



**REQUEST FOR PROPOSAL (RFP)  
COMPREHENSIVE ENGINEERING, SURVEYING AND RELATED SERVICES FOR  
FEDERALLY FUNDED PROJECTS**

ISSUE DATE: November 15, 2022

RFP NO.: 100330-FY23-05

QUESTION DEADLINE: Monday, December 1, 2022; 5:00 p.m.

PROPOSAL DUE DATE: Thursday, December 13, 2022; 3:00 p.m.

DELIVERY ADDRESS: Commonwealth's eProcurement website  
[www.eva.virginia.gov](http://www.eva.virginia.gov)

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**NOTE: Effective January 1, 2021, and until further notice, all bids and proposals in response to a formal solicitation issued by the Town will be securely received via eVA, the Commonwealth's eProcurement website. All formal solicitations, including notices of addenda, will be posted on the Town's Bid Board (<http://www.leesburgva.gov/bidboard>) and eVA ([www.eva.virginia.gov](http://www.eva.virginia.gov)). Courtesy notifications will be provided to interested parties who have registered to receive updates. Interested parties are responsible for providing the correct contact information to the Town.**

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## **I. PURPOSE**

The Town of Leesburg, Virginia (Town) is requesting sealed proposals for engineering, surveying and related professional and non-professional services for federally funded projects.

Some projects assigned under the contract will be funded through the Virginia Department of Transportation (VDOT). These projects shall be subject to compliance with the federal and VDOT regulations contained in this document and elsewhere.

However, there may be other tasks assigned under the contract that include federally-funded projects from other agencies. Those other non-VDOT projects (if any) will be subject to the specific regulations of that funding program or agency.

The Town and/or funding agency (i.e. VDOT's Civil Rights Division as appropriate) will perform audits to ensure compliance with all applicable terms and conditions and guidelines contained in this document or elsewhere.

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

It is anticipated that a single contract will be awarded which may encompass any of the following specialties:

- General civil engineering and surveying
- Utility engineering (water and sewer)
- Water resources engineering
- Traffic and transportation engineering
- Land acquisition services
- Geotechnical engineering
- Surveying services
- Landscape design

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

The Town expects to award one contract under this solicitation but reserves the right to determine the exact number of individual contracts based on the responses received from this request.

Consultant teams may be formed to provide all of the required services. It is a requirement for firms to have capabilities to provide all services listed.

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

## **II. 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 successful offeror, also referred to herein as "Consultant", will be expected to provide all expertise, labor, equipment, and resources necessary to complete the services herein. 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.

Tasks will only be assigned under this contract for projects with federal funding. The Town has existing task-order engineering contracts in place for projects that do not have federal funding, and for airport-related projects. Accordingly, projects without federal funding and airport projects will not be eligible for assignment under this contract. Due to federal funding requirements, certain federal provisions must be included in the solicitation, award and contracts of firms providing professional services for federally funded projects.

If the size of the project does not exceed the limits specified in §2.2-4303.1 of the Virginia Public Procurement Act, the tasks assigned under this contract may include federally funded projects from the Town's approved Capital Improvement Program (CIP). Tasks assigned under this contract may also include federally funded studies, surveys, preliminary and/or final design, or other services on projects that are considered to be maintenance, 3R (repair, renewal, and replacement), or other smaller projects that are not included in the CIP. While other types of services may be requested, it is not anticipated that these services will comprise a substantial volume of the total services requested. The Town reserves the right to expand or delete services as necessary.

The Consultant will be expected to provide professional consultation and design services. Other professional and technical services, including but not limited to those itemized below may be requested under this contract.

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

- Topographic and property surveys and plats, including notifying property owners of entry in accordance with the requirements of Virginia Code § 25.1-203
- Land acquisition (including appraisals, review appraisals, acquisition, and legal services)
- Traffic analysis and design
- Environmental studies (including wetland delineations, hazardous materials evaluation, permitting, and NEPA compliance)
- Geotechnical investigations and studies
- Drainage studies and design
- Flood studies
- Street and highway improvements design (including geometric improvements, signals, signing, and marking)
- Minor structures design (retaining walls, etc.)
- Utility designation and location (including test pits) and relocation coordination
- Pedestrian and bicycle facilities design (including ADA analysis)
- Waterline replacement, relocation, and upgrade design
- Sanitary sewer line replacement, relocation, and upgrade design
- Tree inventory, assessment and preservation plans
- Landscape design

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

- Technical studies and reports (including planning reports, preliminary design reports, traffic studies, etc.)
- Preliminary and final design, preparation of construction plans, specifications and bid documents (including material quantity takeoffs, cost estimates, and related items).
- Permit and permit renewal applications and related services (as required by regulatory agencies)
- Advisory services during bidding and bid evaluation
- Construction phase engineering services such as shop drawing and submittal review, responses to RFIs, etc. (not including on-site inspection or construction management services)
- Land acquisition services (including, but not limited to plat preparation, appraisals, title search, and acquisition)

A schedule for the completion of each task assigned under this contract will be established to reflect the requirements of the project, considering but not limited to grant provisions and internal and external reviews, approvals and notices to proceed.

#### **IV. PROPOSAL SUBMITTAL INSTRUCTIONS**

##### **A. Submittal Instructions**

One (1) electronic copy of your complete proposal and, if applicable, one (1) electronic copy with any trade secret, confidential, or proprietary information redacted must be

submitted by the date and time noted. Late proposals will **not** be accepted. Mailed, telephone, fax, electronic, emailed and verbal offers will **not** be accepted.

Submit proposals through the Commonwealth's eProcurement website, [www.eva.virginia.gov](http://www.eva.virginia.gov).

**In order to be considered for a contract award, offerors must complete and submit a response to this RFP via the Commonwealth's electronic procurement website eVA ([www.eva.virginia.gov](http://www.eva.virginia.gov)). eVA streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. Offerors desiring to provide goods and/or services to the Town must be a registered vendor in eVA. eVA Vendor Registration is free.**

On the eVA website, [www.eva.virginia.gov](http://www.eva.virginia.gov), applicants must login as a vendor using their eVA username and password. Please contact eVA Customer Care for instructions and/or assistance in registering to become a vendor, login, and/or uploading documents. eVA Customer Care:

Hours: 8:00 AM to 4:45 PM, Monday through Friday

Phone Toll Free: 866-289-7367

Email: [eVACustomerCare@DGS.Virginia.gov](mailto:eVACustomerCare@DGS.Virginia.gov)

Proposals shall be submitted electronically to the Town via the Commonwealth's eVA website **prior** to the proposal submission deadline stipulated for this RFP or as amended via any subsequent addenda issued by the Town. Offerors assume full responsibility for the electronic delivery of the completed proposal to [www.eva.virginia.gov](http://www.eva.virginia.gov) on or before the deadline for submission. The Town is not responsible for any loss or delay with respect to the submission of proposals. Late proposals will **not** be accepted. Proposals submitted by any method other than via the eVA website will **not** be accepted.

All required forms and documentation submitted in response to this RFP must be uploaded as one (1) pdf attachment to eVA ([www.eva.virginia.gov](http://www.eva.virginia.gov)). The attachment should use the following naming convention: the RFP number and the name of the bidder (i.e. RFP No. \_\_\_\_\_ - Your Company's Name).

**NOTE: eVA will not allow an offeror to upload documents after the deadline set for receipt of proposals. Any submission partially uploaded at the deadline date and time will be considered incomplete and will not be accepted. 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 shall include all specified items in the order and format designated in Section IV of this RFP.

2. The electronic proposal submittal must be formatted to 8-1/2" x 11" pages. Proposals are to be prepared simply and concisely. Elaborate artwork, visual, and other presentation aids are not required.
3. Proposals shall be signed by the person or persons legally authorized to bind the offeror to a Contract. Until further notice, electronic signatures will be accepted by the Town. Submission of a proposal through the eVA website constitutes your representation that your firm authorizes the use of electronic signatures.
4. Proposals shall contain no more than fifty (50) pages as indicated by the PDF page count in Adobe Acrobat software. All sheets in the proposal (i.e. including covers, dividers and tabs, table of contents, executive summary, forms, registrations and licenses, etc.) will be counted as part of the sheet count.
5. Each copy of the proposal must be contained in one PDF, and all pages shall be numbered and organized using sections in the sequence and format as indicated below:

SECTION 1 Letter of Interest & Required Forms	<ul style="list-style-type: none"> <li>• Letter of Interest</li> <li>• Table of Contents</li> <li>• Offeror Submission Form</li> <li>• Acknowledgement of Addenda</li> <li>• SCC Registration (prime consultant and subconsultants)</li> <li>• DPOR Registration</li> <li>• Firm Data Sheet</li> <li>• Certifications Regarding Debarment</li> </ul>
SECTION 2 Qualifications & Experience	<ul style="list-style-type: none"> <li>• Offeror's Qualifications and Experience</li> <li>• Subconsultants</li> <li>• References</li> <li>• Project descriptions</li> </ul>
SECTION 3 Understanding & Approach	<ul style="list-style-type: none"> <li>• Understanding of project</li> <li>• Approach to Meet the Scope of Work</li> <li>• Quality Control Plan</li> </ul>
SECTION 4 Organization & Staffing	<ul style="list-style-type: none"> <li>• Organization Chart</li> <li>• Resumes of key staff</li> </ul>
SECTION 5 Disadvantaged Business Enterprises	<ul style="list-style-type: none"> <li>• Documentation of the prime's commitment and plan for meeting DBE goals</li> <li>• DBE firm confirmation that it is participating</li> <li>• Documentation of Good Faith Effort in meeting the DBE goal (if applicable)</li> </ul>
SECTION 6 Miscellaneous (Optional)	<ul style="list-style-type: none"> <li>• Supplemental Materials (optional)</li> <li>• Exceptions to the RFP (optional)</li> </ul>

## 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 using the following format:

### 1. Section 1 – Letter of Interest and Required Forms

- **Letter of Interest:** Provide a concise letter confirming interest in providing services under this contract and summarizing background information of the firm including the firm's experience and capabilities in performing the required services.
- **Table of Contents**
- **Offeror Submission Form (RFP page 39)** – 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 (RFP page 40)** – 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 must furnish with proposal submission supporting evidence of their SCC registration. Copies of on-line confirmation are acceptable documentation. Multiple registration certificates may be copied on a single sheet.
- **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.
- **Firm Data Sheet (RFP page 41)** – One Firm Data Sheet for the proposed team.



- **Certification Regarding Debarment Forms (prime consultant and subconsultants) (RFP pages 42 and 43)** – The prime consultant and each proposed subconsultant must submit a signed copy of the forms.

## 2. Section 2 - Qualifications and Experience

- **Qualifications and Experience:** Describe the qualifications and skills of the organization and project team to provide the services.

In the section, 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 *Design and Construction Standards Manual* and VDOT design standards 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.
- Minimum of three (3) references for which the offeror has completed services comparable to the scope of work in this RFP and in an environment comparable to the Town of Leesburg.
- Description of **five (5)** projects completed within the past ten (10) years. These projects should be different from the three (3) references requested above. 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. Section 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, and a statement explaining why the offeror's proposed solution would be the most advantageous to the Town.

Additionally, please provide the following:

- 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, and methods of responding in short time periods.
- Discuss the firm's quality control processes.

### 4. Section 4 – Organization and Staffing

- 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. Section 5 – Disadvantaged Business Enterprises (DBE)

- It is the policy of the Virginia Department of Transportation and the **Town of Leesburg** that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of federally funded consultant contracts. A list of Virginia Department of Small Business and Supplier Diversity (DSBSD) certified DBE firms is maintained on their web site (<http://www.dmbv.virginia.gov/>) under the **DBE Vendor Directory of Virginia Unified Certification Program**. Consultants are encouraged to take all necessary and reasonable steps to ensure that DBE firms have the maximum opportunity to compete for and perform services on the contract, including participation in any subsequent supplemental contracts. If the consultant intends to subcontract a portion of the services on the project, the consultant is encouraged to seek out and consider DBE firms as potential subconsultants. The consultant is encouraged to contact DBE firms to solicit their interest, capability

and qualifications. Any agreement between a consultant and a DBE firm whereby the DBE firm promises not to provide services to other consultants is prohibited. **The DBE contract goal for this procurement is 12%.**

If portions of the services are to be subcontracted to a DBE or SWaM, the following needs to be submitted with your proposal and both must reference the project number(s) for the services:

- Written documentation of the prime’s commitment to the DBE or SWaM firm to subcontract a portion of the services, a description of the services to be performed and the percent of participation.
- Written confirmation from the DBE or SWaM firm that it is participating, including a description of the services to be performed and the percent of participation.

49 CFR Part 26 requires VDOT to collect certain data about firms attempting to participate in VDOT contracts. This data must be provided on the enclosed Firm Data Sheet.

VDOT is also required to capture DBE and SWaM payment information on all professional services contracts. The successful prime consultant will be required to complete C- 63 form for both state and federally funded projects on quarterly basis.

Any DBE or SWaM firm must become certified (with the Virginia Department of Small Business and Supplier Diversity) prior to your response being submitted. If DBE or SWaM firm is the prime consultant, the firm will receive full credit for planned involvement of their own forces, as well as the work that they commit to be performed by DBE or SWaM subconsultants. DBE or SWaM prime consultants are encouraged to make the same outreach efforts as other consultants. DBE or SWaM credit will be awarded only for work actually being performed by them. When a DBE or SWaM prime consultant subcontracts work to another firm, the work counts toward DBE or SWaM goals only if the other firm is itself a DBE or SWaM. A DBE or SWaM prime consultant must perform or exercise responsibility for at least 30% of the total cost of its contract with its own force.

DBE or SWaM certification entitles consultants to participate in VDOT’s DBE and SWaM programs. However, this certification does not guarantee that the firm will obtain VDOT work nor does it attest to the firm’s abilities to perform any particular work.

## **6. Section 6 – Miscellaneous (optional)**

- **Supplemental Materials:** 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 50-page limit.

- **Exceptions to RFP:** Detail any exceptions taken to the Scope of Work and Terms and Conditions sections of this RFP. For each exception, specify the RFP page number, section number, and the exception taken.

**V. EVALUATION CRITERIA AND AWARD**

**A. Evaluation Criteria**

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

<b>Evaluation Criteria</b>	<b>Weight</b>
1 Personnel’s Experience in Similar Types of Services	40%
2 Firm / Team’s Experience in Similar Type of Services	25%
3 Organizational Capability	20%
4 Qualifications of Project Manager	15%

**B. Selection Process**

An Evaluation Committee will be comprised of various Town staff and/or Town representatives. The Evaluation Committee 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 based on the qualifications-based criteria. A minimum of three offerors will be short-listed for further consideration. If the Town receives fewer than three responses to this RFP, the Town will evaluate if the selection process will continue, in consultation with the VDOT project coordinator.

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 one contract, but reserves the right to make multiple awards, 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 shall be at the sole discretion of the Town. An 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 technical capability.

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

Prior to award of the contract, VDOT's Assurance and Compliance Office will oversee a pre-award evaluation, including review of the selected consultant's Federal Acquisition Regulations (FAR) Audit (see Section VII. Terms and Conditions, item 37).

## **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 initial term of this Contract shall commence on a date that is mutually agreed upon both parties and shall continue in force for one (1) year. Upon mutual agreement of both parties, this Contract may be renewed for up to three (3) additional one-year terms.

Pricing for additional renewal years may be negotiated but shall not exceed the contract price(s) of the original contract increased/decreased by more than the percentage increase/decrease of the SERVICES category of the CPI-U section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available. The source for this index should be <http://www.bls.gov/cpi>. Back-up data and justification for contract pricing in excess of the above may be considered at the sole discretion of the Town.

Annually, the DBE commitments and achievements will be reviewed to determine if the consultant is making a good faith effort in meeting the established DBE goal.

Renewal of the contract may be impacted if good faith effort is not met. It is recognized that not all tasks may have opportunity for subconsultants.

2. **Contract Task Order Assignment:** In accordance with §2.2-4303.1 of the Virginia Public Procurement Act, the maximum value of an individual task that may be assigned under this contract is \$2,500,000. The maximum value assigned to each consultant for all tasks performed is \$8,000,000 per one-year contract term. When selected for a task assignment, the Consultant will be required to provide a technical proposal, cost proposal, and project schedule. Negotiations for an assignment will be conducted by competitive negotiation in accordance with the Virginia Public Procurement Act.

**A VDOT Form C-111 listing the DBEs for approval must be submitted for each task order assigned under this contract that involves VDOT funding.**

## **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 must be submitted via the Commonwealth of Virginia's eVA website prior to the proposal submission deadline. eVA will not allow an offeror to upload documents after the deadline set for receipt of proposals. Any proposal received by the Town after the deadline for submission will not be accepted.
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 shall 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 shall thoroughly examine and be familiar with the Town specifications. 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.
6. **Exceptions to RFP (Optional):** Offerors taking exception to any part or section of this RFP are to indicate such exceptions in their proposal. Failure to indicate any exceptions will 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. **Costs Incurred in Responding:** This solicitation does not commit the Town to pay any costs incurred in the preparation and submission of proposals, or to procure or contract for services defined herein.
10. **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.

11. **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".
12. **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.

13. **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 shall 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.
14. **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 703-771-2723. Indicate the BPOL license number on the proposal form.
15. **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.
16. **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 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.
17. **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 shall be excluded from the foregoing provision; termination costs, if any, shall 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.

18. **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.
19. **Use by Other Localities:** Offerors are advised that the resultant contract for engineering services may not be extended to other public bodies in accordance with Section 2.2-4304 Joint and Cooperative Procurement of the Virginia Public Procurement Act.
20. **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.
21. **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.
22. **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.

23. **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.
24. **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.
25. **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.
26. **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.
27. **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.
28. **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.
29. **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.
30. **Faith-Based Organizations:** The Town of Leesburg does not discriminate against faith-based organizations.

31. **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.

32. **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 under Article 8.5.2 of the Contract.

“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.

33. **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.
34. **Purchase Orders:** A purchase order will be issued upon assignment of individual task orders, 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.
35. **Virginia State Corporation Commission Registration:** Prior to the time of submittal of the proposal, all business entities, except for sole proprietorships, are required to register with the Virginia State Corporation Commission. Information about entity formation can be found at <https://www.scc.virginia.gov/default.aspx>. Foreign Professional corporations and Foreign Professional Limited Liability Companies (i.e., organized or existing under the laws of a state or jurisdiction other than Virginia) must possess a Commonwealth of Virginia Certificate of Authority from the State Corporation Commission to render professional services. Any business entity other than a professional corporation, professional limited liability company or sole proprietorships that do not employ other individuals for which licensing is required must be registered in the Commonwealth of Virginia with the Department of Professional & Occupational Regulation <http://www.dpor.virginia.gov/>, Virginia Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects (Board). Board regulations require that all branch offices of professional corporations and business entities located in Virginia, which offer or render any professional services relating to the professions regulated by the Board shall be registered as separate branch office with the Board. All offices, including branches, which offer or render any professional service, must have at least one full-time resident professional in responsible charge who is licensed in the profession offered or rendered at that office. All firms involved that are to provide professional services must meet these criteria prior to submitting a proposal to the Town of Leesburg.

Individual engineers shall meet the requirements of Chapter 4, Title 54.1 of the Code of Virginia.

36. **Federal Immigration Reform and Control Act of 1986:** The Town will not consider for award any cost proposals submitted by any consultants and will not consent to subcontracting any portions of the contract to any subconsultants in violation of the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.
37. **Federal Requirements for Accounting:** All firms submitting proposals (prime consultants, joint ventures and subconsultants) must have internal control systems in place that meet Federal requirements for accounting. These systems must comply with requirements of 48CFR31, "Federal Acquisition Regulations, Contract Cost Principles and Procedures," and 23CFR172, "Administration of Negotiated Contracts." All architectural or engineering firms selected for a project (prime consultants, joint ventures and subconsultants) must submit their FAR audit data along with a Contractor Cost Certification for indirect cost rates required by FHWA order 4470.1A dated October 27, 2010 to the Department within 10 work days of being notified of their selection, whereby an official of an architectural or engineering firm shall certify that the indirect cost rate submitted does not include any costs which are expressly unallowable and that the indirect cost rate was established only with allowable costs in accordance with the applicable cost principles contained in the Federal Acquisition Regulations (FAR) of 48CFR31. A sample Contractor Cost Certification is available for architectural or engineering firm's use on VDOT website at <http://www.virginiadot.org/business/gmpms.asp>. Should any firm on the consultant team fail to submit the required audit data and certification within the 10 work days, negotiations may be terminated by the Town of Leesburg and the next most qualified team invited to submit a proposal.
38. **Title VI of the Civil Rights Act of 1964:** The Town of Leesburg assures compliance with Title VI of the Civil Rights Act of 1964, as amended. The consultant and all subconsultants selected for this project will be required to submit a Title VI Evaluation Report (EEO-D2) within 10 work days of notification of selection when requested by the Town. This requirement applies to all consulting firms when the contract amount equals or exceeds \$10,000.
39. The Town of Leesburg does 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.

## VIII. SAMPLE CONTRACT

The following is an example professional services contract and is for information purposes only. The Town of Leesburg may modify any provisions as the Town deems appropriate.

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

[CONTRACT NAME]

This **Contract** (the “**Contract**”) is made this \_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”), by and between the **Town of Leesburg, Virginia** (the “**Town**”), a municipal corporation, and \_\_\_\_\_ (the “**Professional**”), a Virginia Corporation having a usual place of business at \_\_\_\_\_, to perform \_\_\_\_\_ under the terms and conditions set forth herein. The Town and the Professional will be collectively referred to herein as “Parties”, each a “Party”.

### ARTICLE 1

#### GENERAL PROVISIONS

##### 1.1 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 tasks identified in any individual Task Order issued to Professional pursuant to this Contract.

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 (“VPPA”).

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

1.1.12 “Professional’s Designated Representative” is \_\_\_\_\_, [Title], unless the Professional’s Designated Representative is designated in the Professional’s Proposal.

1.1.13 “Town’s Designated Representative” is the Director of the Department of Public Works & Capital Projects unless the Professional is notified in writing of an alternate “Town Designated Representative.”

1.1.14 The “Contract Documents” consist of: this contract and Attachment 1 incorporated herein; Request For Proposal No. \_\_\_\_\_ dated \_\_\_\_\_ (the “RFP”) (incorporated herein by reference); RFP Addendum No. 1 dated \_\_\_\_\_ (incorporated herein by reference); RFP Addendum No. 2 dated \_\_\_\_\_ (incorporated herein by reference); RFP Addendum No. 3 dated \_\_\_\_\_ (incorporated herein by reference); the Professional’s Proposal dated \_\_\_\_\_ (attached hereto as “Exhibit A”); the Professional’s Rate Schedule dated \_\_\_\_\_ (attached hereto as “Exhibit B”); and any subsequent Task Orders issued by the Town. The Contract Documents shall collectively constitute the Contract. In the event of inconsistency between or among the Contract Documents, they shall be given precedence in the order listed in the preceding sentence, provided however, that the tasks defined in any subsequent Task Order shall take precedence over any more general scope of work in any other Contract Document.

1.1.15 A “Task Order” shall be issued to the Professional by the Town for any individual Project for which the Professional is selected to perform services, and shall define the scope of the individual Project.

1.1.16 The “Notification Services” means the services defined in Attachment 1 hereto.

## 1.2 Contract Term.

The initial contract period shall be one (1) year, commencing on the Effective Date. Upon mutual agreement of both parties, this Contract may be renewed for up to three (3) additional one-year renewal terms. Pricing adjustments for renewal terms shall be subject to the limitations set forth in Section VII(A)(1) of the RFP.

### 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 Professional-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.

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 ensure 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 Article 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 not included in an assigned Task Order. Compensation for Additional Services shall be made as provided in Article 4 hereof. Such prior written approval shall define the "Additional Services" and is a condition precedent to payment for Additional Services.

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

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

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

2.19 The Professional shall pay all applicable royalties and license fees on any and all matters arising in connection with the Design Services unless such matters arise from materials, systems or products specified by someone other than the Professional. The Professional shall hold harmless, indemnify and defend against all suits or claims for infringement of patent, trademark or copyrights against the Town and its respective agents, officers, directors and employees with respect to the matters specified in the preceding sentence.

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

2.21 Landowner Notification Requirements per Virginia Code § 25.1-203. Where included in any Task Order issued to the Professional by the Town, the Professional shall be responsible for performance of the Notification Services defined in Attachment 1 hereof.

### **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.

4.2 Contract modifications 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 Professional and the Town arising from or relating to this Contract, shall be resolved under this paragraph.

5.2 The Professional shall immediately notify the Town's Designated Representative in writing of any claim or dispute pertaining to this Contract. Upon receiving notice of a claim, the Town's Designated Representative or designated representative will attempt to resolve the dispute. If the Professional is not satisfied by the Town's Designated Representative's decision, the Professional shall within ten (10) days after receipt of the Town's Designated Representative's proposed resolution, submit a written claim to the Director of the Department of Public Works & Capital Projects. The Director of the Department of Public Works & Capital Projects shall issue a written decision within ten (10) days after receipt of a claim. If the Professional is not satisfied with the resolution proposed by the Director of the Department of Public Works & Capital Projects, the Professional shall within (10) days after receipt of the Director of the Department of Public Works & 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 Termination for Convenience. The Town may terminate the Contract in whole or in part for the convenience of the Town upon thirty (30) days' written notice of termination. Such notice shall specify the reasons for termination, 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. Provided, however, that 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.

6.2 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 effective date of the 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. Upon termination for convenience, the following method shall be utilized in computing amounts due to the Professional for services prior to termination:

6.2.1 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.

6.2.2 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.

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

6.2.4 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.

6.3 Termination for Cause. The Town may terminate the Contract for cause, default or negligence on the part of the Professional by giving thirty (30) 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.

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

6.5 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 automatically terminated once existing funding is exhausted..

6.6 Termination for any reason 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 by the Town 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.

## **ARTICLE 7**

### **INSURANCE**

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

resulting from the operations, products, and completed operations of the Professional.

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

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

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

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

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

## **ARTICLE 8**

### **COMPENSATION AND PAYMENT**

8.1 Services provided will be on a project-by-project basis. At the Town's request, the Professional will prepare and submit a proposal for the tasks involved for a specific project, together with a technical proposal, cost proposal, and project schedule. The cost proposal shall be per the hourly rates set forth in the Professional's Rate Schedule attached hereto as "Exhibit B". Except as specifically provided otherwise herein, the Town agrees to pay the Professional at the hourly rates listed in "Exhibit B" plus direct expenses not to exceed maximum amount specified in the Task Order issued by the Town. In accordance with Section 2.2-4303.1 of the VPPA, the maximum value of each individual Task Order shall not exceed \$2,500,000.00 and the maximum value for all tasks performed in a one-year Contract term shall not exceed \$8,000,000.00. Town Council approval will be required for all task order proposals exceeding \$200,000.00.

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 Town's receipt 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 Professional'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, 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 Professional 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  
Town of Leesburg  
25 West Market Street  
Leesburg, VA 20176

For Professional:

9.11 Relation to the Town. It is the intent of the Parties hereto that the Professional be considered 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.

9.12 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.

9.13 Laws and Regulations. It shall be understood and agreed that this Contract 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.

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

9.15 Audit. The Professional 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 Town, its authorized agents, and/or auditors shall have full access to and the right to examine any of said materials during said period.

9.16 USDOT Title VI Assurance. The Professional will comply with the requirements delineated in USDOT 1050.2A Title VI Assurance as delineated in the RFP attachment, incorporated herein.

9.17 VDOT Mandatory Federal-Aid Professional Services MOA Provisions. The Professional will comply with the requirements delineated in VDOT Mandatory Federal-Aid Professional Services MOA Provisions as delineated in the RFP attachment, incorporated herein.

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, VIRGINIA**                      **[FIRM]**

Authorized Signature	_____	Authorized Signature	_____
Name	Kaj H. Dentler	Name	_____
Title	Town Manager	Title	_____
Date	_____	Date	_____

APPROVED AS TO FORM:

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

CONTRACT ATTACHMENT 1  
NOTIFICATION SERVICES

1. Notification Services. When assigned to the Professional under any Task Order issued under this Contract, the Professional shall perform the following services in connection with requesting permission to enter the property of affected owners in accordance with the requirements of Virginia Code § 25.1-203 (“Notification Services”):

1.1 Identify Professional 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.

1.2 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.

1.3 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.

1.4 Using templates designated by the Town, complete requisite Professional 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.

1.5 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.

1.6 Provide contemporaneous digital copies of all Request for Permission to inspect documents to designated Town staff.

1.7 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.

1.8 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.

1.9 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).

1.10 Provide contemporaneous digital copies of all Notice of Intent to Enter documents to designated Town staff.

1.11 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.

1.12 Track all requests from affected property owners to provide advance notification of entry, and provide such notification as requested.

1.13 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 Professional's name. Any vehicles used for the work shall also be identified with the name of the Professional.

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.

1.14 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 Professional, on such schedule as is agreed at the pre-notification meeting.

2. Terms and Conditions Applicable to Notification Services. The following terms and conditions shall apply with respect to Professional's performance of Notification Services, where such Notification Services are included in any Task Order issued under the Contract:

2.1 Liability of Professional. In addition to and not in limitation of the obligations of Professional under Section 2.17 of the Contract, Professional shall be liable to the Town

for all damages attributable to any negligent acts of commission or omission of the Professional, 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.

2.2 Indemnification by Professional. Negligent acts or omissions of Professional, 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 Professional 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.

2.3 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 Professional, 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.

**OFFEROR SUBMISSION FORM**

**RFP NO. 100330-FY23-05**

**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: _____



**FIRM DATA SHEET**

Funding: Federal

Project No.: \_\_\_\_\_

Division: \_\_\_\_\_

EOI Due Date: \_\_\_\_\_

The prime consultant is responsible for submitting the information requested below on all firms on the project team, both prime and all subconsultants. All firms are to be reported on one combined sheet unless the number of firms requires the use of an additional sheet. Failure to submit all of the required data may result in the Expression of Interest not being considered.

Firm's Name, Address and DBE and/or SWaM Certification Number	Firm's DBE or SWaM Status *	Firm's Age	Firm's Annual Gross Receipts

--	--	--	--

\* YD = DBE Firm Certified by DMBE

N = DBE or SwaM Firm Not Certified by DMBE

NA = Firm No Claiming DBE or SWaM Status

YS = SwaM Firm Certified by DMBE. Indicate whether small, woman-owned, or small business.  
DMBE is the Virginia Department of Small Business and Supplier Diversity





## **GOOD FAITH EFFORT**

The Town, in consultation with VDOT will accept what consultants submit in their proposal regarding good faith efforts. If a firm that has submitted good faith effort documentation makes the short list, the procuring VDOT Division Administrator (cannot be delegated unless he/she will be out of the office for more than five work days) along with a representative of the EO Division will determine if the good faith effort is acceptable.

When there is a contract goal, a consultant must make good faith efforts to meet it. The consultant can do so either through obtaining enough DBE participation to meet the goal or documenting the good faith efforts it made to do so. These means of meeting contract goal requirements are fully equivalent. 49 CFR Part 26 (the Rule) explicitly provides that the Department must not disregard showings of good faith efforts, and it gives consultants the right to have the Department reconsider a decision that their good faith efforts were insufficient. The Department is prohibited from denying a contract to a consultant simply because it did not obtain enough DBE participation to meet the goal. The Department must seriously consider consultants' documentation of good faith efforts. To make certain that consultants' showings are taken seriously, the Rule requires the Department to offer administrative reconsideration to consultants whose good faith efforts showings are initially rejected.

The Rule also ensures flexibility for consultants by requiring that any contract goal be waived entirely for a prime consultant that demonstrates that it made good faith efforts but was still unable to meet the goal.

When the Department sets a contract goal, the basic obligation of consultants is to make good faith efforts to meet it. They can demonstrate these efforts in either of two ways, which are equally valid. First, they can meet the goal, by documenting that they have obtained commitments for enough DBE participation to meet the goal. Second, even though they have not met the goal, they can document that they have made good faith efforts to do so. A refusal by the Department to accept valid showings of good faith is not acceptable under the Rule.

The Rule makes clear that the Department is not to use a "conclusive presumption" approach, in which the apparent successful consultant is summarily found to have failed to make good faith efforts simply because another consultant was able to meet the goal. However, the performance of other consultants in meeting the contract can be a relevant factor in a good faith effort determination, in more than one way. For example, when the apparent successful consultant fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful consultant could have met the goal. It does not, by itself, prove that the apparent successful consultant did not make a good faith effort to get DBE participation, however. On the other hand, if the apparent successful consultant fails to meet the goal, but meets or exceeds the average DBE participation obtained by other consultants, the Department may view this, in conjunction with other factors, as evidence of the apparent successful consultant having made good faith efforts.

The fact that some additional costs may be involved in finding and using DBEs is not in itself sufficient reason for a consultant's failure to meet a DBE contract goal, as long as such costs are reasonable.

If the Department determines that the apparent successful consultant has failed to meet the requirements of a good faith effort, the Department must, before awarding the contract, provide the consultant an opportunity for administrative reconsideration. The Department intends that the process be informal and timely. The Department will ensure that the process is completed within a brief period (e.g., 5-10 days) to minimize any potential delay in procurements. The consultant will have an opportunity to meet with the reconsideration official, but a formal hearing is not required. As part of this reconsideration, the consultant must have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Department's decision on reconsideration will be made by an official who did not take part in the original determination that the consultant failed to meet the goal or make adequate good faith efforts to do so. The consultant must have the opportunity to meet in person with the reconsideration official to discuss the issues of whether it met the goal or made adequate good faith efforts to do so. The Department will send the consultant a written decision on reconsideration, explaining the basis for finding that the consultant did or did not meet the goal or make adequate good faith efforts to do so. The Department's reconsideration personnel consists of the Commissioner's DBE Review Panel.

It is up to the Department to make a fair and reasonable judgment whether a consultant that did not meet the goal made adequate good faith efforts. It is important for the Department to consider the quality, quantity, and intensity of the different kinds of efforts that the consultant has made. The efforts employed by the consultant should be those that one could reasonably expect a consultant to take if the consultant were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. The Department's determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.

If DBE is prime, they will be allowed to count toward goals the work they commit to performing with their own forces, as well as the work that they commit to be performed by DBE subcontractors. DBE consultants on prime contracts will be expected to make the same outreach efforts as other consultants.

When a DBE participates in a contract, the Department will count only the value of the work actually performed by the DBE toward DBE goals. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function. If a DBE firm loses certification, its work no longer counts toward the DBE goal.

All consultants will be required to submit the following information to the Department with the proposal:

- The names and addresses of DBE firms that will participate in the contract;
- A description of the work that each DBE will perform;
- The percentage amount of the participation of each DBE firm participating;
- Written documentation of the prime consultant's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
- Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
- If the contract goal is not met, evidence of good faith efforts.

The Department has prepared a list based on Federal Regulations of some of the kinds of efforts that consultants may make in obtaining DBE participation. It is not intended to be a mandatory checklist. The Department does not require that a consultant do any one, or particular combination, of the things on the list, nor is the list intended to be exclusive or exhaustive; it merely offers examples. Other factors or types of efforts may be relevant in appropriate cases. In determining whether a consultant has made good faith efforts, it will usually be important for the Department to look not only at the different kinds of efforts that the Consultant has made, but also of the timeliness, quantity, and intensity of these efforts.

The Department offers the following examples of efforts that may be considered:

A. Soliciting through all reasonable and available means (e.g., attendance at project showings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The consultant must solicit this interest within sufficient time to allow the DBEs to participate effectively. The consultant must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime consultant might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract.

D. (1) Negotiating in good faith with interested DBEs. It is the consultant's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

D. (2) A consultant using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's costs, qualifications and capabilities as well as contract goals into consideration. However, the fact that

there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a consultant's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime consultant to perform the work of a contract with its own organization does not relieve the consultant of the responsibility to make good faith efforts. Prime consultants are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations {for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority community organizations; minority contractors' groups; local, state, and Federal minority business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.



**USDOT 1050.2A Title VI Assurance**  
**Appendix 17 E – U.S. DOT 1050.2A Appendices**

**APPENDIX A**

**Contractor/ Consultant/Supplier Agreement: U.S. DOT 1050.2A -- Appendix A**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of Sub-contractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential Sub-contractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
  
6. Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a Sub-contractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.



## Mandatory Federal-Aid Professional Services MOA Provisions

### GENERAL TERMS AND CONDITIONS

1. **COMPLIANCE WITH LAWS AND REGULATIONS:** The Consultant shall keep fully informed of all federal, state, and local laws, ordinances, and regulations, and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on this Agreement, or which in any way affect the conduct of the services provided by the Consultant. It shall at all times observe and comply with, and shall cause its agents, subcontractors and employees to observe and comply with, all such laws, ordinances, regulations, orders, and decrees; and shall protect and indemnify the Town of Leesburg and its employees and appointees against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by itself or its agents, subcontractors or employees. If any discrepancy or inconsistency is discovered between this Agreement and any such law, ordinance, regulation, order, or decree, the Consultant shall immediately report the same to the Department in writing.

2. **VIRGINIA PROHIBITED EMPLOYMENT DISCRIMINATION:** The Consultant, its agents, employees, assigns or successors, and any person, firm, or agency of whatever nature with whom it may contract or make an agreement, shall comply with the provisions of the Section 2.2-4311 of the Code of Virginia (1950), as amended. During the performance of this Agreement, the Consultant agrees as follows:

- a. The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Consultant. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- b. The Consultant, in all solicitations or

advertisements for employees placed by or on behalf of the Consultant, will state that the Consultant is an equal opportunity employer.

- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

The Consultant will include the provisions of the foregoing paragraphs "a", "b" and "c" in every subcontract or purchase order of over ten thousand dollars, so that such provisions will be binding upon each subcontractor or vendor.

3. **NON-DISCRIMINATION PROVISION:** The Consultant agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibits discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, sex or national origin; and further agrees to abide by Executive Order No. 11246 entitled "Equal Employment Opportunity," as amended by Executive Order No. 11375 and as supplemented in the Department of Labor Regulations (41 CFR Part 60), which prohibit discrimination on the basis of age. Section 49 CFR 21 is incorporated by reference in all contracts and subcontracts funded in whole or in part with federal funds. The Consultant shall comply with the Americans with Disabilities Act (ADA), and with the provisions of the Virginians with Disabilities Act, Sections 51.5-40 through 51.5-46 of the Code of Virginia (1950), as amended, the terms of which are incorporated herein by reference.

In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, the Town of Leesburg shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:

- a. withholding of payments to the Consultant under this Agreement until the Consultant complies; and/or
- b. cancellation, termination or suspension of this

Agreement, in whole or in part.

#### 4. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964:

During the performance of this Agreement, the Consultant, for itself, its assignees and successors in interest (herein referred to as "the Consultant"), agrees as follows:

- a. **Compliance with Regulations:** The Consultant will comply with the Regulations of the U.S. Department of Transportation relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (Title 49), Code of Federal Regulations, Part 21, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
- b. **Nondiscrimination:** The Consultant, with regard to the services provided by it after award and prior to completion of this Agreement, will not discriminate on the grounds of race, religion, color, sex, national origin, age or handicap in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the services cover a program set forth in Appendix B of the Regulations.
- c. **Solicitations for Subconsultants:** In all solicitations, either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligations under this Agreement.
- d. **Information and Reports:** The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information. Consultants and subconsultants with 15 or more employees will submit an updated Title VI Evaluation Report (EEO-D2) annually as long as the

consultant or subconsultant is performing in accordance with this Agreement.

- e. **Sanctions for Noncompliance:** In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, the Department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:
  - 1) withholding of payments to the Consultant under this Agreement until the Consultant complies, and/or
  - 2) cancellation, termination or suspension of this Agreement, in whole or in part.
- f. **Incorporation of Provisions:** The Consultant will include the provisions of paragraphs "a" through "f" in every subcontract of \$10,000 or more, including procurements of materials and leases of equipment, unless exempt by the Regulations, order or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontractor or procurement as the Town of Leesburg or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, in the event the Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the Town of Leesburg to enter into such litigation to protect the interests of the Town of Leesburg and, in addition, the Consultant may request VDOT and the United States to enter into such litigation to protect the interests of the Commonwealth and United States.

5. **CERTIFICATION REGARDING NON-SEGREGATED FACILITIES:** By the execution of this Agreement, the Consultant certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location under its control, where segregated facilities are maintained. The Consultant further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; and have not been convicted of any violations of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

12. CORRECTION OF ERRORS: The Consultant shall check for accuracy any reports, and the design, drafting and details of final plans prior to submission. The Consultant will be required, without additional compensation, to correct any errors, including but not limited to omissions, discrepancies and ambiguities, in any services performed in fulfillment of the obligations of this Agreement, and shall also reimburse the Town of Leesburg for any costs incurred. Acceptance of the plans or reports by the Town of Leesburg shall not relieve the Consultant of the responsibility of subsequent correction of errors.

13. PAYMENT TO SUBCONTRACTORS: In accordance with Article 4 of the Virginia Public Procurement Act (Sections 2.2-4342 through 2.2-4356 of the Code of Virginia (1950), as amended), the Consultant shall make payment to all subcontractors within seven (7) days after receipt of payment from the Town of Leesburg, or shall notify the Town of Leesburg and subcontractor in writing of the intention to withhold all or a part of the amount due along with the reason for nonpayment.

In the event payment is not made as noted, the Consultant shall pay interest at the rate of one percent per month to the subcontractor, unless

otherwise provided in this Agreement, on all amounts that remain unpaid after seven (7) days except for the amounts withheld according to this Agreement.

The Town of Leesburg does not require retainage to be withheld by the Consultant on any subcontracts. If the Consultant elects to withhold retainage on subcontracts, prompt payment of the retainage shall be made to the subcontractors within the later of 60 days after the final billing is received by the Consultant from the subcontractor or the satisfactory acceptance of the services by the Department. The Town of Leesburg will notify the Consultant and the subcontractor in writing when the services have been satisfactorily accepted. If the retainage is not promptly paid, the Consultant shall notify the Department and the subcontractor in writing as to the reasons for not making payment.

These same requirements shall be included in each subcontractor agreement and shall be applicable to each lower-tier subcontractor.

#### 14. COMPLIANCE WITH LOBBYING

RESTRICTIONS: By signing this Agreement, the Consultant certifies that:

- a. Since promulgation of the federal requirements implementing Section 319 of PL 101-121, no federal appropriated funds have been paid and none will be paid, by or on behalf of the Consultant, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
- c. The Consultant shall require that the

other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, national origin, age or handicap, because of habit, local custom or otherwise. It agrees that, except where it has obtained identical certification from proposed subcontractors and material suppliers for specific time periods, it will obtain identical certification from proposed subcontractors or material suppliers prior to the award of subcontracts or the consummation of material supply agreements exceeding ten thousand dollars, and that it will retain such certifications in its files.

#### 6. DISADVANTAGED BUSINESS

**ENTERPRISES/SMALL, WOMAN AND MINORITY BUSINESS:** The Consultant, its agents, employees, assigns, or successors, and any person, firm or agency of whatever nature with whom it may contract or make an agreement, shall comply with the provisions of 49 CFR Part 26, as amended, which is hereby made part of this Agreement by reference. The Consultant shall take all necessary and reasonable steps in accordance with 49 CFR Part 26, as amended, to ensure that DBE firms have the maximum opportunity to compete for and perform contracts and subcontracts under this Agreement. Subpart E of 49 CFR 26, Section 26.13 requires each contract signed with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

If a DBE goal has been established for this project, further, the Consultant agrees to provide the Town of Leesburg with the dollar amount contracted and name of each subcontractor which identifies itself as a DBE. Include the following wording on contract with DBE Goals: **The DBE goal for this Contract is [ ]%.**

7. VDOT is also required to capture DBE and SWaM payment information on all professional services contracts. Therefore, the prime consultant will be required to complete the DBE and SWaM Payment Compliance Report, C-63 form on a quarterly basis.

In the event of the Consultant's noncompliance with the DBE/SWaM participation for the services indicated in Expression of Interest in response to the

RFP, Attachment D, Scope of Work and Fee Proposal of this Agreement, the Town of Leesburg shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:

- a. Withholding of payments to the Consultant under this Agreement until the Consultant complies, and/or
- b. Cancellation, termination or suspension of this Agreement, in whole or in part.

8. **TDD/TTY EQUIPMENT FOR THE DEAF:** When seeking public participation through the maintenance of a toll free hot line number and/or publishing project-related materials, the Consultant agrees to ensure that all citizens have equally effective communication. The Consultant agrees to provide or identify a telecommunications device for the deaf/teletypewriter (TDD/TTY) or acceptable means of telephone access for individuals with impaired speech or hearing. The Consultant will provide notice of a TDD/TTY number whenever a standard telephone number is provided.

9. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By signing this Agreement, the Consultant certifies that it does not and will not during the performance of this Agreement violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

10. **OCCUPATIONAL SAFETY AND HEALTH STANDARDS:** The Consultant shall not require any individual employed in the performance of this Agreement to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health or safety as determined under the Occupational Safety and Health Standards promulgated by the United States Secretary of Labor. This provision shall be made a condition of any subcontract entered into pursuant to this Agreement.

In addition, the Consultant shall abide by the Virginia Occupational Safety and Health Standards adopted under Section 40.1-22 of the Code of Virginia (1950), as amended, and will fulfill the duties imposed under Section 40.1-51.1 of the Code of Virginia. Any violation of the aforementioned requirements or duties which is brought to the attention of the Consultant by any person shall be immediately abated.

11. **CERTIFICATION REGARDING DEBARMENT:** By the execution of this Agreement, the Consultant certifies to the best of its knowledge and belief, that it and its principals:

language of this certification be included in all subcontracts at all tiers, and that all subcontractors shall certify and disclose accordingly.

15. RECORDS: The Consultant and subcontractors shall retain all books, documents, papers, accounting records and other evidence supporting the costs incurred, for three (3) years after payment of the final estimate or final audit, whichever is later. Such evidence shall be made available at the Consultant's offices at all reasonable times and will be subject to audit and inspection by the Town of Leesburg, VDOT or any authorized representatives of the Federal Government.

Evidence of costs incurred by a subcontractor shall be made available at its office at all reasonable times during the contract period between the Consultant and the subcontractor and for three years after written acceptance by the Consultant, for audit and inspection by the Town of Leesburg, VDOT or any authorized representatives of the Federal Government. It shall be the Consultant's responsibility to notify the Town of Leesburg, in writing, of the completion of that subcontractor's portion of the services so that the records of the subcontractor can be audited within the three-year retention period. Failure to do so may result in the Consultant's liability for any costs not supported by the proper documentation for the subcontractor's phase of the services. Final payment for the subcontractor's phase of the services will be made after total costs are determined by the final audit of the subcontractor.

16. DRUG-FREE WORKPLACE: During the performance of this contract, the Consultant agrees to:

- a. Provide a drug-free workplace for the consultant's employees
- b. 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 consultant's workplace and specifying the actions that will be taken against employees for violations of such prohibition
- c. State in all solicitations or advertisements for employees placed by or on behalf of the consultant that the consultant maintains a drug-free workplace
- d. 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 purpose of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a consultant, 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.