



DATE: FEBRUARY 12, 2019

**NOTICE TO PUBLIC
INVITATION TO BID
ITB #201917**

CITYWIDE LANDSCAPING SERVICES

The City of Winchester will accept sealed bids until 2:00 pm local time on **March 5, 2019** in the office of the Finance Department. - Purchasing Division, Rouss City Hall – 4th Floor, 15 N. Cameron Street, Winchester, VA 22601, for qualified contractors to provide landscaping services for various locations and facilities for the City of Winchester per the specifications herein. The Contract will be administered by the Public Services Department.

Copies of this Invitation to Bid may be obtained and downloaded from the City's web page at: <http://www.winchesterva.gov/purchasing/itbrfp>.

Offerors should carefully examine the specifications and fully inform themselves as to all conditions and matters, which would in any way affect the equipment/materials/service of cost thereof. Should an offeror find discrepancies in or omissions from the specification or request for proposal, he/she should notify the Purchasing Agent and obtain clarification prior to submitting the proposal. Only questions answered by formal Addenda will be binding; oral and other interpretations or classifications will be without legal effect.

The right is reserved, as the interest of the City of Winchester requires, to revise or amend the specifications prior to the date set for opening proposal; the opening date may be postponed if deemed necessary by the City's Purchasing Agent. Such revisions and amendments, if any, will be announced by written Addenda to the specifications. ***In addition, the City of Winchester reserves the right to accept or reject any proposals, in whole or in part, and to waive any informality.***

The Offeror's proposal shall be submitted in a sealed envelope bearing the Offeror's company name, mailing address, the ITB name, and the ITB number. Proposals shall be received by the due date and time at the following location:

City of Winchester
Finance Department - Purchasing Division
15 North Cameron Street, 4th Floor - Rouss City Hall
Winchester, Virginia 22601

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I. GENERAL:

- a. The City of Winchester is soliciting sealed bids from qualified contractors to provide landscaping and related services in accordance with the specifications herein.
- b. Contract Term: Length of this Contract shall be for one year. The City reserves the right to cancel and terminate this Contract, without penalty, upon ten (10) days written notice to contractor. While it is not anticipated that this contract will be renewed, the parties understand and agree that the City, at its sole option, may renew this Contract for two (2) additional one (1) year periods.
- c. Volume of Business: The City will not guarantee any volume of business.

II. EXCEPTIONS TO THE SPECIFICATIONS:

- a. Bidders taking exception to any part or section of these specifications shall indicate such exceptions on their bid. Failure to indicate any exceptions shall be interpreted as the bidder's intent to fully comply with the specifications as written. The City reserves the right to accept or reject any and all bids, in whole or in part, and to waive informalities.

III. QUESTIONS AND CLARIFICATIONS:

- a. Any questions, requests for information, or clarifications regarding the specifications should be addressed in writing to: **Jen Jenkins, City Arborist** via email at: Jennifer.jenkins@winchesterva.gov
- b. Only questions answered by formal written Addenda will be binding; oral and other interpretations will be without legal effect.
- c. Questions regarding this solicitation must be submitted in writing at least five (5) business days prior to the bid due date.
- d. All questions and responses provided will be posted online at the same location where all information for this ITB is located: <http://www.winchesterva.gov/purchasing/itbrfp>

IV. SUBMISSION REQUIREMENTS – All of the documents listed below shall be included in the proposal submitted by the Offeror. Failure to include all of these documents may result in a non-responsive proposal. The required documents include:

- a. Completed Bid Form (Section VI).
- b. Copy of all applicable licenses and permits verifying the Contractor can begin fertilizer and/or pesticide applications immediately upon execution of the Contract. Bidders engaged in these activities must possess a valid Virginia Pesticide Business License. A copy of this license must be included with your bid. Contractor's employees or subcontractors engaged in these activities must possess a Commercial Pesticide Applicator Certificate that is valid in the following categories: Category 3A Ornamental Pest control, Category 3B Turf, and Category 6 Right-of-Way Pest Control. Contractor must also be certified as a Certified Fertilizer Applicator (CFA). Copies of a Commercial Pesticide Applicator Certificate and a CFS Certificate must be included with your bid response.

- c. All required documents shall be submitted in a sealed envelope bearing the Offerors company name, address, the proposal name and ITB number, delivered to:

City of Winchester
Finance Department - Purchasing Division
15 North Cameron Street, 4th Floor - Rouss City Hall
Winchester, Virginia 22601

V. STATEMENT OF NEEDS:

a. GENERAL SCOPE:

- i. The requested services to be performed herein shall consist of all labor, equipment, materials, tools, transportation, licenses, insurance and overhead to provide landscaping and related services for the City of Winchester

b. TECHNICAL SPECIFICATIONS:

- i. Plantings: All annual plants shall be guaranteed for the duration of the contract award. All perennials, shrubs, and trees shall be guaranteed for one year. Plants shall be healthy, vigorous, and free from serious disease or insect pests. Any installed plants found to be dead, diseased, or damaged shall be replaced at no cost to the City. All plantings and landscaping shall be maintained as plant type, growth, and season dictates. Contractor shall replace, at no additional cost to the City, any turf, plant materials or any other City property damaged as a result of improper maintenance attention or procedures. Replacement material shall be of the same size and variety as the dead or damaged material. Property replacement must be done within five (5) days of identification of damage. If the same plant material is not available, the entire planting bed or section must be replaced to maintain aesthetics. Alternatives to size, variety, and scheduling of replacement must be approved by the City. All plants with unsatisfactory growth or vigor shall be removed at time of inspection and replaced accordingly within five (5) days. Repeated plant failures in a location may require soil testing, soil amendments or disease/insect diagnosis to mediate the issue. Annuals are to be installed in all locations by May 18, 2019 unless otherwise approved by the City. Plant installation counts are to be provided upon completion of installation. **Note: Annual plants are expected to be vigorous and healthy. Damaged or unhealthy plants shall be removed as soon as discovered and replaced within the stated time.
- ii. Mulching: All individual trees, shrubs, and planters shall be mulched with premium quality brown color enhanced shredded hardwood mulch, unless otherwise noted. Bulk or bagged product is acceptable. Mulch shall be spread and maintained to a depth of 3" to 4" and not in direct contact with the trunks or plant material. Areas should be re-mulched in spring and mulch depth, quality, and color should be reassessed in the fall. Any areas with missing or disturbed mulch shall be corrected at time of inspection. **Note: raised planting beds on the Loudoun St. mall may require frequent mulch

maintenance due to disturbances from people, pets, plant replacements and irrigation line adjustments.

- iii. Clean up/Cut Back: Within mulched beds, prune shrubs, and cut back perennial/annual plants as needed. Wood and leaf debris shall be removed. Annuals shall be removed after first frost. Scope of work does not include tree pruning.
- iv. Weed Free: All beds and tree rings shall be kept weed free of noxious weeds at all times using manual and/or chemical control practices unless otherwise directed by the City. **Note: Spring/Summer weed control in planting islands and tree mulch rings may require frequent site visits, hand pulling and herbicide applications. Contractor shall notify the City Arborist of the weed control plan and updates for these areas.
- v. Irrigation System Maintenance: Contractor shall provide irrigation maintenance service which includes cleaning, adjusting, straightening heads, tubes, nozzles, and valves as required for proper irrigation coverage to shrub beds. Drip irrigation valve strainers shall be cleaned as needed. The Contractor shall remove vegetation, sod, or debris which has settled during the winter shutdown months that may affect access to valves and raised boxes. At the beginning of each operation season, lateral lines shall be flushed and heads, nozzles, and drip lines adjusted. Contractor shall activate the irrigation systems in the spring as dictated by annual weather conditions and shall deactivate and winterize the systems at the end of the season. Micro spray irrigation components shall be adjusted and replaced as needed. **Note: Irrigation system is to be activated in the spring and deactivated in the fall even if watering is done by hand. System start-up, shut-down and issues shall be verified by the City Arborist.
- vi. Supplemental Watering: The Contractor shall regularly water all plant materials less than one year old. Plant materials shall receive the equivalent of 1" of water per week through combined irrigation and rainfall. All newly planted or replacement plants shall be watered as per the accepted practices of the trade in terms of frequency and volume at a minimum of every other day for two weeks for new materials. Supplemental watering should also be added as needed in areas where irrigation systems are located. Supplemental watering during extreme heat and/or drought situations will be the responsibility of the Contractor. All annual/perennial plants, with the exception of trees, shall be watered during drought conditions if needed. **Note: Access to water will be provided at the City Yard's Facility.
- vii. Pesticide/Fertilization: Use of chemicals shall be in compliance with all State & Federal rules, local laws, ordinances and regulations for safe handling and application of hazardous chemicals including the requirements of the Virginia Department of Agriculture for licensing and certification and OSHA. Bidders engaged in these activities must possess a valid Virginia Pesticide Business

License. A copy of this license must be included with your bid. Contractor's employees or subcontractors engaged in these activities must possess a Commercial Pesticide Applicator Certificate that is valid in the following categories: Category 3A Ornamental Pest control, Category 3B Turf, and Category 6 Right-of-Way Pest Control. Contractor must also be certified as a Certified Fertilizer Applicator (CFA). Copies of a Commercial Pesticide Applicator Certificate and a CFS Certificate must be included with your bid response. The City Arborist shall be notified of all pesticide and fertilizer application rates and timing. Any pesticide or fertilizer applications that could potentially affect people or property will be permitted during non-standard business hours. Soil samples may be required prior to applying fertilizer. A copy of the soil test will need to be provided to the City Arborist.

- viii. General Area Cleaning: During scheduled work times or weekly inspections Contractor shall remove any litter, debris, fallen sticks, or limbs from mulched planting beds.
- ix. Soil Enhancement: In raised beds, two inches of 75/25 topsoil/mushroom compost mixture shall be tilled into top three to four inches of existing soil to reduce soil compaction and enhance soil quality and organic content in all areas where annual plants are to be installed. In general, this area does not involve the sloped grade immediately surrounding existing tree trunks. Planter depth should be raised to the level of existing electrical boxes. Removal and replacement of all mulch, irrigation and micro spray components will be necessary.
- x. Soil Replacement: In raised beds, replace existing soil with quality topsoil/compost mixture to a depth of 8 to 10 inches in areas where annual plants are to be installed. In general, this area includes the lower noses of the median planter islands on Cameron St. Removal and replacement of all mulch, irrigation and micro spray components may be necessary.
- xi. Pruning of Shrubs: Plants shall be pruned for structural stability, form, and safety as needed according to ANSI A300 standards. Deadwood shall be removed and shrubs should be pruned according to standard form based on species. Scope of work does not include tree pruning.

c. **CONTRACTOR'S RESPONSIBILITIES:**

- i. Contractor's Capacity to Perform: The Contractor shall ensure their capacity to perform work under this contract regardless of other contractual responsibilities to the City or elsewhere. The Contractor shall be capable of commencing work within the scheduled time frames and shall be current on all permits, licensures and insurance. The successful Contractor will be responsible to ensure adequate resources (personnel and equipment) are available to accomplish all work within the specified timeframes.

- ii. Experienced, Qualified Personnel: The Contractor shall provide experienced, qualified and properly trained personnel to perform the requested work.
- iii. Equipment: The Contractor shall provide all equipment, tools and materials to perform the required service outlined within the bid document. This equipment shall be in good repair.
- iv. Identification: Contractor personnel and equipment must display identification while performing work for the City of Winchester.
- v. Employee and Subcontractor Personnel Conduct: The Contractor shall be responsible for controlling the conduct and performance of the Contractor and Subcontractor's personnel, and ensure compliance with the following rules:
 - 1. Contractor's employees appearing to be under the influence of alcohol or drugs shall not be permitted to work. City staff will advise the Contractor's superintendent.
 - 2. No loud or boisterous conduct permitted.
 - 3. Contractor's employees shall not use or tamper with any fire hydrants, City equipment, vehicles and buildings, and/or City employees' personal property at any time.
 - 4. No smoking in City buildings, vehicles or equipment.
 - 5. At all times Contractor's personnel shall communicate with the traveling public, landowners and citizens throughout the City of Winchester in a courteous and respectful manner. The Contractor's personnel shall refer all public questions concerning work planned, performed or promised to the OWRF's Facility Manager, or designee.
- vi. Safety is a paramount to all operations. Contractor and personnel shall adhere to all applicable federal, state and local standards and laws to ensure a safe work environment for City employees, visitors, citizens and Contractor personnel while performing work for the City of Winchester.
- vii. Communication: All assigned contractor personnel shall have a cellular phone, or phone number to be provided for emergency contact (24 hour access) for the City's management.
- viii. Unauthorized Personnel: the Contractor's employees are not to be accompanied in their work areas or on the premises by acquaintances, family members, or any person unless said person is an authorized Contractor employee performing work under the contract.

d. CITY'S RESPONSIBILITY:

- i. The City reserves the right to remove any personnel or contractor equipment that may be unsafe, unprofessional or otherwise misrepresents the City to the public or jeopardizes the safe operations necessary to fulfill the Scope of Services herein.

- e. **QUALITY OF WORK:** All contractor services and employees shall perform quality work according to the prevailing professional, ethical and business standards of the industry and to the satisfaction of the City of Winchester. Contractor shall guarantee all work be performed in accordance with the federal, state and local standards and laws, and by amendment or written directive of the Purchasing Agent or designee. Contractor shall implement safeguards to eliminate accidents, down time, and mistakes while promoting quality workmanship and service. Only the highest quality of work will be allowed.

- f. **CONTRACT ADMINISTRATION:**
 - i. The Public Services Department shall assign a Contract Administrator upon Award and the individual shall be delegated to perform these duties as outlined: ordering, monitoring of progress, inspection and acceptance, quality assurance, invoice payment and scheduling of services.
 - ii. Acceptance:
 - 1. The Public Services Department has ten (10) business days from time of service delivery to accept the product or service, and ensure compliance to all City specifications, state and federal guidelines and laws.
 - 2. If work is rejected in whole or in part due to poor quality or workmanship then City shall outline in writing the problem and notify the Contractor.
 - a. Time requirement:
 - A. When the Contractor is notified in writing by the City of non-acceptance, the Contractor shall have **two (2)** business days to correct the problem. The Public Services Director, or designee, may extend this period if agreed upon in writing by both parties.
 - iii. Contract Officer:
 - 1. Shall be: Michael Marzullo, Purchasing Agent, Finance Department, 15 N. Cameron Street, Winchester VA 22601. 540-667-1815 Extension 1477. Duties include: making decisions for dispute resolution, administering change orders and amendments, executing supplemental agreements, and authorizing contract renewal.

VI. BID FORM

CITYWIDE LANDSCAPING SERVICES

This Bid Sheet, completely filled out, in a sealed envelope, with the ITB #, the ITB name, and Bidder's name clearly marked on the outside of the envelope must be received in the Finance Department – Purchasing Division – 15 North Cameron Street, Rouss City Hall, Winchester, VA 22601 by the due date.

All prices are inclusive of all fees, including overhead, profit, etc.
(Note: Please see Section X of this ITB for location maps of these areas)

Site 1: Cameron St. Islands

Site Description: Four center median islands located at 47 S. Cameron St., 11 S. Cameron St., 15 N. Cameron St. (Rouss City Hall), and 115 N. Cameron St., respectively.

Requested Work:

- Planting: Install a total of 300 Cocktail series Begonia semperflorens "Vodka" (6") in raised median planters, divided appropriately among medians
- Planting: Install a total of 300 SunPatiens Compact white (6") in the "nose" of each island, divided appropriately among medians
- Irrigation System Maintenance
- Fertilization of all annuals three times during growing season, or as needed.
- Mulching
- Clean up/Cut back plants
- Supplemental watering as needed
- Weed Free mulched areas
- Pruning of shrubs
- Soil Replacement in lower "noses" of center median planter areas

Plant Materials and Installation: \$_____

Maintenance Cost: \$_____

Soil Replacement Cost: \$_____

Site 2: Jubal Early Island

Site Description: Triangular island located at intersection of E Jubal Early Dr. and Apple Blossom Dr.

Requested Work:

- Supplemental Watering as needed
- Fertilization as needed
- Mulching
- Clean up/Cut back plants
- Weed Free mulched areas
- General Area Cleaning

Maintenance Cost: \$_____

Site 3: Amherst St. Islands

Site Description: Two center median islands located just east of Medical Cir. on Amherst St.

Requested Work:

- Clean up/Cut back plants
- Mulching
- Weed Free mulched areas
- Supplemental Watering as needed

Maintenance Cost: \$ _____

Site 4: Valley Ave. Island

Site Description: Median island located on Valley Ave. at 3103 Valley Ave. (Creekside Station).

Requested Work:

- Clean up/Cut back plants
- Mulching
- Supplemental Watering as needed
- Weed Free mulched area

Maintenance Cost: \$ _____

Site 5: Meadow Branch Islands and Tree Lawns

Site Description: Medians and tree lawns (between sidewalk and curbing) from Seldon Dr. to Amherst St. Includes mulch rings around center median trees, trees in tree lawns and center median plantings. Includes larger mulched beds near John Kerr Elementary School, beds at Buckner Dr. and tree rings around evergreens behind sidewalk along Green Circle Trail near Buckner Dr.

Requested Work:

- Clean up/Cut back plants
- Mulching
- Weed Free mulched areas
- Supplemental Watering as needed
- Fertilization as needed
- General Area Cleaning

Maintenance Cost: \$ _____

Site 6: Loudoun St. Mall

Site Description: All planters on Loudoun St. Mall between Cork St. and Piccadilly St.

Requested Work:

- Planting: Install 375 Cocktail series Begonia semperflorens “Vodka” (6”) in raised beds, divided appropriately among planters to achieve maximum fullness, as appropriate, for all beds
- Planting: Install 375 Cocktail series Begonia semperflorens “Whiskey” (6”) in raised beds, divided appropriately among planters to achieve maximum fullness, as appropriate, for all beds

- Planting: Install 375 SunPatiens Compact White (6") in raised beds, divided appropriately among planters to achieve maximum fullness, as appropriate, for all beds
- Planting: Install 375 SunPatiens Compact Blush Pink (6") in raised beds, divided appropriately among planters to achieve maximum fullness, as appropriate, for all beds
- Clean up/Cut back plants in spring
- Mulching
- Fertilize annuals three times during growing season, as needed
- Supplemental Watering as needed
- Irrigation System Maintenance **Note: due to high public use, irrigation lines may need frequent adjustment to maintain position and coverage
- Weed Free mulched areas
- General Area Cleaning
- Soil Enhancement

Plant Materials and Installation: \$ _____

Maintenance Cost: \$ _____

Soil Enhancement Cost: \$ _____

Site 7: National Ave. Roundabout

Site Description: Roundabout located at intersection of Piccadilly St. and National Ave., including the surrounding landscaped areas on south, east, and west sides of intersection. Includes all planting beds, raised beds and mulched tree rings.

Requested Work:

- Planting: Install 300 Cocktail series Begonia semperflorens "Vodka" (6") in median planters, upper portion of central planter and lower circle planter; double rows.
- Planting: Install 300 Cocktail series Begonia semperflorens "Whiskey" (6") in median planters and around lower circle planter; double rows.
- Planting: Install
- Clean up/Cut back plants **Note: existing perennial plant materials and shrubs need to be thinned/cut back/removed as necessary to plant a double row of annuals in beds
- Mulching
- Weed Free mulched areas (includes tree rings)
- Irrigation System Maintenance
- Supplemental watering as needed
- General Area Cleaning
- Pruning of Shrubs

Plant Materials and Installation: \$ _____

Maintenance Cost: \$ _____

Site 8: Taylor Hotel Pavilion

Site Description: Landscaped area in courtyard behind Taylor Hotel (119 N. Loudoun St.).

Requested Work:

- Clean up/Cut back plants
- Mulching
- Weed Free mulched areas
- Irrigation System Maintenance
- General Area Cleaning
- Pruning of shrubs

Maintenance Cost: \$_____

Site 9: Berryville Triangle

Site Description: Triangular island located on Berryville Ave at the intersections with Virginia Ave. and Battle Ave.

Requested Work:

- Clean up/Cut back plants
- Mulching
- Weed Free mulched areas
- General Area Cleaning
- Pruning of shrubs

Maintenance Cost: \$_____

Site 10: Berryville Islands

Site Description: Four center median islands located at 929 Berryville Ave., 1011 Berryville Ave., 1124 Berryville Ave., and 1217 Berryville Ave. respectively.

Requested Work:

- Clean up/Cut back plants
- Mulching Weed Free mulched areas
- General Area Cleaning
- Supplemental Watering

Maintenance Cost: \$_____

Site 11: City Hall

Site Description: Landscaping beds around City Hall property located at 115 N Cameron St.

Requested Work:

- Mulching
- Weed Free mulched areas
- General Area Cleaning

- Pruning of shrubs

Maintenance Cost: \$_____

Site 12: Hawthorne Triangle

Site Description: Triangular landscape bed along Hawthorne Drive

Requested Work:

- Clean up/cut back plants
- Mulching
- Weed Free mulched areas
- General Area Cleaning

Maintenance Cost: \$_____

Site 13: Tevis St Extension

Site Description: Medians and tree lawns (between sidewalk and curbing) along E Tevis St beginning just east of Legge Blvd and extending eastward towards proposed I-81 overpass. Includes trees in tree lawns and center median plantings.

Requested Work:

- Clean up/Cut back plants
- Mulching
- Weed Free mulched areas
- Supplemental Watering as needed
- Fertilization as needed
- General Area Cleaning

Maintenance Cost: \$_____

Site 14: Timbrook Safety Building

Site Description: Located at 231 E Piccadilly St. Includes all landscaped areas.

Requested Work:

- Clean up/Cut back plants and shrubs
- Mulching
- Weed Free mulched areas
- Supplemental Watering as needed
- Fertilization as needed
- General Area Cleaning
- Pruning of shrubs

Maintenance Cost: \$_____

Site 15: Creamery Building

Site Description: Located at 21-25 S Kent St. Includes landscaped area around building.

Requested Work:

- Mulching
- Weed Free mulched areas
- Supplemental Watering as needed
- Fertilization as needed
- General Area Cleaning

- Pruning of shrubs

Maintenance Cost: \$ _____

Cost Summary For All Work:

Plant Materials and Installation: \$ _____

Maintenance Cost: \$ _____

Soil Enhancement Cost: \$ _____

Soil Replacement Cost: \$ _____

Grand Total: \$ _____

COMPANY NAME: _____

ADDRESS: _____

TELEPHONE NO.: _____

FAX No.: _____

EMAIL: _____

TAX ID _____

NAME AND TITLE: _____

DATE: _____

SIGNATURE: _____

By signing this bid sheet, bidder acknowledges that he completely understands all Specifications and the General Conditions and Instructions to Bidders. Failure to completely fill out the Bid Form will result in a non-responsive bid.

VII. **SPECIAL TERMS AND CONDITIONS**

- a. **AWARD:** The right is reserved to make a separate award of each item, a group of items or all items, and to make an award either in whole or in part, whichever is deemed in the best interest of the City of Winchester. The award or awards will be made to the lowest responsive, responsible bidder or bidders as applicable. Ability to meet response time requirement will be an additional determining factor and part of the award process. The City of Winchester reserves the right to conduct any tests it may deem advisable and to make all evaluations. If cash discount for prompt payment is offered, it must be clearly shown within their bid. Discounts for prompt payment will not be considered in making awards. The City of Winchester also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.
- b. **BID ACCEPTANCE PERIOD:** Any bid in response to this solicitation shall be valid for sixty (60) days. At the end of the sixty (60) days the bid may be withdrawn at the written request of the bidder. If the bid is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.
- c. **PRIME CONTRACTOR RESPONSIBILITIES:** The contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime contractor. The contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.
- d. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the Purchasing Agent or designee. In the event that the contractor desires to subcontract some part of the work specified herein, the contractor shall furnish the Purchasing Agent, or designee the names, qualifications and experience of their proposed subcontractors. The contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.
- e. **AUDIT:** The contractor shall retain all books, records, and other documents relative to this contract for three (3) years after final payment, or until audited by the City of Winchester, whichever is sooner. The City, its authorized agents, and/or City auditors shall have full access to and the right to examine any of said materials during said period.
- f. **COOPERATIVE PROCUREMENT:** Any successful Bidder/Offeror, may at his sole discretion, allow any public body, locality, authority, agency, and school board of the Commonwealth to participate in the Invitation to Bid for the purpose of combining requirements to increase efficiency or reduce administrative expenses.
- g. **CONTRACTOR/SUBCONTRACTOR LICENSE REQUIREMENT:** By my signature on this solicitation, I certify that this firm/individual and subcontractor are properly licensed for providing the goods/services specified.

- h. **INSPECTION OF JOB SITE:** My signature on this solicitation constitutes certification that I have inspected the job site and am aware of the conditions under which the work must be accomplished. Claims, as a result of failure to inspect the job site, will not be considered by the City of Winchester.
- i. **EXTRA CHARGES NOT ALLOWED:** The bid price shall be for the completion of all services and equipment ready for the City of Winchester's use, and shall include all applicable freight, loading/unloading, transportation, labor, materials, tools and overhead charges; extra charges will not be allowed.
- j. **WORK SITE DAMAGES:** Any damage to existing utilities, equipment or finished surfaces resulting from the performance of this contract shall be repaired to the City of Winchester's satisfaction at the contractor's expense.
- k. **RENEWAL OF CONTRACT:** This contract may be renewed by the City of Winchester for two (2) successive one year periods under the terms and conditions of the original contract except as stated in 1. and 2. below. Price increases may be negotiated only at the time of renewal. Written notice of the City of Winchester's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.
 - 1. If the City of Winchester elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by more than the percentage increase/decrease of the All category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
 - 2. If during any subsequent renewal periods, the City of Winchester elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period increased/decreased by more than the percentage increase/decrease of the All category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
- l. **PROTECTION OF PERSONS AND PROPERTY:**
 - 1. The contractor expressly undertakes, both directly and through its subcontractor(s), to take every precaution at all times for the protection of persons and property which may be affected by the contractor's operation in connection with the work.
 - 2. The contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with their work.
 - 3. The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia, issued by the Department of Labor and Industry under Title 40.1 of the *Code of Virginia* shall apply to all work under this contract.
 - 4. The contractor shall continuously maintain adequate protection of all his work from damage and shall protect the owner and public property from injury or loss arising in connection with this contract. He shall make good any such damage, injury, or loss, except such as may be directly due to errors in the contract documents or caused by agents or employees of the owner. He shall adequately protect adjacent property to prevent any damage to it or loss of.

m. USE OF PREMISES AND REMOVAL OF DEBRIS - The contractor shall:

1. Perform his contract in such a manner as not to interrupt or interfere with the operation of any existing activity on the premises or with the work of any contractor or public or private property without discussing with the Owners Representative;
2. Store his apparatus, materials, supplies, and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of his work or the work of any other contractor, citizen or City department; and
3. Place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work.
4. The contractor expressly undertakes, either directly or through his subcontractor(s), to clean up frequently all refuse, rubbish, scrap materials, and debris caused by his operations, to the end that at all times the site of the work shall present a neat, orderly, and workmanlike appearance. No such refuse, rubbish, scrap material, and debris shall be left within the completed work nor buried on any building site, but shall be removed on a daily basis from all sites and properly disposed of in a licensed landfill or otherwise as required by law.
5. If a contractor fails to clean up at the completion of the work, the owner may do so and charge for costs thereof to the contractor.
6. If necessary, the contractor shall not operate or disturb the setting of any valves, switches or electrical equipment on the service lines to any buildings. The contractor shall give ample advance notice of the need for cut-offs which will be scheduled at the convenience of the City.
7. The City reserves the right to visit and inspect the disposal site(s). If upon inspection, the City of Winchester determines that any requirement of the contract is not being met the Purchasing Agent reserves the right to terminate the contract at anytime.

VIII. CITY OF WINCHESTER –REQUIRED GENERAL TERMS AND CONDITIONS

- A. APPLICABLE LAWS AND COURTS
- B. ANTI-DISCRIMINATION
- C. ETHICS IN PUBLIC CONTRACTING
- E. IMMIGRATION REFORM AND CONTROL ACT OF 1986
- F. DEBARMENT STATUS
- G. ANTITRUST
- H. MANDATORY USE OF CITY FORM AND TERMS AND CONDITIONS
- I. CLARIFICATION OF TERMS
- J. PAYMENT
- K. PRECEDENCE OF TERMS
- L. QUALIFICATIONS OF BIDDERS OR OFFERORS
- M. TESTING AND INSPECTION
- N. ASSIGNMENT OF CONTRACT
- O. SEVERABILITY
- P. CHANGES TO THE CONTRACT
- Q. DEFAULT
- R. TAXES
- S. USE OF BRAND NAMES
- T. TRANSPORTATION AND PACKAGING
- U. INSURANCE
- V. ANNOUNCEMENT OF AWARD
- W. DRUG-FREE WORKPLACE
- X. NONDISCRIMINATION OF CONTRACTORS
- Y. AVAILABILITY OF FUNDS
- Z. LICENSES AND PERMITS
- AZ. TERMINATION
- BZ. HOLD HARMLESS INDEMNIFICATION
- CZ. CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION
- DZ. BID PRICE CURRENCY

These General Terms and Conditions are required for all sealed and unsealed written or verbal solicitations issued by the City of Winchester for procurements that are subject to the Winchester City Code unless changed, deleted or revised by the City Attorney.

- IX. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed by the laws of the Commonwealth of Virginia. Any dispute arising from the performance or non-performance of this Agreement shall be resolved or otherwise litigated in the Circuit Court for the City of Winchester, Virginia or the Fourth Circuit Federal District Court in Harrisonburg, Virginia. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute following the Winchester City Code, Chapter 21-61. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- X. **ANTI-DISCRIMINATION:** By submitting their (bids/proposals), (bidders/offerors) certify to the City of Winchester that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1. And 2. Below apply:

1. 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, national origin, age, disability, or any 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 contractor. 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 shall be deemed sufficient for the purpose of meeting these requirements.

2. The contractor will include the provisions of 1. Above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

- XI. **ETHICS IN PUBLIC CONTRACTING:** By submitting their (bids/proposals), (bidders/offerors) certify that their (bids/proposals) are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other (bidder/offeror), supplier, manufacturer or subcontractor in connection with their (bid/proposal), and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- XII. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting their (bids/proposals), (bidders/offerors) certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
- XIII. **DEBARMENT STATUS:** By submitting their (bids/proposals), (bidders/offerors) certify that they are not currently debarred by the Federal Government, Commonwealth of Virginia, or by any City, Town or County from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- XIV. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the City of Winchester all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the City of Winchester under said contract.
- XV. **MANDATORY USE OF CITY FORM AND TERMS AND CONDITIONS:** Failure to submit a bid/proposal on the official City form provided for that purpose may be a cause for rejection of the bid/proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the bid/proposal; however, the City of Winchester reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid/proposal.
- XVI. **CLARIFICATION OF TERMS:** If any prospective (bidder/offeror) has questions about the specifications or other solicitation documents, the prospective (bidder/offeror) should contact the buyer whose name appears on the face of the solicitation no later than five working days before

the due date. Any revisions to the solicitation will be made only by addendum issued by the Purchasing Agent, or designee.

XVII. PAYMENT:

a. To Prime Contractor:

- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which department is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail.
- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the City of Winchester shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia, § 2.2-4363*).

b. To Subcontractors:

- i. A contractor awarded a contract under this solicitation is hereby obligated:
 1. To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the City of Winchester for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 2. To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
- ii. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the City of Winchester, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the City of Winchester.
- iii. **PRECEDENCE OF TERMS:** The following General Terms and Conditions APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF CITY FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply and take precedence.

The City's procurement, Contractor's response and written negotiation summary shall form part of the Contract. In the case of conflicts, discrepancies, errors or omissions among the City's procurement, the Contractor's response, written negotiation summary and the main body of the Contract, the documents and amendments to them shall take precedence and govern in the following order:

1. Contract
2. Negotiation Summary
3. City's Procurement Document(s)
4. Contractor's Response
5. Other Documents

L. **QUALIFICATIONS OF (BIDDERS/OFFERORS)**: The City of Winchester may make such reasonable investigations as deemed proper and necessary to determine the ability of the (bidder/offeror) to perform the services/furnish the goods and the (bidder/offeror) shall furnish to the City of Winchester all such information and data for this purpose as may be requested. The City of Winchester reserves the right to inspect (bidder's/offeror's) physical facilities prior to award to satisfy questions regarding the (bidder's/offeror's) capabilities. The City of Winchester further reserves the right to reject any (bid/proposal) if the evidence submitted by, or investigations of, such (bidder/offeror) fails to satisfy the City of Winchester that such (bidder/offeror) is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

M. **TESTING AND INSPECTION**: The City of Winchester reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

N. **ASSIGNMENT OF CONTRACT**: A contract shall not be assignable by the contractor in whole or in part without the written consent of the City of Winchester.

O. **SEVERABILITY OF CONTRACT**: In the event that any provision shall be adjudged or decreed to be invalid, such ruling shall not invalidate the entire Agreement but shall pertain only to the provision in question and the remaining provisions shall continue to be valid, binding and in full force and effect.

P. CHANGES TO THE CONTRACT:

- iv. A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent of the amount of the contract or ten thousand dollars (\$10,000), whichever is greater, without the advance written approval of the City Council. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer (Winchester City Code 21-44).
- v. Changes can be made to the contract in any of the following ways:
 - a. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 - b. The City of Winchester may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the City of Winchester a credit for any savings. Said compensation shall be determined by one of the following methods:
 1. By mutual agreement between the parties in writing; or
 2. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the City of Winchester's right to audit the contractor's records and/or to determine the correct number of units independently; or

3. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the City of Winchester with all vouchers and records of expenses incurred and savings realized. The City of Winchester shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the City of Winchester within thirty (30) days from the date of receipt of the written order from the City of Winchester. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the City of Winchester Code. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the City of Winchester or with the performance of the contract generally.

Q. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the City of Winchester, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the City of Winchester may have.

R. **TAXES:** Sales to the City of Winchester are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request.

S. **USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict (bidders/offerors) to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The (bidder/offeror) is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the City of Winchester to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the (bidder/offeror) clearly indicates in its (bid/proposal) that the product offered is an equal product, such (bid/proposal) will be considered to offer the brand name product referenced in the solicitation.

T. **TRANSPORTATION AND PACKAGING:** By submitting their (bids/proposals), all (bidders/offerors) certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

U. **INSURANCE:** By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverages during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

- vi. Workers' Compensation – Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the City of Winchester of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract. The insurer must have an A.M. Best rating of A- or better.
- vii. Employer's Liability - \$100,000.
- viii. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The City of Winchester must be named as an additional insured and so endorsed on the policy by the insurer. A notation on the certificate of insurance is not sufficient.
- ix. Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.)

NOTE: In addition, various Professional Liability/Errors and Omissions coverages are required when soliciting those services as follows:

Profession/Service Limits

Accounting: \$1,000,000 per occurrence, \$3,000,000 aggregate
 Architecture: \$2,000,000 per occurrence, \$6,000,000 aggregate
 Asbestos Design, Inspection or Abatement Contractors: \$1,000,000 per occurrence, \$3,000,000 aggregate

Health Care Practitioner (to include Dentists, Licensed Dental Hygienists, Optometrists, Registered or Licensed Practical Nurses, Pharmacists, Physicians, Podiatrists, Chiropractors, Physical Therapists, Physical Therapist Assistants, Clinical Psychologists, Clinical Social Workers, Professional Counselors, Hospitals, or Health Maintenance Organizations.): \$1,925,000 per occurrence, \$3,000,000 aggregate

(Limits increase each July 1 through fiscal year 2008, as follows:
 July 1, 2008 - \$2,000,000. This complies with §8.01-581.15 of the Code of Virginia.)

Insurance/Risk Management: \$1,000,000 per occurrence, \$3,000,000 aggregate
 Landscape/Architecture: \$1,000,000 per occurrence, \$1,000,000 aggregate
 Legal: \$1,000,000 per occurrence, \$5,000,000 aggregate
 Professional Engineer: \$2,000,000 per occurrence, \$6,000,000 aggregate
 Surveying: \$1,000,000 per occurrence, \$1,000,000 aggregate

V. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract over \$50,000, as a result of this solicitation, the Purchasing Agent will publicly post such notice on the City of Winchester's web site (www.winchesterva.gov/purchasing) for a minimum of 10 days.

W. **DRUG-FREE WORKPLACE:** 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, the employees of whom are prohibited from

engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- x. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

Y. **AVAILABILITY OF FUNDS:** In the event that funds are not appropriated for this Contract for any City fiscal year, following the City's current year, the Contract shall terminate automatically as of the last day for which funds were appropriated without the City providing written notice to the Contractor prior to the date of termination. The City shall not consider termination of the Contract pursuant to this section default. Upon such termination, the City shall be released from any obligation to make future payments and shall not be liable for cancellation or termination charges.

Z. **LICENSES AND PERMITS:** Contractors will be responsible for all licenses and permits, if required. Any person, firm, or corporation responding to the City's procurement which is required to have a current and valid City of Winchester business license and, in fact, does not, will not be considered a "responsive bidder" as such term is defined by the Code of Virginia §2.2-4301, as amended. Any bid received from such an entity may be rejected, at the City's sole option, for that reason alone. In addition, the successful bidder or offeror will be required to produce affirmative evidence, satisfactory to the Purchasing Agent, or designee that it has such a license, or is not required to have such a license, prior to approval and execution of any contract to perform the work herein described.

AZ **TERMINATION:**

- a. Termination for Convenience: The City of Winchester may terminate a contract, in whole or in part, whenever the City OF Winchester determines that such termination is in the best interest of the City of Winchester, without showing cause, upon giving ten (10) days written notice to the vendor.
- b. Termination for Default: When the vendor has not performed or has unsatisfactorily performed the contract, the City of Winchester may terminate the contract for default. Upon termination for default, payment may be withheld at the discretion of the City of Winchester. The Vendor will be paid for work satisfactorily performed prior to termination.

BZ **HOLD HARMLESS:** Bids/Proposal shall provide that during the term of the contract, including warranty period, for the successful bidder/offeror indemnifying, defending, and holding harmless the City, its officers, employees, agent and representatives thereof from all suits, actions, claims of any kind (including claims for attorney's fees) brought on account of any personal injuries, damages, or violation of rights sustained by any person or property in consequence of any neglect in safeguarding contract work, or on account of any act or omission by the contractor or his employees, or from any claims or amounts arising from violation of any law, bylaw, ordinance, regulation or decree. The vendor agrees that this clause shall include claims involving infringement of patent or copyrights.

CZ. **CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION:** The contractor assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the agency's written consent and only in accordance with federal law or the Code of Virginia. Contractors who utilize, access, or store personally identifiable information as part

of the performance of a contract are required to safeguard this information and immediately notify the agency of any breach or suspected breach in the security of such information. Contractors shall allow the City to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Contractors and their employees working on this project may be required to sign a confidentiality statement.

DZ. **BID PRICE CURRENCY:** Prices are to be stated in US dollars unless otherwise specified in the solicitation.

IX. CONTRACT

CONTRACT #XXXXXX

THIS CONTRACT WAS MADE AND ENTERED INTO THIS _____ DAY OF _____, 201_ __, BY AND BETWEEN _____, F.I.N. OR S.S. NUMBER _____ ("CONTRACTOR"), AND THE **CITY OF WINCHESTER, VIRGINIA**, A POLITICAL SUBDIVISION OF THE COMMONWEALTH OF VIRGINIA ("CITY").

WHEREAS, THE CITY HAS PREVIOUSLY ISSUED INVITATION TO BID _____ (ITB # " _____"), DATED _____, 201_ __, TO PROVIDE LAND APPLICATION OF BIOSOLIDS SERVICES TO THE CITY OF WINCHSTER, AS MORE FULLY DESCRIBED AND REQUESTED IN THE ITB, AND;

WHEREAS, CONTRACTOR HAS SUBMITTED A PROPOSAL IN RESPONSE TO THE ITB DATED 201_ __, SIGNED BY _____ WHICH STATES QUALIFICATIONS, SERVICES AND NEGOTIATED PRICING ASSIGNED TO THE CITY.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS HEREIN CONTAINED, THE PARTIES COVENANT AND AGREE AS FOLLOWS:

1. THE CONTRACTOR SHALL PROVIDE THE CITY THE SERVICES OUTLINED IN ITB # _____, WHICH IS INCORPORATED IN ITS ENTIRETY HEREIN BY REFERENCE. THE CITY SHALL PAY THE CONTRACTOR FOR THE WORK COMPLETED AT THE PRICES ESTABLISHED UNDER THIS CONTRACT. THE CONTRACTOR SHALL FORWARD AN INVOICE FOR SUCH WORK TO THE PUBLIC SERVICES DIRECTOR REQUESTING SERVICES FOLLOWING THE COMPLETION OF THE WORK AND ACCEPTANCE BY THE CITY. THE CITY SHALL PAY SUCH INVOICE IN ACCORDANCE WITH THE PROMPT PAYMENT ACT PROVISIONS OF THE VIRGINIA PUBLIC PROCUREMENT ACT, WHICH ARE INCORPORATED HEREIN BY REFERENCE.
2. THE TERM OF THIS CONTRACT SHALL BE A PERIOD OF ONE (1) YEAR FROM DATE OF AWARD. THE CITY RESERVES THE RIGHT TO CANCEL AND TERMINATE THIS CONTRACT, WITHOUT PENALTY, UPON TEN (10) DAYS WRITTEN NOTICE TO CONTRACTOR. THE PARTIES UNDERSTAND AND AGREE THAT THE CITY, AT ITS SOLE OPTION, MAY RENEW THIS CONTRACT FOR TWO (2) ADDITIONAL ONE (1) YEAR PERIODS.
3. **APPLICABLE LAW AND VENUE:** THE PARTIES AGREE THAT THIS CONTRACT FOR SERVICES SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF VIRGINIA. ANY DISPUTE ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT SHALL BE RESOLVED OR OTHERWISE LITIGATED IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER, VIRGINIA OR THE FOURTH CIRCUIT FEDERAL DISTRICT COURT IN HARRISONBURG, VIRGINIA.
4. IF ANY PROVISION OF THIS AGREEMENT IS FOUND TO BE ILLEGAL, INVALID OR UNENFORCEABLE, THAT SHALL NOT AFFECT THE VALIDITY OR ENFORCEABILITY OF ANY OTHER PROVISION OF THIS AGREEMENT.
5. THE CONTRACTOR HAS, AT THE TIME OF ITS EXECUTION OF THIS CONTRACT, PROVIDED THE CITY WITH A CERTIFICATE OF INSURANCE SHOWING THAT IT HAS CURRENTLY IN FORCE ALL OF THE INSURANCE REQUIRED BY ITB # _____. CONTRACTOR COVENANTS THAT SUCH CERTIFICATE SHALL REMAIN IN FULL FORCE AND EFFECT THROUGHOUT THE TERM OF THIS CONTRACT, AND THAT IT WILL PROMPTLY NOTIFY THE CITY IN THE EVENT, SUCH INSURANCE IS NO LONGER IN EFFECT FOR WHATEVER REASON.

IN WITNESS WHEREOF, THE PARTIES HAVE SIGNED THIS INSTRUMENT ON THE DATE INDICATED BELOW, WITH ONE (1) FULLY SIGNED ORIGINAL DELIVERED TO CONTRACTOR AND ONE (1) FULLY SIGNED ORIGINAL DELIVERED TO THE CITY.

CONTRACTOR:

CITY OF WINCHESTER:

BY: _____

BY: _____

TITLE: _____

TITLE: _____

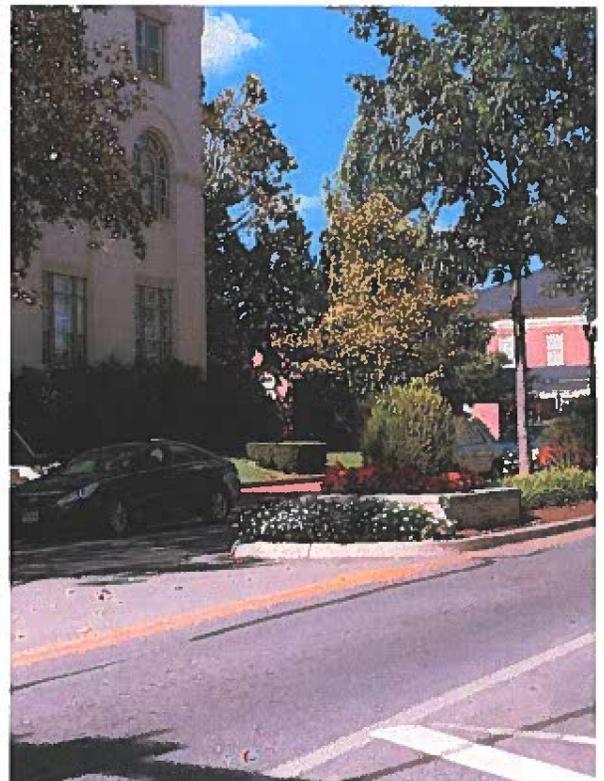
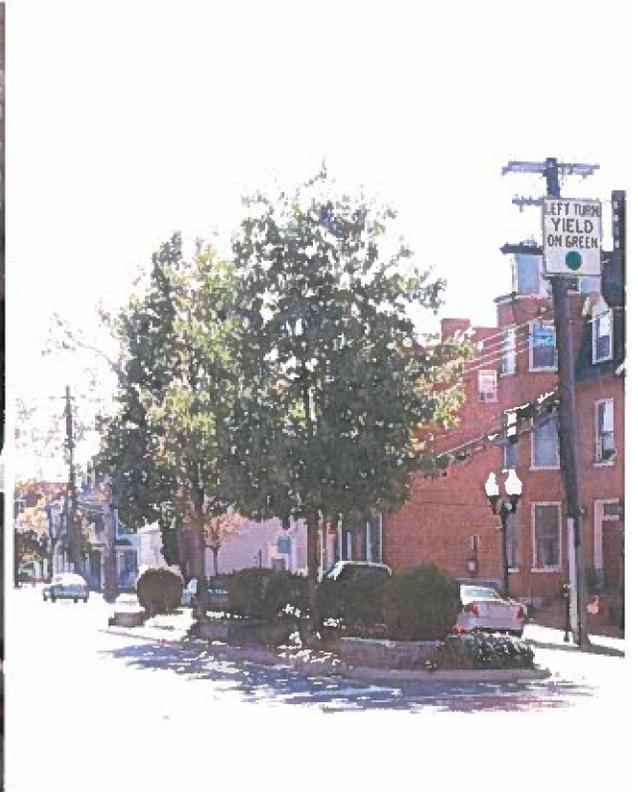
DATE: _____

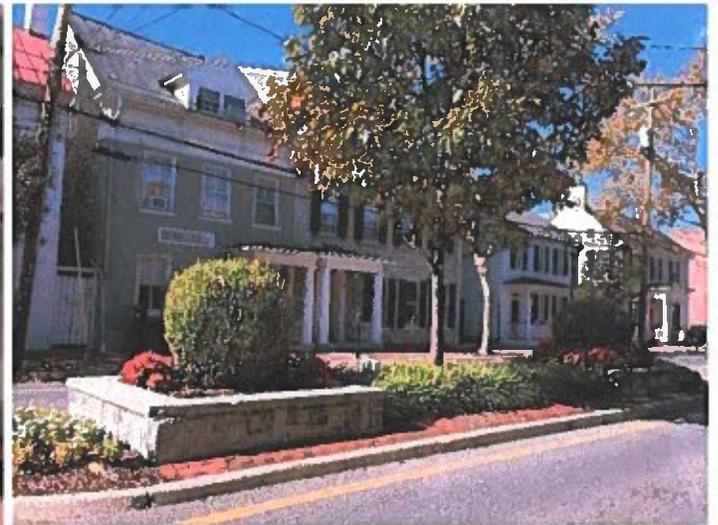
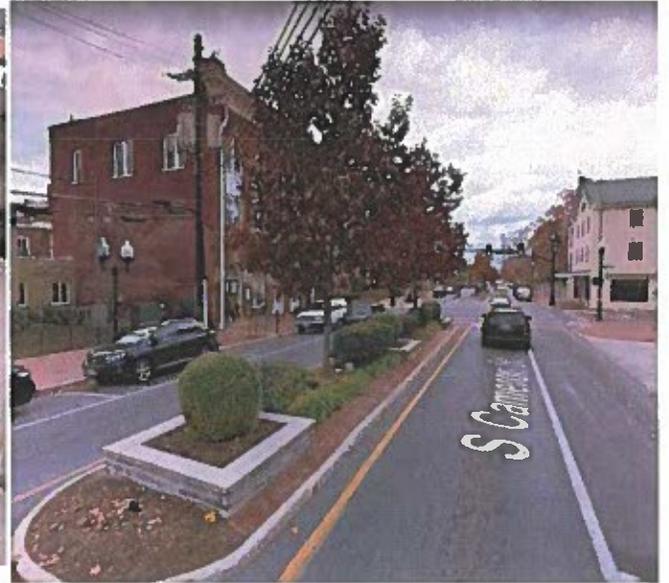
DATE: _____

X. Schematic Maps of Landscaped Areas

Site 1: Cameron St. Islands

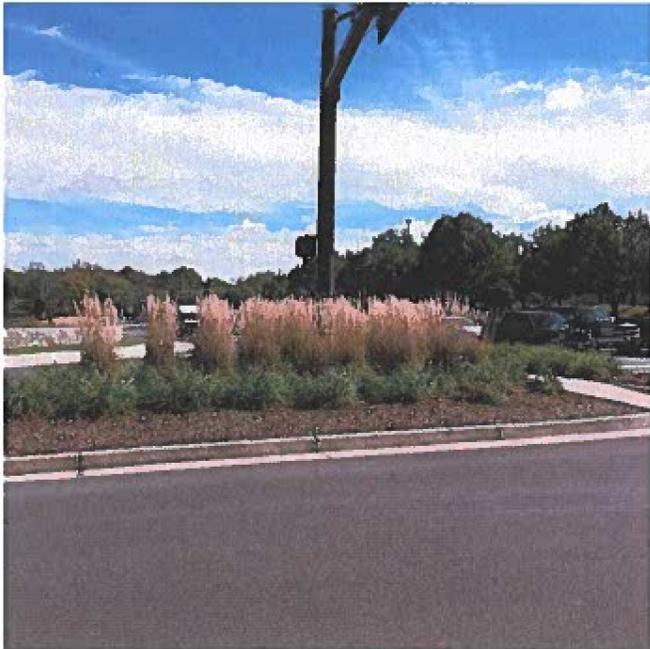
Site Description: Four center median islands located at 47 S Cameron St., 11 St. Cameron St., 15 N Cameron St. (Rouss City Hall), and 115 N. Cameron St., respectively





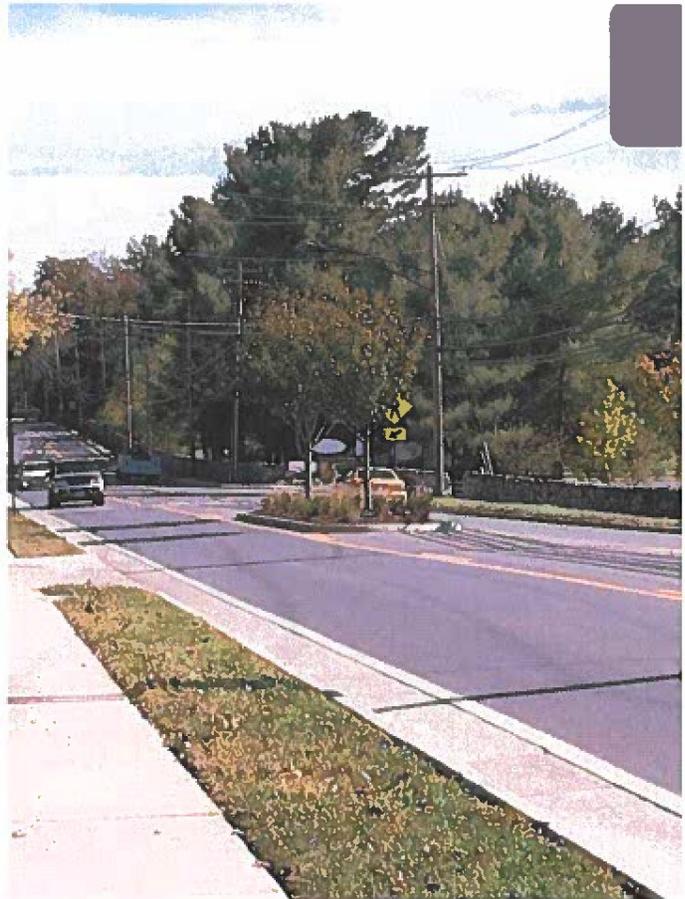
Site 2: Jubal Early Island

Site Description: Triangular island located at intersection of E Jubal Early Dr. and Apple Blossom Dr.



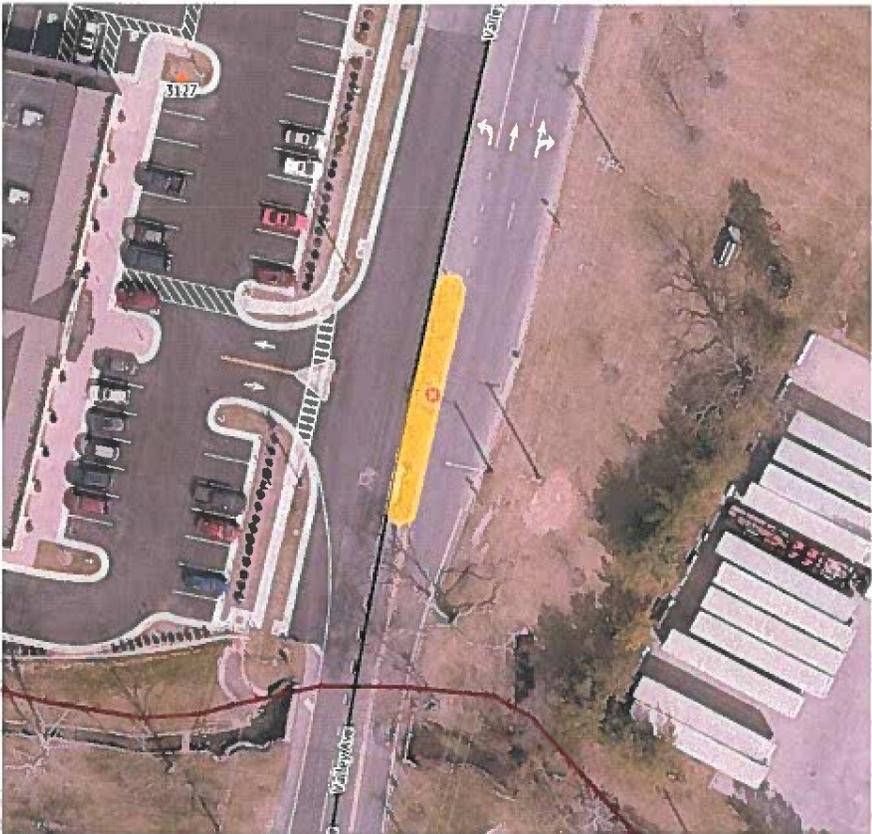
Site 3: Amherst St. Islands

Site Description: Two center median islands located just east of Medical Cir.



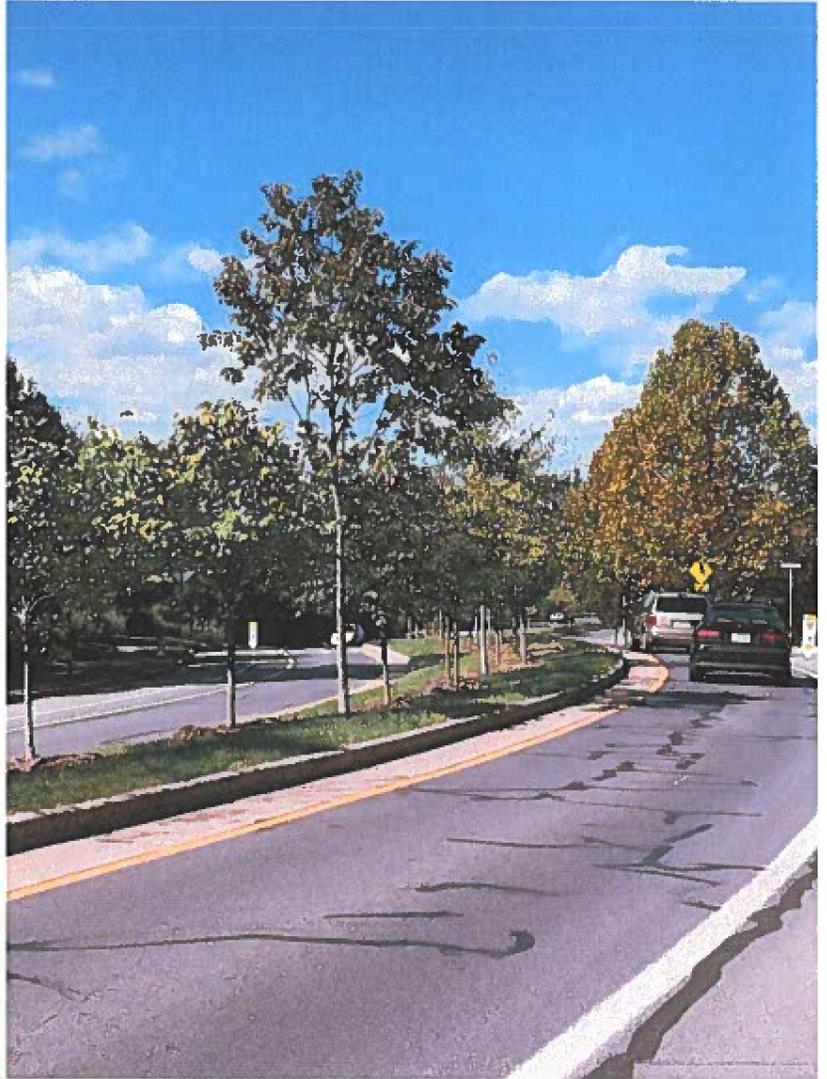
Site 4: Valley Ave Island

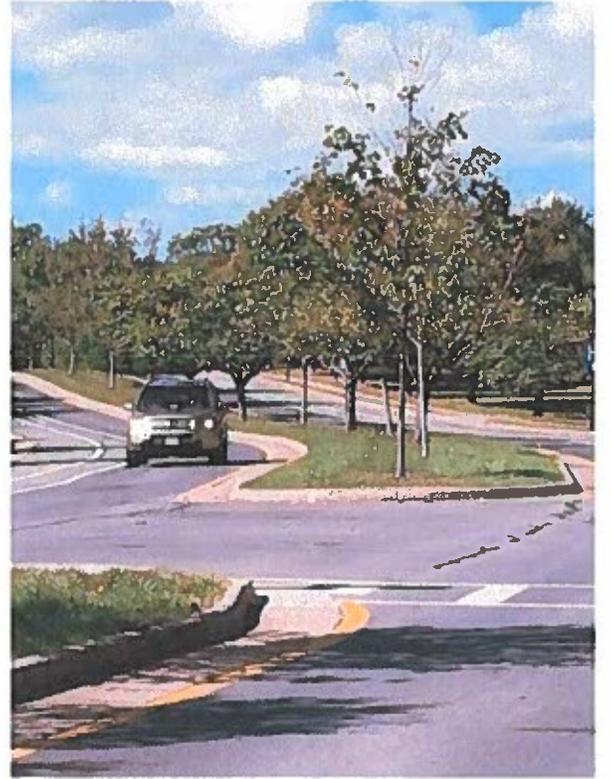
Site Description: Median island located on Valley Ave. at 3103 Valley Ave. (Creekside Station)

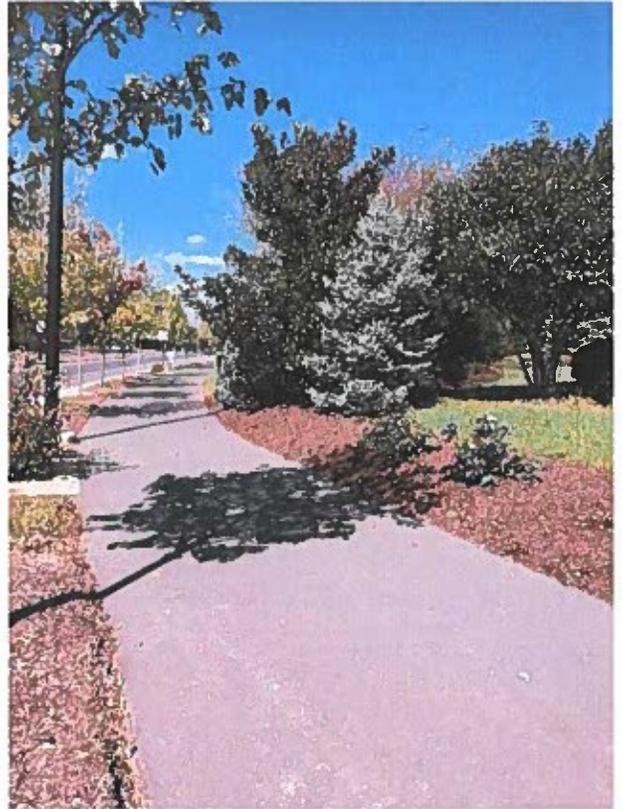


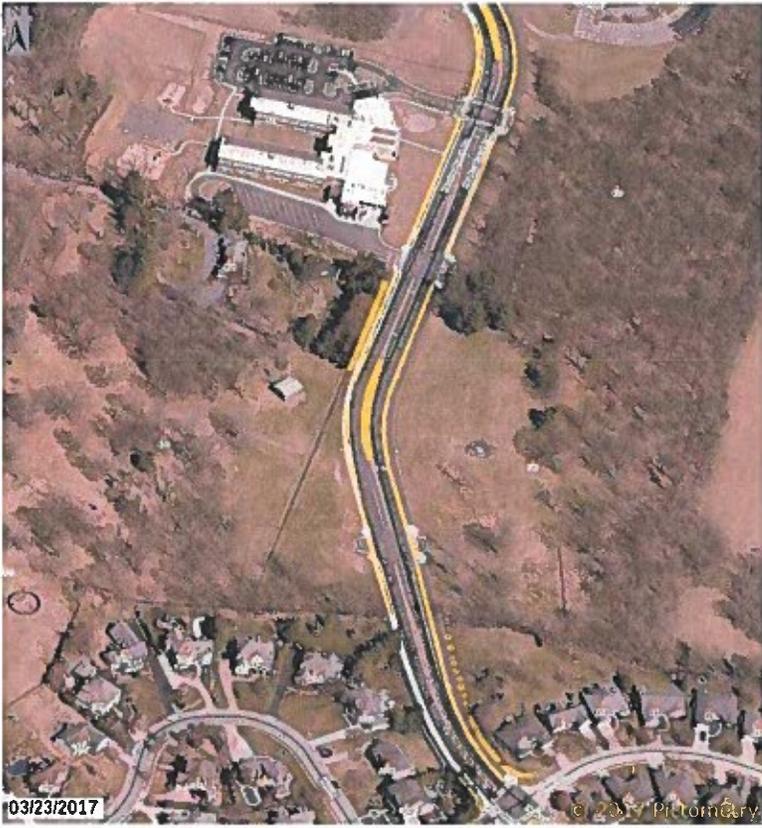
Site 5: Meadow Branch Islands and Tree Lawns

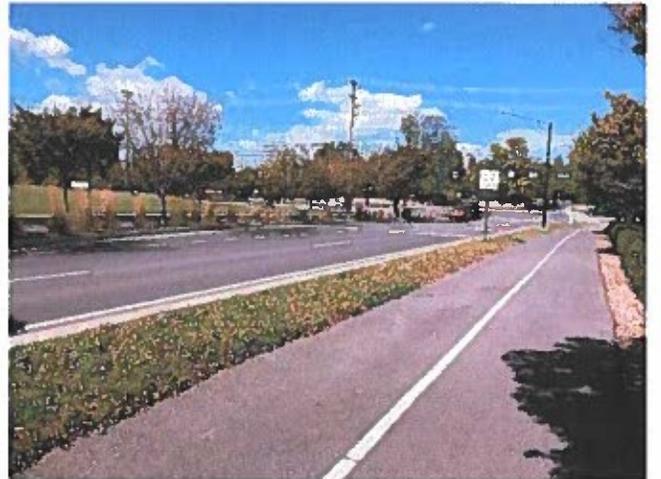
Site Description: Medians and tree lawns from Seldon Dr. to Amherst St. Includes mulch rings around center median trees, trees in tree lawns and center median plantings. Includes larger mulched beds near John Kerr Elementary School, beds at Buckner Dr. and tree rings around evergreens behind sidewalk along Green Circle Trail near Buckner Dr.



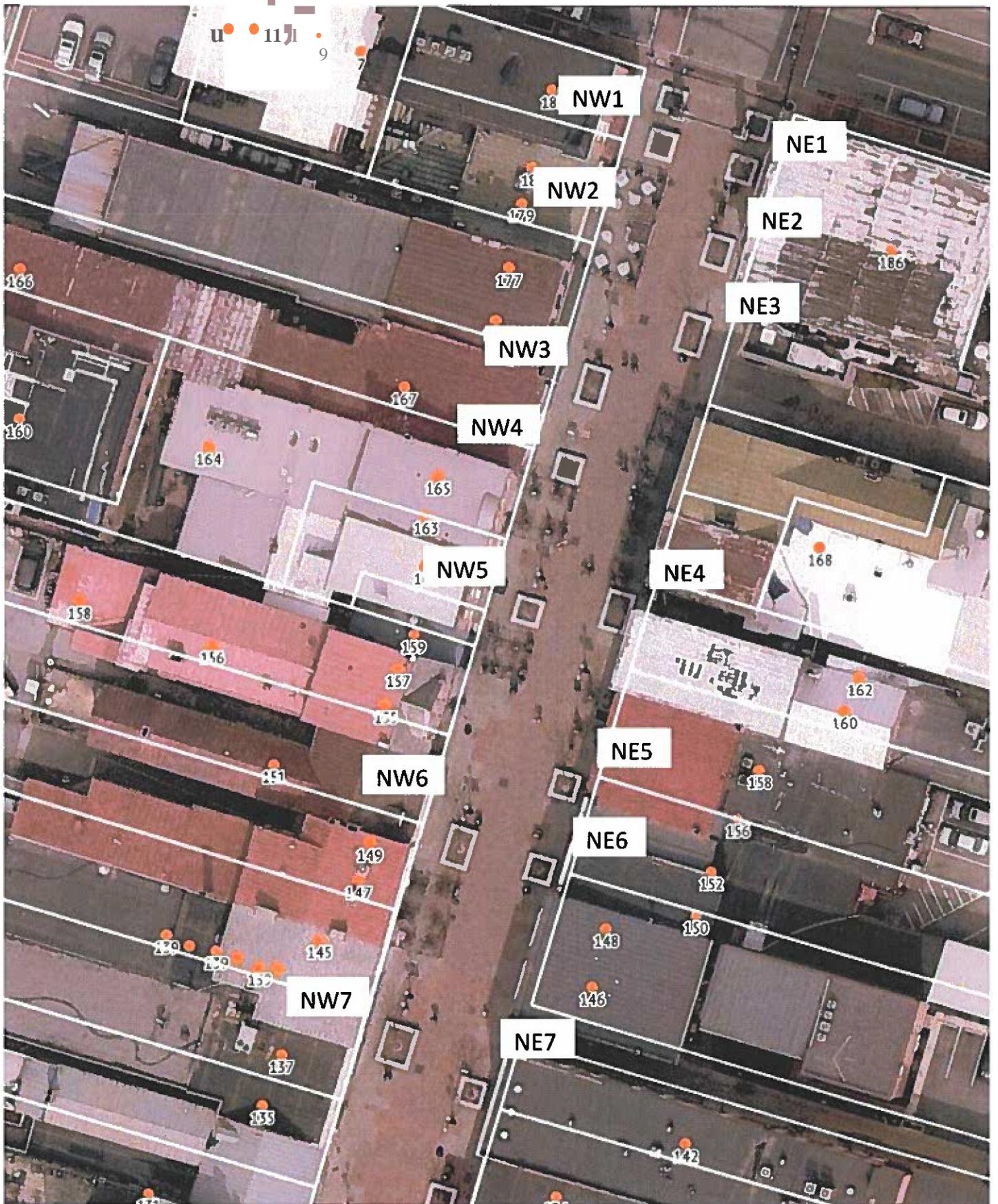


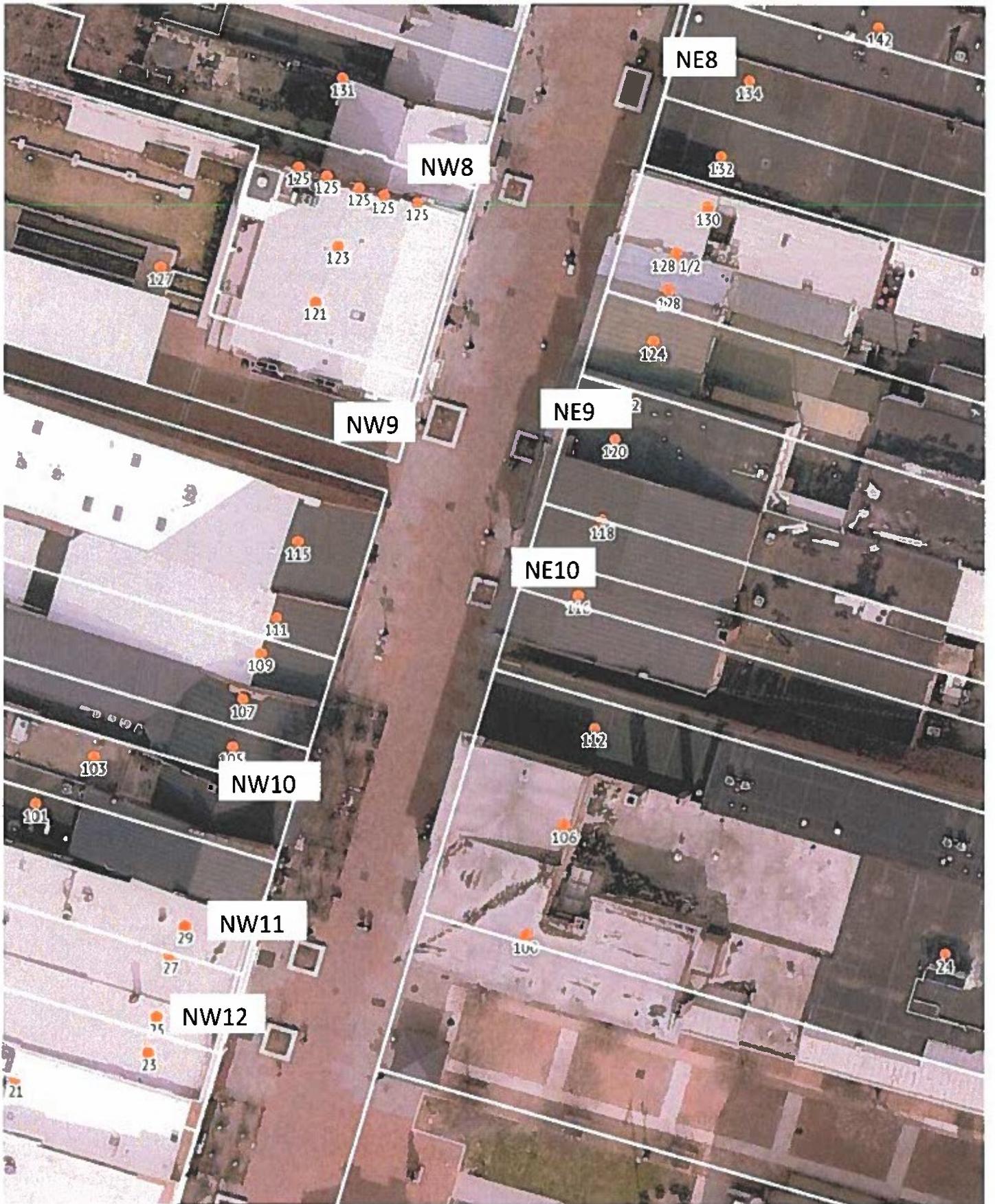


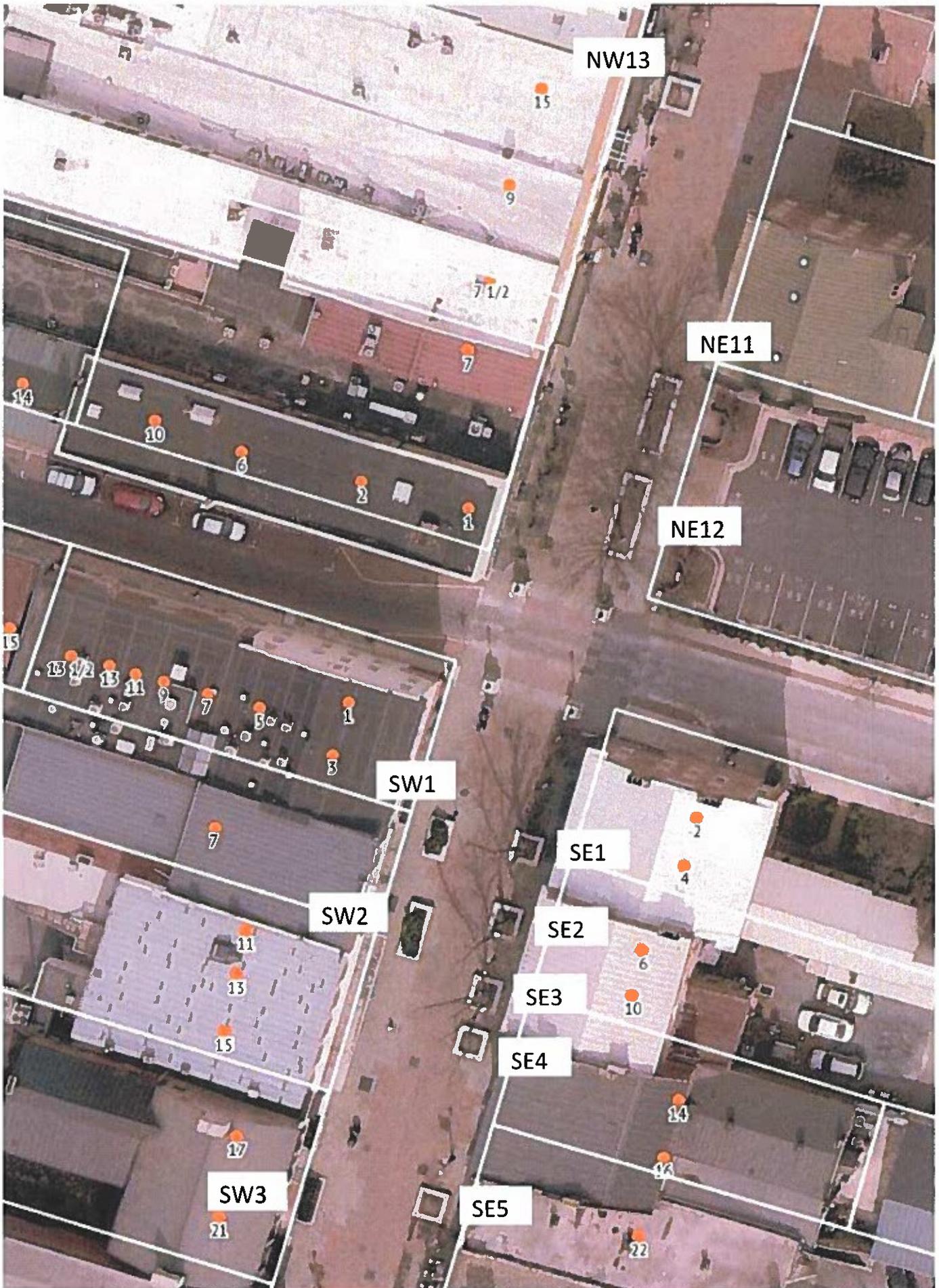




Site 6: Loudoun St. Mall Site Description: All planters on Loudoun St. Mall between Cork St. and Piccadilly St.







NW13

NE11

NE12

SW1

SW2

SW3

SE1

SE2

SE3

SE4

SE5

15

9

7 1/2

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2

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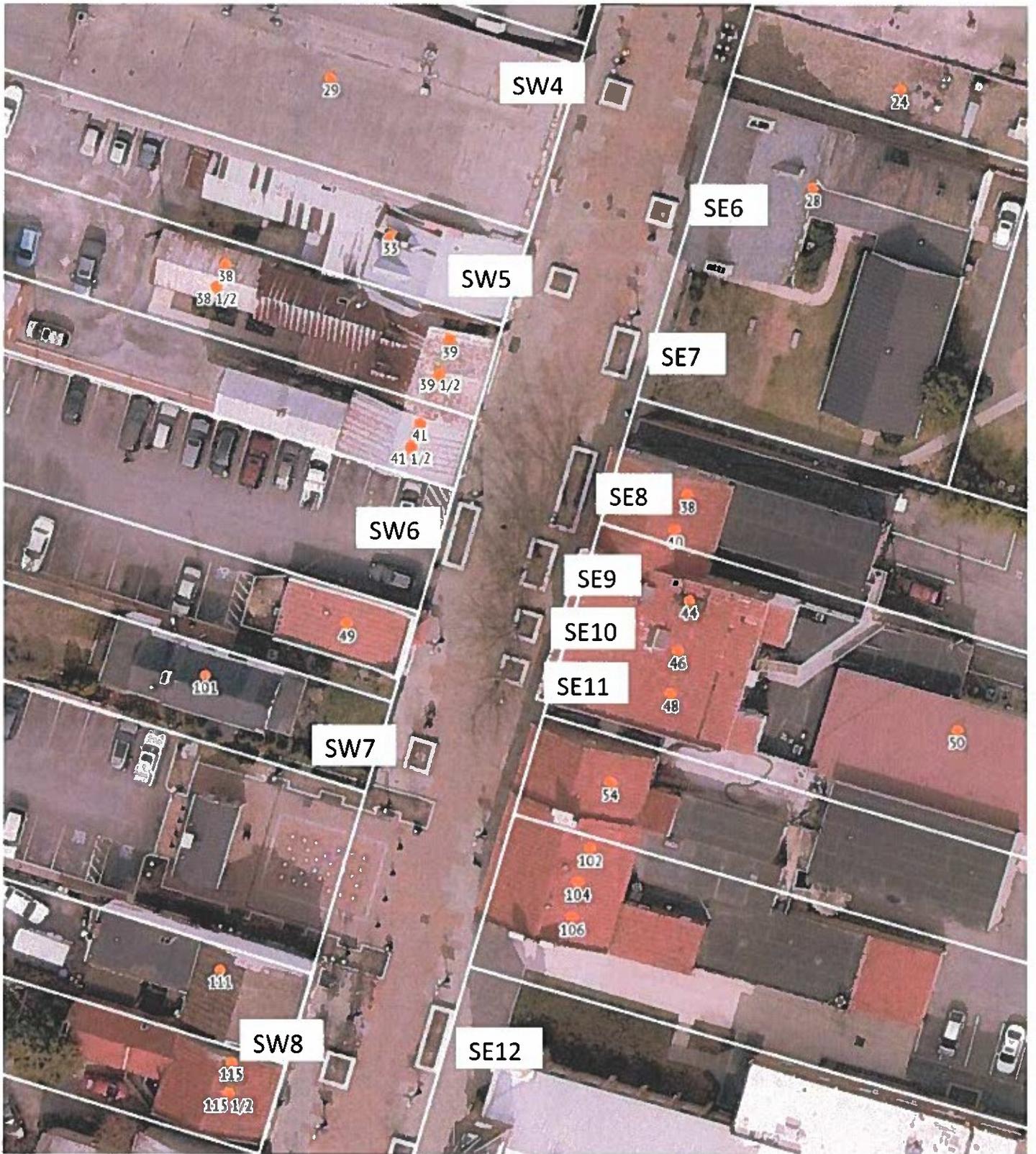
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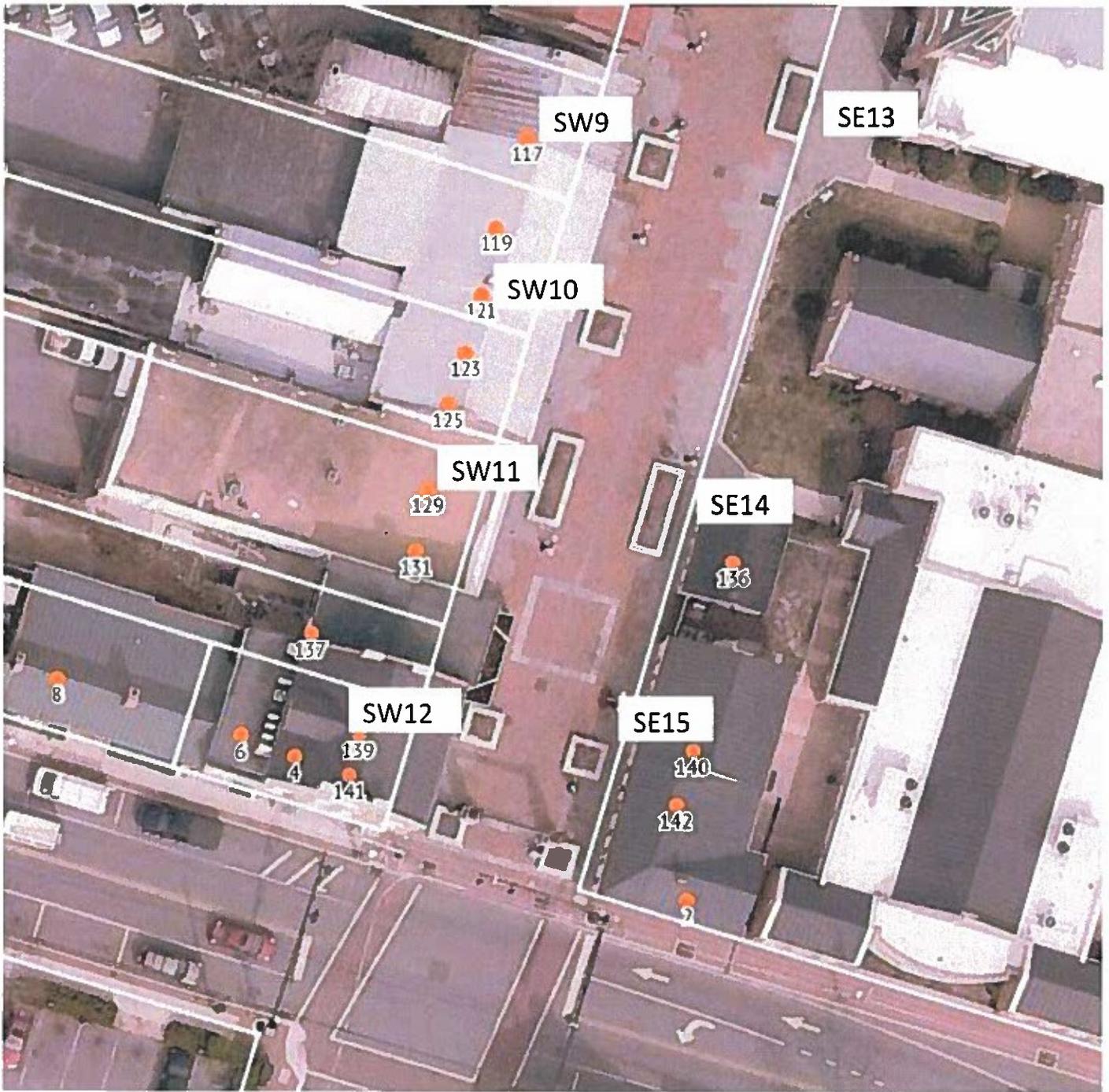
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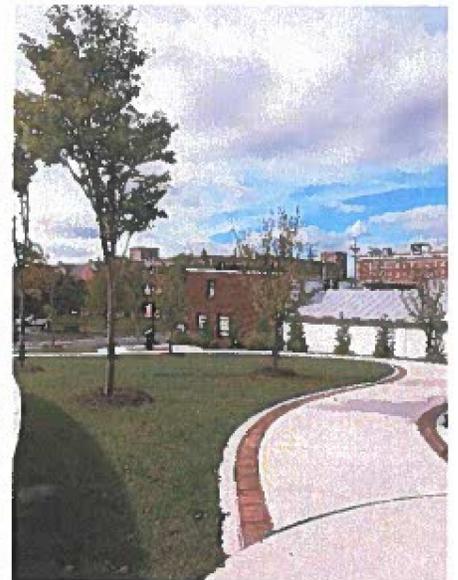
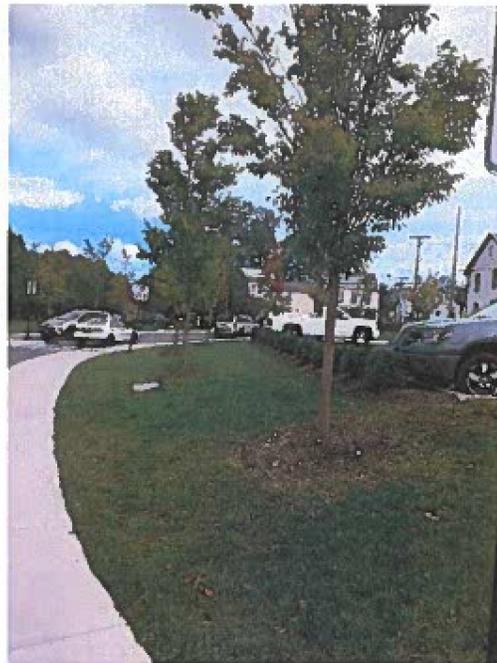
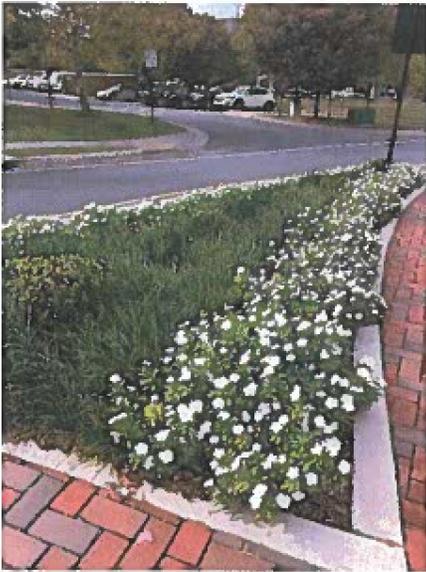
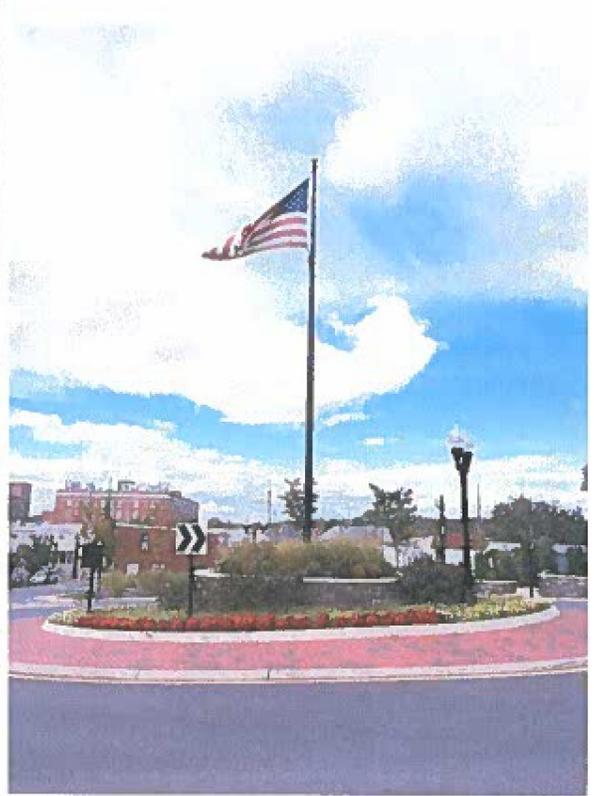
22





Site 7: National Ave Roundabout

Site Description: Roundabout located at intersection of Piccadilly St. and National Ave., including the surrounding landscaped areas on south, east, and west sides of intersection. Includes all planting beds, raised beds and mulched tree rings.



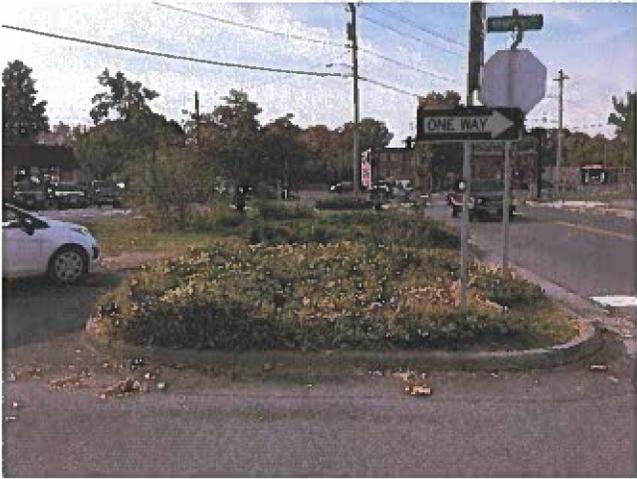
Site 8: Taylor Hotel Pavilion

Site Description: Landscaped area in courtyard behind Taylor Hotel (119 N Loudoun St.).



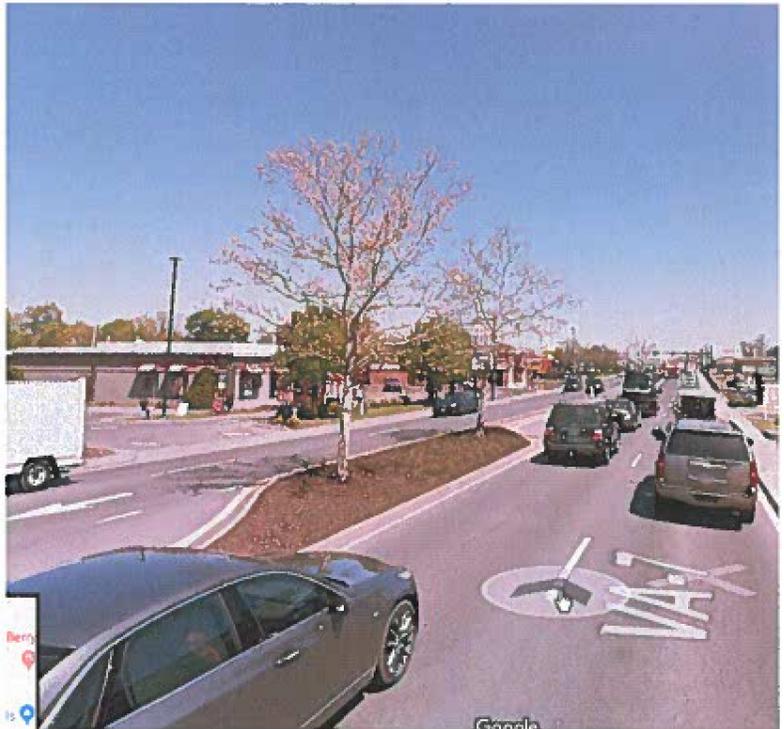
Site 9: Berryville Triangle

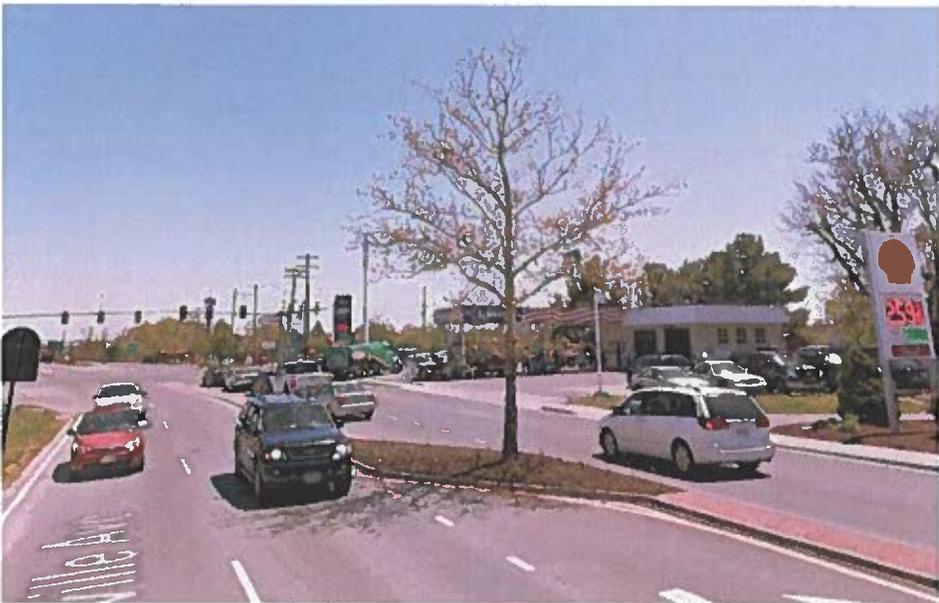
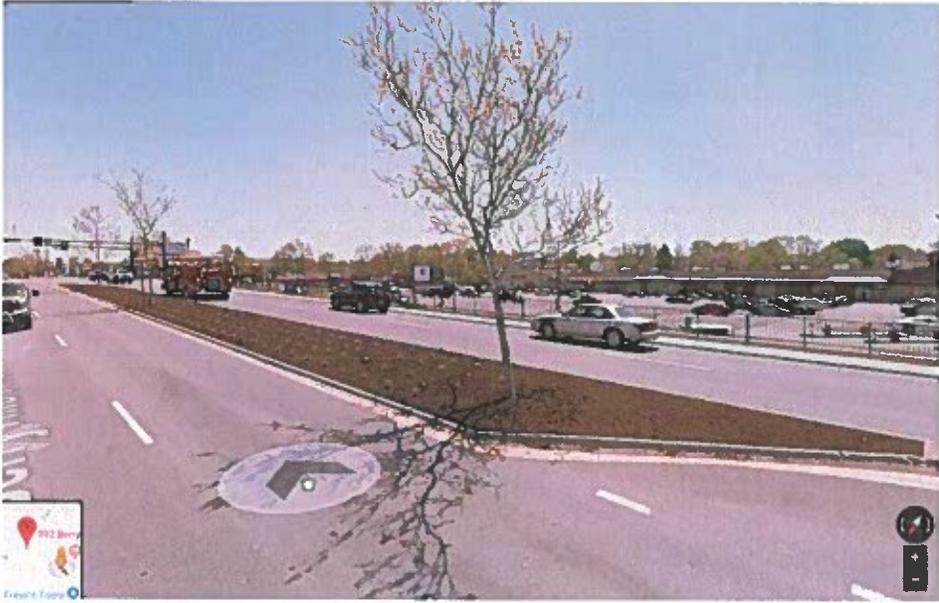
Site Description: Triangular island located on Berryville Ave. at the intersections with Virginia Ave. and Battle Ave.



Site 10: Berryville Islands

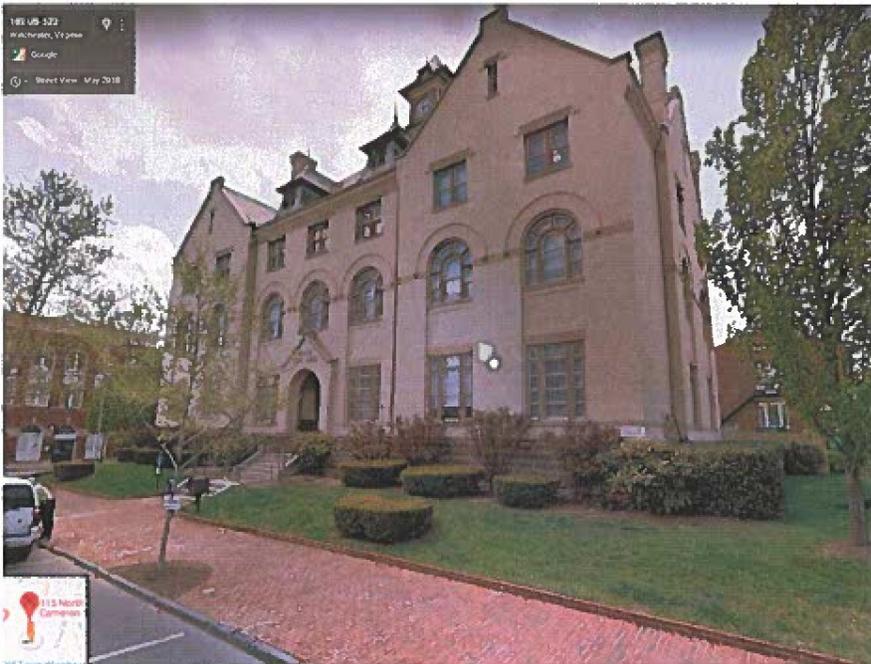
Site Description: Four center median islands located at 929 Berryville Ave., 1011 Berryville Ave., 1124 Berryville Ave., and 1217 Berryville Ave. respectively.

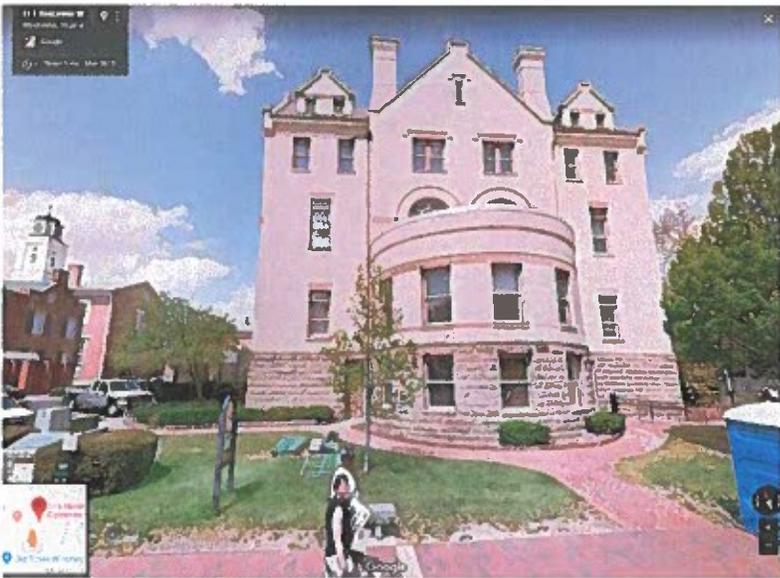
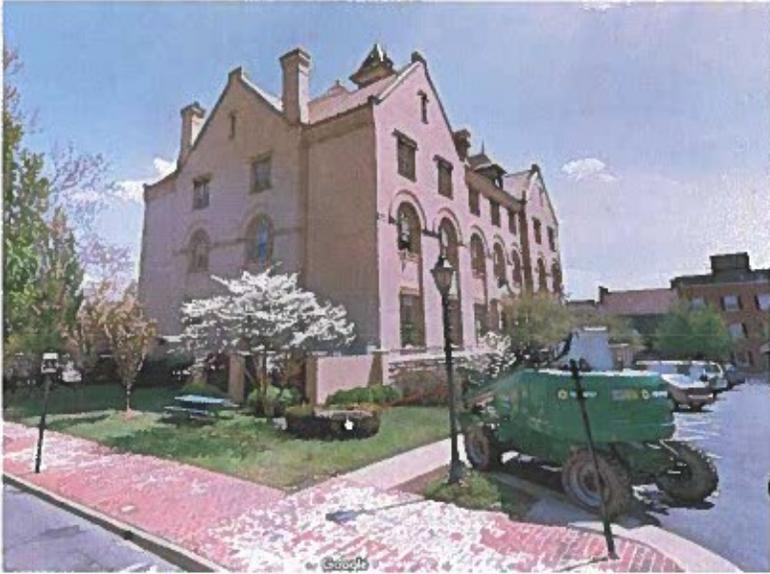




Site 11: City Hall

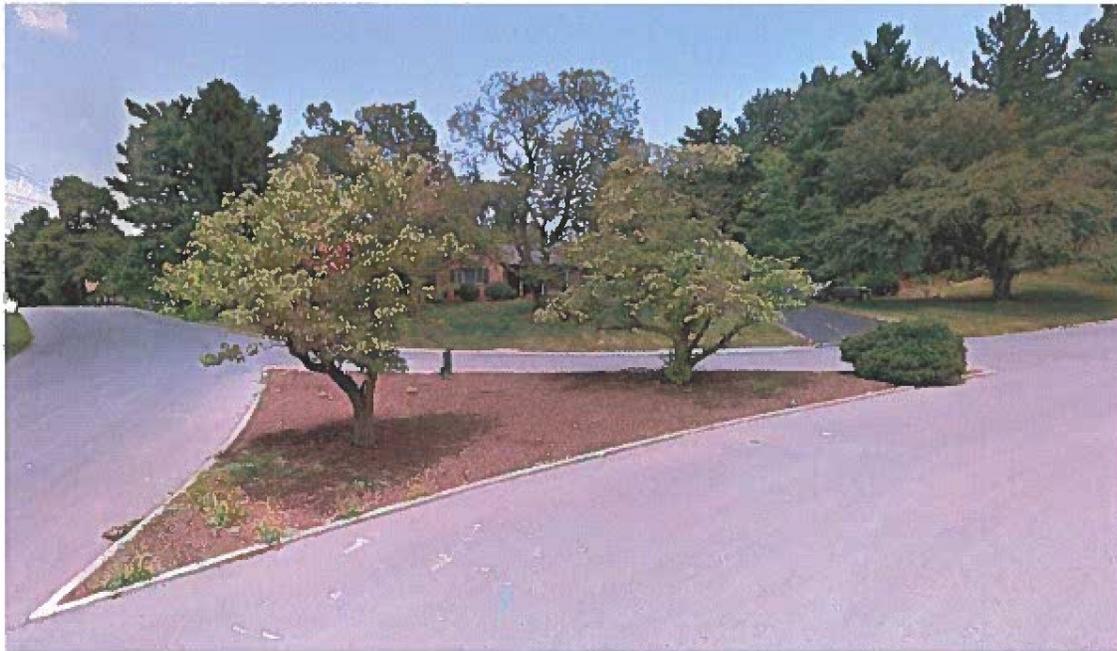
Site Description: Landscaping beds around City Hall property located at 115 N Cameron St.





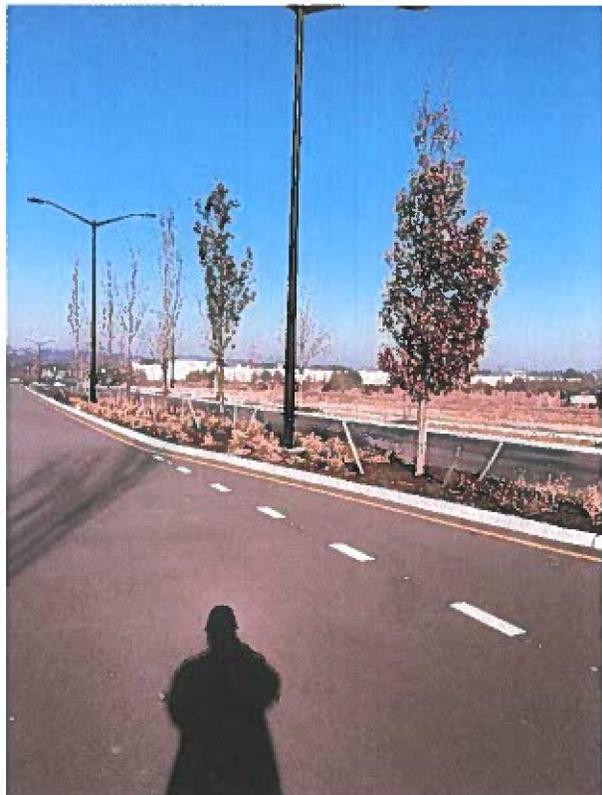
Site 12: Hawthorne Triangle

Site Description: Triangular landscape bed along Hawthorne Drive



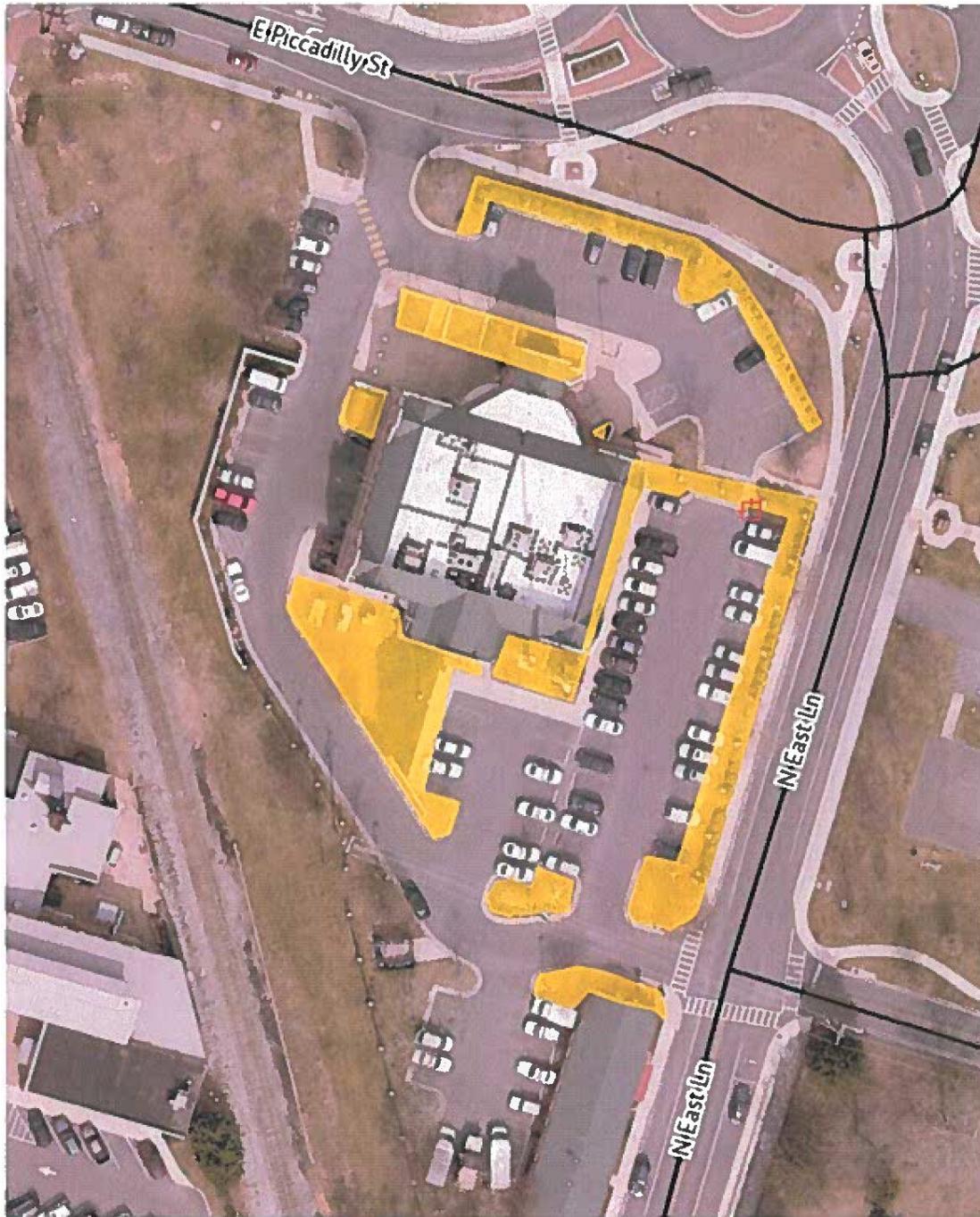
Site 13: Tevis St Extension

Site Description: Medians and tree lawns (between sidewalk and curbing) along E Tevis St beginning just east of Legge Blvd and extending eastward towards proposed 1-81 overpass. Includes trees in tree lawns and center median plantings.

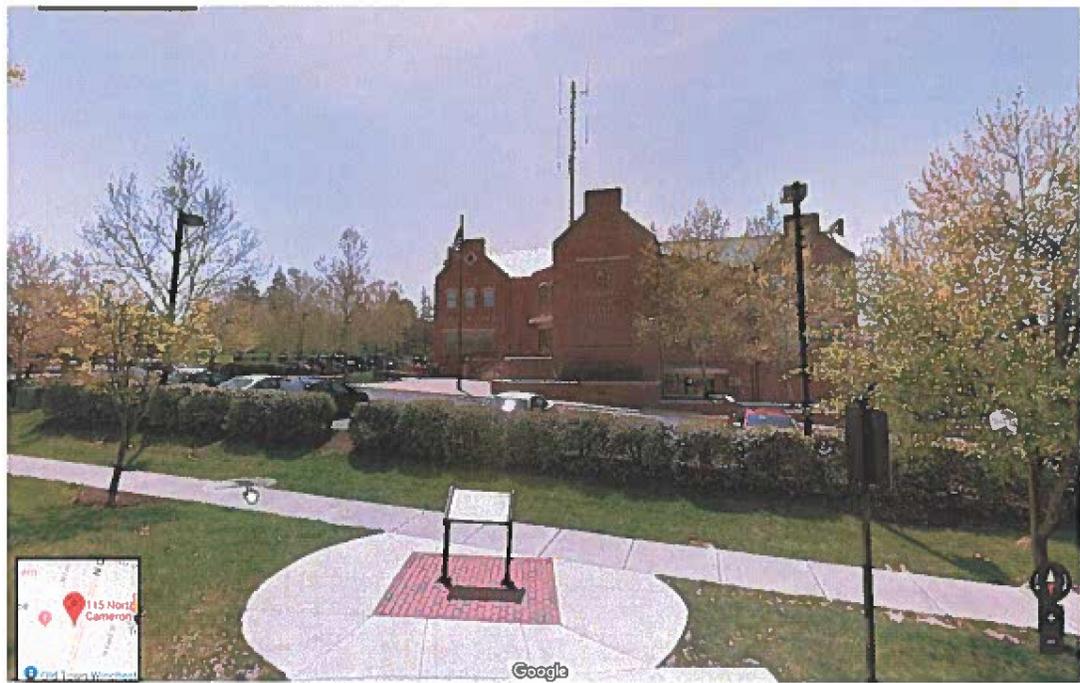
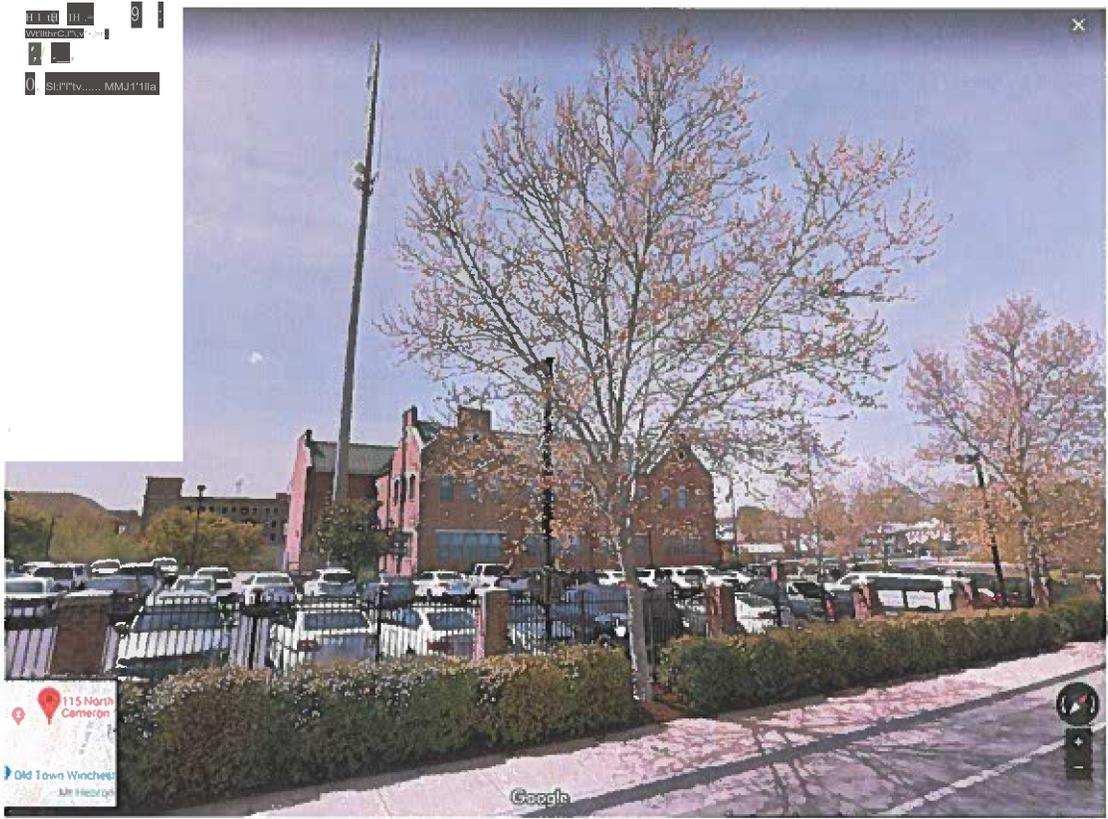


Site 14: Timbrook Safety Building

Site Description: Located at 231 E Piccadilly St. Includes all landscaped areas



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Supply... MMJ1111a



Site 15: Creamery Building

Site Description: Located 21 25 S Kent St. Includes landscaped area around building.



