth areas within the corporate limits of the Town.

III. SCOPE OF WORK

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 both in the Commonwealth of Virginia and the State of Maryland, assistance in the preparation of construction bid documents, assistance in public participation, 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)
- Town of Leesburg Subdivision and Land Development Regulations
- VDOT Manuals and Documents
 - Road and Bridge Specifications
 - Road and Bridge Standards
 - Virginia Work Area Protection Manual
 - Virginia Supplement to the Manual on Uniform Traffic Control Devices (MUTCD)
- Virginia Department of Environmental Quality Manuals
 - Virginia Erosion and Sediment Control Handbook
 - Virginia Stormwater Management Handbook
- Americans with Disabilities Act requirements

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

- Surveys, mapping and plat preparation, including notifying property owners of entry in accordance with the requirements of Virginia Code § 25.1-203 (**See Attachment No. 1**)
- Selected environmental investigations and studies as required to meet federal and state (Commonwealth of Virginia and State of Maryland) permitting requirements
- Roadway design, including design of associated pedestrian facilities
- Structural design
- Geotechnical investigations and analysis
- Drainage and stormwater management design
- Erosion and sediment control design
- Arborist studies
- 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 SUBMITTAL INSTRUCTIONS

A. Submittal Instructions

One (1) original (so marked), three (3) hard-copies of your proposal, and one (1) electronic copy of your proposal in USB flash drive format must be submitted to the address on the cover page of this RFP by the date and time noted. Late proposals will not be accepted. Telephone, fax, electronic, emailed and verbal offers will not be accepted.

Submit proposals in a sealed envelope with the following information on the exterior:

TITLE: RFP No. 21203-FY20-53
Veterans Park at Balls Bluff Engineering Design Services
DUE DATE: July 21, 2020; 2:00 p.m.
LOCATION: Town of Leesburg, Virginia
Procurement Office
25 W. Market Street
Leesburg, VA 20176

Offerors assume full responsibility for the delivery of the completed proposal to the address noted above on or before the deadline for submission. The Town is not responsible for the premature opening of any proposals not properly addressed and identified on the outside of a sealed envelope. The Town is not responsible for any loss or delay with respect to the delivery of the proposals. **ANY PROPOSAL RECEIVED BY THE TOWN AFTER THE DEADLINE FOR SUBMISSION WILL NOT BE ACCEPTED.**

B. Proposal Format

Offerors should submit proposals in the following format:

1. Proposals should include a cover letter, the completed RFP Submission Forms, references, supplemental information, and any other information that you deem appropriate.
2. Proposals should be submitted on 8-1/2" x 11" paper. Proposals are to be prepared simply and concisely. Elaborate artwork, expensive paper, visual, and other presentation aids are not required.
3. Proposals should be signed in ink by the individual or authorized principals of the firm.
4. Proposals should contain no more than thirty (30) individual sheets. Double-sided printed pages are encouraged. Note that a sheet printed on both sides is counted as a sheet. All sheets in the proposal (i.e. including covers, dividers and tabs, table of contents, executive summary, etc.) will be counted as part of the sheet count.

5. Each copy of the proposal should be bound or contained in binders, all pages shall be numbered, and shall be organized using tabs in the sequence and format as indicated below:

TAB 1	<ul style="list-style-type: none"> • Letter of Interest • Table of Contents • Executive Summary • Offeror Submission Form (Page 31) • Acknowledgement of Addenda (Page 32) • SCC Registration (prime consultant and subconsultants) • DPOR Registration
TAB 2	<ul style="list-style-type: none"> • Offeror’s Qualifications and Experience • References
TAB 3	<ul style="list-style-type: none"> • Understanding and Approach: Offeror’s Understanding to Meet the Scope of Work as Outlined in Section III, Project Approach, and Quality Control Plan
TAB 4	<ul style="list-style-type: none"> • Staffing: Project Team, Organization Chart
TAB 5 (Optional)	<ul style="list-style-type: none"> • Supplemental Materials (optional)

C. Proposal Organization

Offerors are encouraged to be thorough in addressing the Scope of Work and the Proposal Submittal Instructions as outlined in this RFP. Offerors must fully address each of the following items and submit proposals using the following format:

1. Tab 1 – Letter of Interest, Table of Contents, Executive Summary, Offeror Submission Form (Page 31), Acknowledgement of Addenda (Page 32), SCC Registration (prime consultant and subconsultants), DPOR Registration

- **Executive Summary:** Provide a concise description of all work experiences as they relate to the scope of work, including but not limited to: background information about organization (i.e. philosophy, ownership, size, facilities, locations, etc.), management structure, the type of organization you represent (i.e. individual, partnership, corporation, etc.), and a detailed history of all mergers and acquisitions.
- **Offeror Submission Form** - Each Offeror submitting a proposal must complete and include the Offeror Submission Form regarding company identification and ownership disclosures, conflict of interests, and collusion. The certification on this form must bear an original signature. Failure of the Offeror to include the required submission forms with its proposal may be cause for rejection of the proposal.
- **Acknowledgement of Addenda** - Each Offeror submitting a proposal must acknowledge all addenda issued by providing the Acknowledgement of Addenda.

Failure of the Offeror to include the required submission forms with its proposal may be cause for rejection of the proposal.

- **SCC Registration (prime consultant and subconsultants)** – 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 should furnish with proposal submission supporting evidence of their SCC registration. Copies of online confirmation are acceptable documentation.
- **DPOR Registration** - 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 architecture, engineering, and surveying should provide 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 key personnel in responsible charge of portions of the work. Multiple registration certifications may be copied on a single sheet.

2. Tab 2 - Offeror's Qualifications and Experience, References

- **Qualifications and Experience:** Describe the qualifications and skills of the organization and project team to provide the services, including but not limited to: Offeror's qualifications to perform the services, services to be subcontracted and subcontractor(s) to provide said services.

Additionally, in the section, please provide the following:

- Description of firm, with emphasis on the staffing and capabilities of the office where the work will be performed.
- Prime consultant experience in performing the types of services required under this contract. Experience on projects involving Town of Leesburg's *Design and Construction Standards Manual, Zoning Ordinance, and Subdivision and Land Development Regulations* should be noted.
- Any proposed subconsultants should be identified and their proposed role on the project team should be defined. Subconsultant experience on similar projects should be noted.
- Description of **three (3)** projects completed within the past five (5) 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 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 and final construction cost, if known
- Project description
- Firm's role on the project
- Key firm personnel
- The project descriptions should emphasize the relevancy of the experience to the services required under this contract.

3. Tab 3 – Understanding and Approach

- **Understanding and Approach:** Provide a detailed description of the services to be provided under this contract, including but not limited to: overview of the Offeror's understanding of the scope of work and services to be provided, provide best practice approaches to the Town that will enhance efficiency and effectiveness, address each of the specific requirements set forth in Section III Scope of Work in order to demonstrate how the proposed solution will meet the specifications requested, and a statement explaining why the offeror's proposed solution would be the most advantageous to the Town.

Additionally, please provide the following:

- Briefly provide an understanding of the project.
- Describe key issues that can be anticipated based on experience with the Town or on similar contracts with other local governments, and provide an approach to resolving those issues.
- Discuss the firm's approach to keeping the project on schedule and within the established budget, including the firm's approach to meeting scheduled commitments, methods of responding in short time periods, and techniques used to control engineering and construction costs.
- Discuss the firm's quality control processes.

4. Tab 4 – Staffing - Project Team, and Organization Chart

- 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 key project team member listed on the organizational chart.

5. Tab 5 – 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 30-page limit.

V. EVALUATION CRITERIA AND AWARD

A. Evaluation Criteria

Proposals will be evaluated on the following criteria and weighted accordingly:

1. Offeror's Qualifications and Capabilities – 20%
2. Understanding of the Town's Needs, approach to Tasks and Quality Control – 30%
3. Staffing/Personnel Qualifications – 20%
4. History of Services on Similar Projects – 20%
5. Availability and Accessibility to the Town – 10%

B. Selection Process

An Evaluation Committee will be comprised of Town staff appointed by the Manager of Capital Projects. The Town Staff will evaluate and rank the proposals using the evaluation criteria stated above and negotiate a contract in accordance with the process for competitive negotiation described in Section 2.2-4302.2 of the Virginia Public Procurement Act (VPPA) for professional services.

Based on the Evaluation Criteria listed in Section V, the evaluation 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. Negotiations will then be conducted with the offeror ranked first. Scope of services, estimated man-hours and prices will be discussed at this stage. If these negotiations are unsuccessful, they will be formally concluded and the second ranking firm will be contacted.

C. Contract Award

The Town intends to award a contract to a qualified offeror authorized to transact business in the Commonwealth of Virginia with demonstrated experience similar in nature to that being requested herein. The award of a contract should be at the sole discretion of the Town. Award will be made to the offeror whose proposal is determined to be most advantageous to the Town, taking into consideration the above criteria.

The Town reserves the right to accept or to reject any or all proposals in whole or in part, to make multiple awards, and to waive informalities in the process of awarding this contract. The Town further reserves the right to make an award of a contract without further discussion of the proposals received provided it is determined in writing that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration. Therefore, proposals should be submitted

initially on the most favorable terms that the offeror could propose with respect to both price and technical capability.

The contents of the proposal submitted by the successful offerors will become a part of any contract awarded as a result of this RFP. The successful offeror should be expected to sign a contract with the Town. Additional terms and provisions may be included in the contract, a sample copy of which is enclosed.

VI. QUESTIONS AND INQUIRIES

Unless otherwise instructed, the Procurement Contact is the sole point of contact for questions concerning this RFP. Questions concerning this RFP must be made in writing, via email, to the Procurement Contact listed on the cover page of the RFP. **Questions must be received by the date and time listed on the cover page of the RFP.**

A formal addendum responding to all questions received by the deadline will be made available no later than five business days before the proposal due date. Additional clarifications to the specifications will also be in the form of a written addendum. All addenda will be posted on the Town's website. Such addenda will become part of the contract documents. Verbal instructions are not binding and will not form a part of the proposal documents. It is the Offeror's responsibility to obtain all addenda from the Town's website: <http://www.leesburgva.gov/bidboard>.

VII. TERMS AND CONDITIONS

A. Special Terms and Conditions

1. **Contract Term:** 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.

B. General Terms and Conditions

1. **Proposal Binding for One Hundred Twenty (120) Days:** Offeror agrees that this proposal shall be valid and may not be withdrawn for a period of one hundred and twenty (120) calendar days after the due date.
2. **Late Proposals:** Proposals received after the time specified on the cover page of this RFP will not be accepted and will be returned unopened, provided a return address is visible.
3. **Acceptance or Rejection of Proposals:** The Town reserves the right to accept or reject any or all proposals in whole or in part and to waive minor informalities in the process of awarding this contract.
4. **Competition Intended:** It is the Town's intent that this request for proposals permits competition. It should be the offeror's responsibility to advise the Procurement

Officer in writing if any language, requirements, specifications, etc., or any combinations thereof, inadvertently restricts or limits the requirements stated in this RFP to a single source. The Procurement Officer must receive such notification at least ten (10) business days before the due date.

5. **Understanding of Specifications:** Offerors should thoroughly examine and be familiar with the Town specifications. The failure or omission of any offeror to receive or examine this document should 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.
6. **Exceptions to RFP:** Offerors taking exception to any part or section of this RFP should indicate such exceptions in their proposal. Failure to indicate any exceptions should be interpreted as the offeror's intent to fully comply with the specifications as written. Conditional or qualified proposals are subject to rejection in whole or in part.
7. **Inquiries Concerning Specifications:** Questions concerning this RFP must be made in writing to the Procurement Contact listed on the cover page of the RFP.
8. **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.
9. **Employment Discrimination Prohibited:** During the performance of this contract, the contractor agrees as follows:
 - a. The contractor 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 state law relating to discrimination in employment. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation should be deemed sufficient for the purpose of meeting the requirements of this section.

The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

10. **Disposition of Proposals:** All materials submitted in response to this RFP will become the property of the Town. One (1) copy of each proposal will 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 12. "Trade Secrets and Proprietary Information Disclosure".

11. **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 will 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.
12. **Laws and Regulations:** The offeror's attention is directed to the fact that all applicable Commonwealth of Virginia laws, municipal ordinances and the rules and regulations of all authorities having jurisdiction over the contract should apply to the contract throughout, and they will be considered to be included in the contract the same as though herein written out in full.
13. **License Requirement:** All firms doing business for the Town are required to be licensed in accordance with the Town's "Business, Professional, and Occupational Licensing (BPOL) Tax" Ordinance. Wholesale and retail merchants without a business location in Leesburg, VA are exempt from this requirement. Offerors do not have to obtain a BPOL license in order to submit a proposal; however, offerors must obtain a license, if applicable, prior to award of the contract. Questions concerning the BPOL Tax should be directed to the Department of Finance, Telephone **703-771-2753**. Indicate the BPOL license number on the proposal form.
14. **Ethics in Public Contracting:** The offeror agrees that it will adhere to Article 6 – "Ethics in Public Contracting" requirements set forth in the Virginia Public Procurement Act.
15. **Safety:** All contractors and subcontractors performing services for the Town are required and should 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 should 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.
16. **Termination:** Subject to the provisions below, the contract may be terminated by the Town upon thirty (30) days advance written notice to the other party. If any work or service hereunder is in progress, but not completed as of the date of termination, then this contract may be extended upon written approval of the Town until said work or services are completed and accepted.

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 thirty (30) days advance written notice, then the Town will negotiate reasonable termination costs, if applicable.

Termination for Cause: – Termination by the Town for cause, default or negligence on the part of the contractor will be excluded from the foregoing provision; termination costs, if any, will not apply. The thirty (30) days advance notice requirement is waived in the event of Termination for Cause. In the event of default by the offeror, we reserve the right to procure the commodities and/or services from other sources, and hold the offeror liable for any excess cost occasioned thereby. If, however, public necessity requires use of commodities and/or service not conforming to the specifications they may be accepted and payment therefore shall be made at a proper reduction in price.

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 contractor 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.

17. **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.
18. **Use by Other Localities:** Offerors are advised that the resultant contract may be extended, with the authorization of the offeror, to other public bodies or public agencies or institutions of the United States to permit their use of the contract at the same prices and/or discounts and terms and conditions of the resulting contract. If any other public body decides to use the final contract, the Contractor(s) must deal directly with that public body concerning the placement of orders, issuance of the purchase orders, contractual disputes, invoicing and payment. The Town of Leesburg acts only as the “Contracting Agent” for these public bodies. Failure to extend a contract to any public body will have no effect on consideration of your bid.

It is the Contractor’s responsibility to notify the public body(s) of the availability of the contract.

Other public bodies desiring to use this contract must make their own legal determination as to whether the use of this contract is consistent with their laws, regulations, and other policies.

Each public body has the option of executing a separate contract with the Contractor(s). Public bodies may add terms and conditions required by statute, ordinances, and regulations, to the extent that they do not conflict with the contract’s terms and conditions. If, when preparing such a contract, the general terms and conditions of the public body are unacceptable to the Contractor, the Contractor may withdrawal its extension of the award to that public body.

The Town of Leesburg shall not be held liable for any costs or damages incurred by another public body as a result of any award extended to that Public Body by the Contractor.

19. **Modification of the Contract:** This contract may be modified by an approved contract modification or change order signed by both parties in accordance with the VPPA.
20. **Discrimination Prohibited; Participation of Small and Minority-Owned Business:** The Town shall not discriminate against an offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.
21. **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 contractor 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 contractor that the contractor 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 contractor 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.

22. **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. The signer of the proposal must declare that all persons, companies and parties interested in the contract as principals are named therein; that the proposal is made without collusion with any other person, persons, company or parties submitting a proposal; that it is in all respects fair and in good faith without collusion or fraud; and that the signer of the proposal has authority to contractually bind the offeror. See Offeror Submission Form.

23. **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 there from.
24. **Qualification of Offerors:** Each offeror may be required, before the award of any contract, to show to the complete satisfaction of the Evaluation Team 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 Team to be satisfied as to the offeror's qualifications. Failure to qualify according to the foregoing requirements will justify proposal rejection.
25. **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 offerors that make performance impossible or illegal, unless otherwise specified in the agreement.
26. **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.
27. **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 VPPA.
28. **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 of the Code of Virginia, as amended, and the Town Procurement Policy.
29. **Faith-Based Organizations:** The Town of Leesburg does not discriminate against faith-based organizations.
30. **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;
- Workers Compensation insurance, which meets the statutory requirements of the Commonwealth of Virginia;
- 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; and
- 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.

31. **Payment Clauses:** Pursuant to Section 2.2-4354 of the VPPA, 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 Town attributable to the work performed by the subcontractor under that contract; or
 - b. Notify the Town and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

Individual contractors must provide their social security numbers and proprietorships, partnerships, and corporations to provide their federal employer identification numbers.

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

“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.

32. **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.

33. **Purchase Orders:** A purchase order will be enclosed with the resulting , and will become an integral part of the resulting contract. The purchase order indicates that sufficient funds have been obligated as required by Title 15 of the Code of the Commonwealth of Virginia, and assures distribution of the necessary receiving reports. The purchase order does not supersede any provisions of the resulting contract. Performance time and dates are determined solely by the contract and any modification thereto. Services are not to begin until receipt of the purchase order and/or other notification by the Town's Procurement Officer or designee.

VIII. SAMPLE CONTRACT

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

CONTRACT NO. _____

CONTRACT/PROJECT NAME

This **Contract** (the “**Contract**”) is made this ___ day of _____, _____, 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 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.

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.

1.20 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.

1.21 Landowner Notification Requirements per Virginia Code § 25.1-203. The Professional shall be responsible for notification duties to property owners as related to design work, including notifying property owners of entry in accordance with the requirements of Virginia Code § 25.1-203. These requirements will be included as an amendment to the contract as shown on **Attachment No. 2.**

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 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 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 forty-five (45) 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 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 6.4, 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
Department of Public Works & 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

OFFEROR SUBMISSION FORM

RFP NO. 21203-FY20-53

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 _____

OFFEROR MUST RETURN THIS FORM WITH THEIR PROPOSAL

ACKNOWLEDGEMENT OF ADDENDA

Offeror acknowledges receipt of the following ADDENDA, which have been considered in the preparation of this proposal:

No. _____	Dated: _____
No. _____	Dated: _____
No. _____	Dated: _____
No. _____	Dated: _____
No. _____	Dated: _____

Town of Leesburg
Additional Notification Duties of Contractor
Effective 1/21/20

Contractor shall perform the following additional services in connection with requesting permission to enter the property of affected owners and notifying property owners of entry where no permission has been granted, all in accordance with the requirements of Virginia Code § 25.1-203 (“Notification Services”):

1. Identify Contractor personnel responsible for managing the Notification Services (the “Notification Manager”). Personnel may not be substituted as the Notification Manager without written notification to the Town.
2. Hold one pre-notification meeting between the Notification Manager and designated Town staff to determine the specifics of the approach for the particular project. Items to be discussed might include: Types of activities to be included, template letters and door hangers, to be provided by the Town, to use for notifications, list of property owners to be notified, time frame given to owner for activities, method for tracking notifications using a spreadsheet, frequency of updates to the Town of the notification activities, additional notifications required by the Town, identification of site employees and vehicles, etc.
3. Create a database of affected property owners to be notified, and submit same to the Town Staff no later than 10 days prior to anticipated delivery to affected property owners. Maintain the database to track notification and permission status for entry onto each affected property, and provide designated Town staff with access to such database upon request.
4. Using templates designated by the Town, complete requisite Contractor information in Request for Permission to Inspect and, as necessary, Notice of Intent to Enter forms, in accordance with the requirements of Virginia Code § 25.1-203 (including: date of entry; name of entity to enter onto property; number of persons to enter; purpose of entry; and testing, appraisals or examinations to be performed or other actions to be taken). Submit sample of completed forms to designated Town staff no later than 10 days’ prior to anticipated delivery to affected property owners.
5. Deliver a Request for Permission to Inspect letter including the Town supplied FAQ Sheet to each affected property owner (listing all affected properties owned by that owner on one letter) at least 15 days in advance of the desired entry, by certified mail, return receipt requested, in accordance with Virginia Code § 25.1-203, and also by first class mail through the USPS.
6. Provide contemporaneous digital copies of all Request for Permission to inspect documents to designated Town staff.

7. Track delivery of all Request for Permission to inspect documents in the database of affected property owners and provide evidence of delivery or other status to designated Town staff.
8. Receive, collate and deliver to designated Town staff all Permission to Enter Property forms returned by property owners, and maintain records of permissions received in the database of affected property owners.
9. For each affected property owner who does not return a Permission to Enter Property form within the required fifteen days, deliver a Notice of Intent to Enter, including the Town supplied FAQ Sheet, , at least 15 days in advance of the desired entry, by certified mail, return receipt requested, AND by one additional delivery method, in accordance with Virginia Code § 25.1-203 (posting at the affected property, delivery by overnight delivery service, or hand delivery).
10. Provide contemporaneous digital copies of all Notice of Intent to Enter documents to designated Town staff.
11. Track delivery of all Notice of Intent to Enter documents (by each required delivery means) in the database of affected property owners and provide evidence of such delivery or other status to designated Town staff.
12. Track all requests from affected property owners to provide advance notification of entry, and provide such notification as requested.
13. Hang a door hanger on each affected property 24-72 hours ahead of the date of entry notifying the owner one more time of the activity.

Enter property only after accomplishing the steps above as appropriate and knock on the door to notify property owner or occupant of your presence. Leave the property in the same condition when entered. Personnel entering property shall carry a copy of the notification letter(s) and have official identification providing their name and Contractor's name. Any vehicles used for the work shall also be identified with the name of the Contractor.

If: (a) additional entry is needed due to schedule issues, which would result in entry outside of the time frame which was either approved in a signed Permission to Enter Property or specified in a properly delivered Notice of Intent to Enter (the "Permitted Entry Timeframe"); or (b) additional entry is needed for a new activity not included in either a signed Permission to Enter Property or the delivered Notice of Intent to Enter (the "Permitted Activities"), then repeat the notification process as described above.

14. Maintain and update database showing dates for each step completed, and document any discussions with property owners throughout the process. Periodically update designated Town staff regarding questions or comments received from affected property owners, and responses provided by Contractor, on such schedule as is agreed at the pre-notification meeting.

AMENDMENT TO CONTRACT

THIS AMENDMENT TO CONTRACT (“Amendment”) is made this ____ day of _____, 2020, by and between _____ (“Designer” or “Contractor”), and the Town of Leesburg, Virginia, (“Town”), collectively referred to as the “Parties.”

WHEREAS, the Designer and the Town entered into Contract No. _____ dated _____ (the “Contract”); and

WHEREAS, in response to changes in Virginia Code requirements related to entry onto affected property, the Town has requested that the Designer perform additional duties not included in the Contract, to facilitate compliance with Virginia Code § 25.1-203, as most recently revised in 2019; and

WHEREAS, the Town and the Designer agree that it is in their respective best interests for the Designer to perform the additional services requested by the Town upon the terms set forth in this Amendment.

NOW THEREFORE, in consideration of the premises and the mutual promises contained herein, and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Contract is hereby amended as follows:

1. Terminology. The term “Contractor” as used in this Amendment hereof shall have the same meaning as the term “Designer” as used in the Contract. All capitalized terms not defined in this Amendment shall have the meaning ascribed to them in the Contract.
2. Liability of Contractor. In addition to and not in limitation of the obligations of Contractor under Section 2.17 of the Contract, Contractor shall be liable to the Town for all damages attributable to any negligent acts of commission or omission of the Contractor, or of its employees, agents, or Lower-tier Entities, in connection with the Notification Services, including but not limited to: all costs (including reasonable attorney fees) incurred by the Town in defending any statutory damages claim brought by a property owner under Virginia Code § 25.1-203, and any and all statutory damages, attorney fees, court costs, or expert fees awarded to any property owner under Virginia Code § 25.1-203(E) in any such action.
3. Indemnification by Contractor. Negligent acts or omissions of Contractor, or of its employees, agents, or Lower-tier Entities in connection with the Notification Services, shall be subject to the indemnification provisions of section 2.18 of the Contract; indemnification by Contractor for such negligent acts or omissions in connection with the Notification Services shall include, but not be limited to, all costs (including reasonable attorney fees) incurred by the Town in defending any statutory damages claim brought by a property owner under Virginia Code § 25.1-203, and any and all statutory damages, attorney fees, court costs, or expert fees awarded to any property owner under Virginia Code § 25.1-203(E) in any such action.

4. Disclaimer of Town Liability. In addition to and not in limitation of the provisions of Section 2.20 of the Contract, the Town shall at no time be legally responsible in the event that entry onto any affected property by Contractor, its employees, agents, or Lower-tier Entities, in connection with the Notification Services, is deemed by any court of competent jurisdiction to have been in violation of Virginia Code § 25.1-203, and/or such entry is deemed to be a trespass.

5. Interpretation. In the event of a conflict between the provisions of this Amendment and any provision of the Contract, the provisions of this Amendment shall control. All other provisions of the Contract not modified by this Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed and delivered effective as of the day and year written above.

CONTRACTOR

By: _____
Name: _____
Title: _____
Date: _____

TOWN OF LEESBURG, VIRGINIA

By: _____
Name: _____
Title: _____
Date: _____

APPROVED AS TO FORM

By: _____
Title: Town Attorney