



October 17, 2016

**NOTICE TO PUBLIC
RFP #201455**

**REQUEST FOR PROPOSALS FOR PROFESSIONAL ENGINEERING AND RELATED SERVICES
FOR AN ON-CALL CONTRACT TO THE CITY OF WINCHESTER
FOR VARIOUS PROJECTS**

The City of Winchester will accept proposals until 2:00 p.m. local time on November 15, 2016, in the office of the Finance Department - Purchasing Division, 15 North Cameron Street, 1st Floor - Rouss City Hall, Winchester, VA 22601. This RFP is for Professional Engineering and Related Services to the City of Winchester for various projects. The services are intended to cover a wide array of task orders from concept design, surveying, plans and specifications, and construction assistance. The Contract will be administered by the Department of Public Services.

Copies of this Request for Proposal may downloaded at: <http://www.winchesterva.gov/purchasing/itbrfp> or obtained upon request from the Office of the Finance Department-Purchasing Agent, telephone (540) 667-1815 ext. 1477.

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 may require, 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 reserves the right to accept or reject any proposals, in whole or in part, and to waive any informality.***

Five (5) copies of the proposal and an electronic copy in .pdf format are to be submitted in a sealed envelope bearing the Offerors company name, mailing address, the RFP name, the RFP number, the date and the time due mailed or delivered to:

City of Winchester
Finance Department - Purchasing Division
15 North Cameron Street, 1st Floor - Rouss City Hall
Winchester, Virginia 22601

BY: Michael Marzullo
Purchasing Agent

**CITY OF WINCHESTER
DEPARTMENT OF FINANCE
15 N. Cameron Street
Winchester, VA 22601**

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A. INTRODUCTION AND PURPOSE

INTRODUCTION:

The City, founded in 1744, is the oldest Virginia City west of the Blue Ridge Mountains. Located at the northern entrance to the Shenandoah Valley, the City is the medical, commercial, governmental and financial center for the surrounding area.

The City encompasses 9.3 square miles and is located at the crossroads of U.S. Highways 11, 17, 50, 522, Interstate 81 and State Route 7. Interstate 66, terminating 11 miles south of the City at Interstate 81, provides a third transportation artery to Washington, D.C., 72 miles to the southeast. The City's 2015 population was estimated at 27,284 with 7,650 single family attached and detached homes and over 4,000 multi-family dwelling units.

PURPOSE:

The purpose of this solicitation is to select multiple firms to provide engineering and other related services to the City of Winchester for various projects. The types of projects will include, but are not limited to, the following:

1. Water treatment plant improvements
2. Wastewater treatment plant improvements
3. Water distribution system improvements
4. Sanitary sewer collection system improvements
5. Storm drainage system improvements
6. Roadway improvements
7. Traffic related improvements
8. Building improvements
9. Surveying

The Contract will be administered by the Department of Public Services. These services will be provided under separate task orders for each project identified by the City. The Scope of Services is provided in Section B.

This Request for Proposal (RFP), plus the resulting agreement, shall be consistent with, and governed by the Act, the Virginia Public Procurement Act (VPPA).

PRE-PROPOSAL CONFERENCE:

None scheduled.

SCHEDULE OF EVENTS:

- | | |
|--------------------------------------|---|
| 1. RFP Distribution | October 17, 2016 |
| 2. Proposal Submissions Due (Part I) | November 15, 2016 at 2:00 P.M. local time |
| 3. Interviews (If necessary) | December 2016 |
| 4. Award of Contract (TBD) | January 2017 |

CONTRACT TERM

The contract term shall be the earlier of one year (1) year from date of award or when the cumulative total of fees for Task Orders issued reaches the maximum fee total or if the Contract is terminated in writing by either party. This one-year period shall be referred to as the Term. The City reserves the right to cancel and terminate this Contract, without penalty, upon ten (10) days written notice to contractor. The City and the CONSULTANT are obligated to fulfill the requirements of all task orders, including change orders thereto, issued even though the term for issuing new task orders has concluded.

The parties understand and agree that the City, at its sole option, may renew this Contract for four (4) additional one- year contract terms. If the City exercises its option to renew, the Contract Term shall begin one year from the date of the execution of this Contract, or previous renewal, or the date that the City notifies the CONSULTANT that the option to renew is being exercised, whichever occurs first. A new aggregate limit of \$500,000 shall apply to the second Contract Term, without regard to the dollar amounts of Task orders issued during the first year of the Contract. Any unused amounts from the first Contract Term are forfeited and shall not carry forward to the second Contract Term.

TASK ORDERS:

It is understood that more than one Task Order may, at the City's sole discretion, be offered to the CONSULTANT during the Contract Term. The maximum fee allowed by law for any Task Order is \$100,000 which includes all fees, reimbursable expenses and contingencies and although the potential exists for multiple Task Orders during the Contract Term, the aggregate fees shall not exceed \$500,000. The City does not represent or guarantee that the CONSULTANT will receive any amount of work.

The Task Order offered to the CONSULTANT should include a scope of work, a definition of the product required and request for fee proposal. If the CONSULTANT and City cannot agree on the scope of work and/or the fee for a Task order offered to the CONSULTANT, the City shall terminate negotiations with the CONSULTANT on that Task order and pursue obtaining the services from other CONSULTANT's using proper procurement procedures. The City shall not offer the Task Order, nor request a fee proposal from a second CONSULTANT until negotiations have been terminated in writing with the CONSULTANT first offered that Task Order.

B. SCOPE OF SERVICES

The contract provided will be for an initial one-year term, plus four one-year extensions, if the work is deemed to be acceptable to the City. Each project will be awarded as a Task Order, complete with fee estimate, schedule and work plan. Task orders will cover various activities including concept design, surveying, final design, and construction administration services. The types of projects will include, but are not limited to, the following:

1. Water treatment plant improvements
2. Wastewater treatment plant improvements
3. Water distribution system improvements
4. Sanitary sewer collection system improvements
5. Storm drainage system improvements
6. Roadway improvements
7. Traffic related improvements
8. Building improvements
9. Surveying

Important Note: A consultant does not need to have expertise in each of the project types listed above to submit a proposal and be awarded a contract as the City intends to award multiple contracts as a result of this solicitation.

C. SELECTION PROCEDURE

This Request for Proposals is divided into two parts:

- Part I - Written Submission of Firm Experience and Qualifications; and
- Part II - Interviews and Presentations from Part I short-listed firms, only.

In general, the selection of a firm will be conducted by the following process:

PART I

1. Statements of firms' experience and qualifications shall be submitted in the form defined under Submittal Requirements (Section D).
2. A Selection Committee, composed of City Staff, will evaluate and rank all firms.
3. Firms will be evaluated and ranked in accordance with the Part I – Evaluation Criteria (Section E).

PART II

1. Based on the results of the process to this point, the highest ranked firms may be invited to make a presentation to the Selection Committee. The Selection Committee may also conduct formal interviews with these firms.
2. The Selection Committee will complete the final evaluation and rank the firms as set forth in Evaluation Criteria (Section E), in order to select one or more firms whose professional qualifications and proposed services are deemed most meritorious per VA Code §2.2-4301.

D. SUBMITTAL REQUIREMENTS

1. GENERAL INSTRUCTIONS:

- a. RFP Response: In order to be considered for selection, offerors must submit a complete response to this RFP. Five (5) copies of the proposal and one (1) original electronic copy in .pdf format are to be submitted in a sealed envelope bearing the company name, mailing address, the RFP name, the RFP number, the date and the time due mailed or delivered to: City of Winchester, Finance Department - Purchasing Division, 15 North Cameron Street, 1st Floor-Rouss City Hall, Winchester, Virginia 22601. No other distribution of the proposal shall be made by the offeror.
- b. Late Proposals: It is the responsibility of the firm to insure the Purchasing Agent receives the submittal by the proposal due date and time. Late Proposals will be returned to offeror unopened, if the container is properly identified with the firm's return address.

2. PROPOSAL PREPARATION:

- a. Proposals shall be signed by an authorized representative of the offeror. All information requested should be submitted. Failure to submit all information requested may result in the Purchasing Agent requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals which are substantially incomplete or lack key information may be rejected by the Purchasing Agent. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.
- b. Proposals shall be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content. Avoid excessive content and unrelated work samples.
- c. Proposals should be organized in the order in which the requirements are presented in the RFP. All pages of the proposal should be numbered. Each paragraph in the proposal should reference the paragraph number of the corresponding section of the RFP. It is also helpful to cite the paragraph number, sub-letter, and repeat the text of the requirement as it appears in the RFP. If a response covers more than one page, the paragraph number and sub-letter should be repeated at the top of the next page. The proposal should contain a table of contents which cross references the RFP requirements. Information which the offeror desires to present that does not fall within any of the requirements of the RFP

should be inserted at an appropriate place or be attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.

- d. Each copy of the proposal should be bound or contained in a single volume where practical. All documentation submitted with the proposal should be contained in that single volume.
 - e. Limit your Proposal to a maximum of **twenty (20) total pages**. Twenty pages shall include: **ALL** exhibits, resumes, letters, attachments, and enclosures. Dividers are allowed and will not count towards your twenty pages.
 - f. Ownership of all data, materials and documentation originated and prepared for the City pursuant to the RFP shall belong exclusively to the City and be subjected to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by an offeror shall not be subject to the public disclosure under the Virginia Freedom of Information Act; however, the offeror must invoke the protections of §2.24342F of the Code of Virginia, in writing, either before or at the time the data or other material is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secrets or proprietary information. The classification of an entire proposal document, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable and will result in rejection of the proposal.
3. **PART I - SUBMITTAL CONTENT:** Written proposals shall contain the following information presented in the following order:
- a. List the project types (nine different project types listed previously) that the firm has expertise in and the three most relevant contracts or projects completed by the firm within the last three years. Include short descriptions, project dates, client name and contact person, address and phone number, and whether your firm was the prime contractor or a sub-contractor.
 - b. Summary qualifications of key individuals (and office location for each) to be assigned to the work. A Project Manager must be assigned. Full resumes may be attached, but count towards the twenty page maximum. Resumes must exhibit qualifications and experience of the individual in the type of work to be conducted with emphasis on projects similar in nature to those expected. The Project Manager must be a licensed professional engineer, architect, or surveyor in the Commonwealth of Virginia.
 - c. List the outside services to be used. Describe the anticipated scope of work by sub-consultants and how they will be coordinated. Specific names of sub-consultants are not required, but preferred at this time. The intent of this section is to ascertain what outside services the firm will require.
 - d. Describe the methodology and procedures that will be implemented for all task orders and project work. Identify who will be responsible for the quality assurance program and how the program works within the firm. Provide specific examples of the firm's experience in meeting deadlines and completing the work within budget.
 - e. Outline your firm's knowledge and understanding of the City of Winchester's procedures, operations, and infrastructure.

- f. Verify that required insurance coverage is available (*insurance certificates need not be submitted until the award stage*).
4. **PART II - SUBMITTAL CONTENT:** At the City’s sole discretion, interviews and presentations may be conducted consisting of two possible sections:
- a. Presentation by Firms and Formal Interview (Optional): In the event the City requests an interview, questions that may be asked are: Summarize the firm’s familiarity with and knowledge of the City of Winchester and the capabilities of the firm to meet the needs of the City. Presentation may depict how staff will be organized to accomplish the work and where they will be located. Demonstrate the availability of resources for the successful completion of the task orders, including office locations and percentage of time that the project manager and staff members will be allocated to the City. Question and Answer period may follow.
 - b. Identify any requested Amendments to the Standard Agreement.

E. EVALUATION CRITERIA

Each member of the Selection Committee will individually evaluate each firm on the basis of the following criteria. A composite ranking will then be developed that ranks the firms from first to last.

PART I - Evaluation Criteria and Scoring

Criteria	Maximum Possible Score
Experience and qualifications of Project Manager assigned	25
Experience and qualifications of the firm	25
Familiarity and knowledge of the City’s procedures, operations, and infrastructure	20
Firm’s quality assurance approach and ability to meet schedules and budgets	15
Overall quality and completeness of proposal	15
Maximum Possible Score	100

PART II - Evaluation Criteria

- Final adjustments to Part I criteria may be made by the Selection Committee, if interviews are conducted.
- References: Three (3) references may be contacted.

Compensation: Offeror will not be compensated for the cost of proposal preparation whether or not an award is consummated.

Investigations: The Selection Committee may make such reasonable investigations, as it deems proper and necessary to determine the ability of the firm to perform the work. The Selection Committee and/or its representative(s) reserves the right to inspect the firm's physical premises prior to award to satisfy questions regarding the firm's capabilities.

F. QUESTIONS

Questions regarding this solicitation must be submitted in writing at least five (5) days prior to the proposal due date. The City will issue a written addendum to any inquiries that alter the scope of the proposal. All other contacts with City personnel concerning this solicitation are discouraged. Submit inquiries via e-mail to:

Perry Eisenach
Public Services Director
City of Winchester
15 N. Cameron St
Winchester, VA 22601
perry.eisenach@winchesterva.gov

H. SPECIAL TERMS AND CONDITIONS:

- a. **AWARD:** The City shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. At the discussion stage the public body may discuss non-binding estimates of total project costs, including, but not limited to, life-cycle costing, and, where appropriate, non-binding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of the informal interviews, on the basis of evaluation factors published in the Request for Proposals and all information developed in the selection process to this point, the City shall select, in the order of preference, two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the City can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on, until such a contract can be negotiated at a fair and reasonable price. The City reserves the right to make multiple awards as a result of this solicitation. Should the City determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror. The Selection Committee shall recommend the appropriate firms to the City Manager for award.
- b. **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.
- c. **RENEWAL OF CONTRACT:** This contract may be renewed by the City of Winchester for four (4) successive twelve (12) month period under the terms and conditions of the original contract except as stated in i.. and ii. 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.
 - i. 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 Services 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.
 - ii. 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 Services 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.
- d. **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 Bid/Proposal for the purpose of combining requirements to increase efficiency or reduce administrative expenses.

- e. **ADVERTISING:** In the event a contract is awarded for supplies, equipment, or services resulting from this bid/proposal, no indication of such sales or services to the City of Winchester will be used in product literature or advertising. The contractor shall not state in any of its advertising or product literature that the City of Winchester or any agency or institution of the Commonwealth has purchased or uses its products or services.
- f. **BID ACCEPTANCE PERIOD:** Any bid in response to this solicitation shall be valid for (60) days. At the end of the (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.
- g. **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.
- h. **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.
- i. **OWNERSHIP OF INTELLECTUAL PROPERTY:** All copyright and patent rights to all papers, reports, forms, materials, creations, or inventions created or developed in the performance of this contract shall become the sole property of the City of Winchester. On request, the contractor shall promptly provide an acknowledgment or assignment in a tangible form satisfactory to the City to evidence the City's sole ownership of specifically identified intellectual property created or developed in the performance of the contract.

j. **SECTION 1 – GENERAL**

1.1 Standard of Performance.

ENGINEER shall provide OWNER professional engineering and related services in all aspects of the Program to which this Agreement applies as hereinafter provided. ENGINEER shall serve as OWNER's professional engineering representative for each Task Order of the Program. ENGINEER may employ such ENGINEER's Consultants as ENGINEER deems necessary to assist in the performance or furnishing of professional engineering and related services hereunder. OWNER shall not require ENGINEER to employ any Consultant unacceptable to ENGINEER.

ENGINEER will provide key staff members and the Program Manager as stated in ENGINEER's Proposal. The Program Manager assigned to the OWNER will be _____ . Any change in the assigned Program Manager must be approved by OWNER as a written amendment to this Agreement.

1.2 Independent Contractor.

In the performance of the services under this agreement, ENGINEER shall be an independent contractor, maintaining complete control of the ENGINEER's personnel and operations. As such, ENGINEER shall pay all salaries, wages, expenses, social security taxes, federal and state unemployment taxes and any similar taxes relating to

the performance of this agreement. The ENGINEER, its employees, and agents shall in no way be regarded as employees of the OWNER.

1.3 Definitions.

Wherever used in this Agreement the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

- 1.31 *Additional Services.* Additional Services means the services to be performed for, or furnished to, OWNER by ENGINEER described in Section 3.
- 1.32 *Agreement.* Agreement means the subsequent Contract between OWNER and ENGINEER for Professional Services generated from this RFP.
- 1.33 *Basic Services.* Basic Services means the services to be performed for or furnished to OWNER by ENGINEER generally described in Section 2 and as set forth in each separate Task Order.
- 1.34 *Construction Cost.* Construction Cost means the total cost of construction of each Task Order Project described or specified by ENGINEER. Construction Cost does not include ENGINEER's compensation and expenses, the cost of land, rights-of-way, or compensation for, or damages to, properties, or OWNER's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to OWNER pursuant to Section 4. Construction Cost is one of the items comprising Total Project Costs.
- 1.35 *Contractor.* Contractor means the person or entity with whom OWNER enters into a written agreement covering construction work to be performed or furnished with respect to each Task Order Project.
- 1.36 *ENGINEER's Consultant.* ENGINEER's Consultant means a person or entity having a contract with ENGINEER to provide Basic or Additional Services as ENGINEER's independent professional consultant engaged directly on the Project.
- 1.37 *Program Manager.* ENGINEER's employee assigned to the OWNER and responsible for the conduct of the work, schedule and fee of all Task Orders to be completed under this Agreement. The Program Manager is the primary contact between the OWNER and ENGINEER.
- 1.38 *Reimbursable Expenses.* Reimbursable Expenses means the expenses incurred by ENGINEER directly in connection with the performance or furnishing of Basic and Additional Services for the Program for which OWNER shall pay ENGINEER as indicated in Section 6.
- 1.39 *Resident Project Representative.* Resident Project Representative means the authorized representative of ENGINEER who will assist ENGINEER at the site during the Construction Phase of each Task Order Project when called for under a particular Task Order. The Resident Project Representative will be ENGINEER's agent or employee and under ENGINEER's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by OWNER. The duties and responsibilities of the Resident Project Representative are set

forth in Exhibit A, “Duties, Responsibilities and Limitations of Resident Project Representative”.

1.40 *Standard General Conditions.* *Standard General Conditions* means the *City Required General Terms and Conditions* of the Request for Proposal (RFP).

1.41 *Task Order.* The individual Project assigned to the ENGINEER containing the Work Plan, schedule, estimated fee, and purchase order.

1.42 *Total Project Costs.* Total Project Costs means the sum of the Construction Cost, allowances for contingencies, the total costs of professional and related services provided by ENGINEER and (on the basis of information furnished by OWNER) allowances for other items, such as charges of all other professionals and consultants, the cost of land and rights-of-way, compensation for or damages to properties, interest and financing charges and other services to be provided by others to OWNER.

1.43 *Work Plan.* The individual scope of work, separated into six phases as described in Section 2, and defining the work effort and steps to be accomplished in order to complete a particular Task Order. Each Task Order will have a separate Work Plan.

k. **SECTION 2 – BASIC SERVICES OF ENGINEER**

In concert with this section, the ENGINEER will provide a written proposal, in the form of a Proposed Task Order consisting of a Work Plan, level of effort (person-hours) and schedule for each Task Order requested by the OWNER. Task Orders shall be structured into six phases (paragraph 2.1 to 2.6). When providing services for Task Orders that do not include all six phases, ENGINEER shall note which phases are not included. The procedures for individual Task Orders shall be as follows:

Step 1: The ENGINEER shall be notified by the OWNER of the scope of a particular task to be performed, whereupon the ENGINEER and OWNER shall mutually develop a description of the Task Order Project.

Step 2: The ENGINEER shall prepare a written Proposed Task Order stating the scope of services within the Work Plan; the schedule; estimated person-hours per phase by category, ENGINEER’s Consultant costs and other direct costs; a list of materials and resources required of the OWNER, and the estimated not-to-exceed fee.

Step 3: Following negotiations and OWNER’s approval of the Proposed Task Order, the Task Order will be numbered, and a Purchase Order shall be issued by the OWNER, signifying the approval of the Task Order and constituting the notice to proceed with the work. No work is authorized until the ENGINEER has been issued a numbered Purchase Order. Work performed prior to such issuance shall be performed at the ENGINEER’s risk.

Step 4: The ENGINEER shall advise the OWNER of the progress of the work on a monthly basis. Changes or modifications in the Work Plan, which will affect the fee and/or schedule, shall be brought to the attention of the OWNER as soon as the ENGINEER recognizes the change within the monthly report under “variances” and thereafter in a written Proposed Amendment to the Task Order. Additional work effort beyond the agreed upon Work Plan or schedule shall be authorized by the OWNER in writing, in advance.

2.1 Report Phase.

Under this phase, and for each Task Order so required, ENGINEER shall:

- 2.1.1. Review available data and consult with OWNER as necessary to understand OWNER's requirements.
- 2.1.2. Advise OWNER as to the necessity of OWNER's providing, or obtaining from others, data or services that are not part of ENGINEER's Basic Services, and assist OWNER in obtaining such data and services.
- 2.1.3. Identify and analyze requirements of governmental agencies having jurisdiction to approve portions of each Task Order designed or specified by ENGINEER.
- 2.1.4. Evaluate various alternate solutions available to OWNER and, after consultation with Owner, recommend to OWNER those solutions that in ENGINEER's judgment best meet OWNER's requirements.
- 2.1.5. Provide, within the period stipulated in each Task Order, a report (the Basis of Design Report) which will contain the statement of OWNER's requirements and, as appropriate, will contain schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the considerations involved and the alternate solutions available to OWNER. Each Report will be accompanied by ENGINEER's opinion of Total Project Costs for each alternative and the solution which is so recommended, including the following which will be separately itemized: opinion of Construction Cost, allowances for contingencies and for the estimated total costs of professional services provided by ENGINEER and, on the basis of information furnished by OWNER, allowances for other items and services included within the definition of Total Project Costs.
- 2.1.6. ENGINEER's services under the Report Phase will be considered complete when OWNER has accepted the Basis of Design Report in writing.

2.2 Design Phase

After acceptance of the Basis of Design Report by OWNER, selection by OWNER of a recommended solution and indication of any specific modifications or changes in the scope, extent, character or design requirements contained in the report by OWNER, ENGINEER shall:

- 2.2.1. On the basis of the solution selected by OWNER and the specific modifications or changes in the scope, extent, character or design requirements of each Task Order Project agreed upon by OWNER and ENGINEER, provide, within the period stipulated in the written Task Order, a Preliminary Engineering Report (PER) consisting of final design criteria, preliminary drawings, outline specifications, lists of project materials and equipment selection.
- 2.2.2. Advise OWNER if additional studies, data or other information or services of the types described in paragraph 4.5 are necessary and assist OWNER in obtaining such studies, data or other information and services.
- 2.2.3. Based on the information contained in the PER, submit a revised opinion of Construction Cost and any adjustments to Total Project Costs known to ENGINEER, which will be itemized as stipulated in paragraph 2.1.5.

ENGINEER's services under the PER task will be considered complete when the PER has been accepted in writing by OWNER, plus such additional time as may be considered reasonable for obtaining approval of government authorities, such as the Virginia Department of Health and the Department of Environmental Quality having jurisdiction to approve the PER. After acceptance by OWNER of the PER, revised

opinion of Construction Cost and indication of any specific modifications or changes in the scope, extent, character or design requirements of each Task Order Project desired by OWNER, Engineer shall:

- 2.2.4. Prepare for incorporation in the Contract Documents final Drawings and Specifications showing the scope, extent and character of the work to be performed and provided by Contractor.
- 2.2.5. Advise OWNER of any adjustments to the opinion of Construction Cost and any adjustments to Total Project Costs known to ENGINEER.
- 2.2.6. Utilizing OWNER's standards, prepare for review and approval by OWNER, its legal counsel, contract agreement forms, general conditions and supplementary conditions, bid forms, invitations to bid and instructions to bidders, and assist in the preparation of other related documents as required for each Task Order Project.
- 2.2.7. Furnish the above documents, Drawings and Specifications to, and review them with, OWNER.
- 2.2.8. Submit the above documents, Drawings and Specifications and the revised opinion of probable Construction Cost within the stipulated period.

ENGINEER's services under the Design Phase will be considered complete when the submittals have been accepted in writing by OWNER, plus such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER.

2.3 Permit Phase.

This phase will run concurrently with the Report and Design Phases and is intended to provide focus on the myriad of permits that are required for construction projects. Under this Phase, ENGINEER will provide a detailed plan to meet all permit requirements for each Project, to include, but not necessarily limited to, the Virginia Department of Health, Department of Environmental Quality, Virginia Department of Transportation, City of Winchester land use permits (such as Commission Permit, Special Exemption, Comprehensive Plan Amendment), City of Winchester site plan permits, U.S. Army Corps of Engineers, and the Virginia Marine Resources Commission. Under this Phase, ENGINEER will:

- 2.3.1. File application for permits and approvals of such governmental authorities that have jurisdiction to review or approve the final design.

2.4 Bidding Phase.

After acceptance by OWNER of the ENGINEER's Drawings, Specifications and other Design Phase documentation, and upon written authorization to proceed, ENGINEER shall provide to OWNER bound copies of final Drawings, Specifications and contract documents and shall:

- 2.4.1. Assist OWNER in advertising for and obtaining bids for construction, materials, equipment and services; and, attend pre-bid conferences, if any.
- 2.4.2. Issue Addenda to OWNER for distribution as appropriate to clarify, correct or change the Bidding Documents.

- 2.4.3. Consult with OWNER as to the acceptability of subcontractors, suppliers and other persons and entities proposed by contractor for those portions of the work as to which such acceptability is required by the Bidding Documents.
- 2.4.4. Attend the bid opening and assist OWNER in preparing bid tabulation sheets, evaluating bids and assembling and awarding contracts for construction, materials, equipment and services
- 2.4.5. The Bidding Phase will terminate and the services to be performed or furnished hereunder will be considered complete upon the issuance of the Notice to Proceed from OWNER or upon cessation of negotiations with prospective Contractors.

2.5 Construction Phase.

During the Construction Phase:

- 2.5.1. *General Administration of Construction Contract.* ENGINEER shall consult with and advise OWNER and act as OWNER's representative as provided in the *Standard General Conditions*. The extent and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said *Standard General Conditions* may be modified by OWNER as provided in each Task Order. When specifically provided within a particular Task Order OWNER's instructions to Contractor will be issued through ENGINEER, who shall have authority to act on behalf of OWNER in dealings with Contractor, otherwise the OWNER will provide instructions to the Contractor directly.
- 2.5.2. *Visits to Site and Observations of Construction.* In connection with observations of the work of Contractor while it is in progress:
 - 2.5.2.1. ENGINEER shall make visits to the project site at intervals appropriate to the various stages of construction as agreed in each Task Order. The purpose of visits is to observe as an experienced and qualified design professional, the progress and quality of the various aspects of Contractor's work. ENGINEER shall provide the services of a Resident Project Representative only when specifically provided within a particular Task Order. Based on information obtained during such visits and observations, ENGINEER shall determine if work is proceeding in accordance with the Contract Documents and shall keep OWNER informed of the deficiencies and issues for resolution when so observed.
 - 2.5.2.2. *Purpose.* The purpose of ENGINEER's visits and, where required per Task Order, representation by the Resident Project Representative will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase. In addition, ENGINEER's efforts are to provide for OWNER confidence that the completed work of Contractor will conform to the Contract Documents and that the integrity of the design concept has been implemented and preserved by Contractor. ENGINEER shall not supervise, direct or have control over Contractor's work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work.
- 2.5.3. *Defective Work.* During such visits and on the basis of such observations, ENGINEER shall disapprove, or reject, Contractor's work while it is in progress if ENGINEER believes that such work is not reasonably likely to produce a completed Project that

conforms to the Contract Documents or that it will prejudice the integrity of the design concept of the completed facility as described in the Contract Documents.

- 2.5.4. *Clarification and Interpretations; Field Orders.* ENGINEER shall issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of the work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. ENGINEER may issue Field Orders authorizing minor variations from the requirements of the Contract Documents, but may not authorize changes in price or time without the approval of the OWNER. If the Task Order Project does not call for the ENGINEER to provide a Resident Project Representative, OWNER has the option of corresponding directly with the Contractor.
- 2.5.5. *Change Orders and Work Change Directives.* Engineer shall recommend Change Orders and Work Change Directives to OWNER as appropriate, and shall prepare Change Orders and Work Change Directives as approved by the OWNER. If the Task Order Project does not call for the ENGINEER to provide a Resident Project Representative, OWNER has the option of corresponding directly with the Contractor.
- 2.5.6. *Shop Drawings.* ENGINEER shall review and provide appropriate action in respect of Shop Drawings and Samples and other data, which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed facility to be provided by the Task Order as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.
- 2.5.7. *Substitutes.* ENGINEER shall evaluate and may only recommend to OWNER the acceptability of substitute or “or-equal” materials and equipment proposed by Contractor.
- 2.5.8. *Inspections and Tests.* ENGINEER may require special inspections or tests of the work, and shall receive and review all certificates of inspections, tests and approvals required by laws, rules, regulations, ordinances, codes, or the Contract Documents. ENGINEER’s review of such certificates will be for the purpose of determining that the results certified are in compliance with the Contract Documents, but will not constitute an independent evaluation such that the content or procedures of such inspections, tests or approvals guarantee compliance with the Contract Documents.
- 2.5.9. *Disagreements between OWNER and Contractor.* ENGINEER shall render recommendations on all claims of OWNER and Contractor affecting price, time, acceptability of the work, or the interpretation of the Contract Documents pertaining to the execution and progress of the work.
- 2.5.10. *Applications for Payment.* Unless the ENGINEER provides a Resident Project Representative, OWNER will review and approve progress payments. For Task Order Projects where the ENGINEER provides a Resident Project Representative, and based on ENGINEER’s on-site observations as an experienced and qualified design professional and on review of Applications for Payment and the accompanying data and schedules, ENGINEER shall recommend the amounts that Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER’s representation to OWNER, based on such observations and review, that, to the best of ENGINEER’s knowledge, information and belief, the work has progressed to the point indicated, the quality of such work is in accordance with the Contract Documents (subject to an evaluation of such work as a functioning whole

prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment have been fulfilled.

2.5.11. *Contractor's Completion Documents.* To the extent of effort stipulated in each Task Order ENGINEER shall receive, review and transmit to OWNER with written comments, maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, an marked-up record documents (including Shop Drawings, Samples and other data approved as provided under paragraph 2.5.6 and marked-up record drawings under paragraph 2.5.14) which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment.

2.5.12. *Substantial Completion.* Following notice from Contractor that Contractor considers the entire work ready for its intended use, ENGINEER and OWNER, accompanied by Contractor, shall conduct an inspection to determine if the work is substantially complete. If after considering any objections of OWNER, ENGINEER considers the work substantially complete, ENGINEER shall deliver a certificate of Substantial Completion to OWNER and Contractor.

2.5.13. *Final Notice of Acceptability of the Work.* ENGINEER shall conduct a final inspection to determine if the completed work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER shall also provide a notice that the work is acceptable to the best of ENGINEER's knowledge, information and belief and based on the extent of the services performed and furnished by ENGINEER under this Agreement.

2.5.14. *Record Drawings.* When specifically called for in the Task Order, ENGINEER shall prepare in digital set of record drawings showing record information which ENGINEER considers significant based on the Drawings, Shop Drawings, and other record documents furnished by Contractor to ENGINEER which were annotated by Contractor to show all changes made during construction. ENGINEER will not be responsible for any errors in or omissions in the information provided by Contractor that is incorporated in the record drawings or other record documents.

2.5.15. *Limitation of Responsibilities.* ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any subcontractor, any supplier, or of any other person or organization performing or furnishing any of the work. ENGINEER shall not be responsible for Contractor's failure to perform or furnish the work in accordance with the Contract Documents, unless ENGINEER has actual knowledge of such errors by Contractor and failed to notify OWNER.

2.5.16. *Duration of Construction Phase.* The Construction Phase will commence with the issuance of the Notice to Proceed by OWNER and will terminate upon written recommendation by ENGINEER of final payment.

2.6 Operational Phase.

During the Operational Phase, ENGINEER shall, when requested by OWNER:

2.6.1. Provide assistance in connection with refining and adjusting any equipment or system.

- 2.6.2. Assist OWNER in training OWNER's staff to operate and maintain the equipment and/or process.
- 2.6.3. Assist OWNER in developing systems and procedures for control of the operation and maintenance of and record keeping for each Task Order.
- 2.6.4. In company with OWNER, visit the project site to observe any apparent defects in the completed work, assist OWNER in consultations and discussions with Contractor concerning correction of such defects, and make recommendations as to replacement or correction of defective work.
- 2.6.5. Provide miscellaneous services as requested by OWNER in connection with "Project Closeout" as defined in the *Standard General Conditions*.
- 2.6.6. The Operational Phase will terminate one year after the date of Substantial Completion or upon written recommendation by ENGINEER of final payment, whichever occurs last.

1. **SECTION 3 – ADDITIONAL SERVICES OF ENGINEER**

3.1 **Additional Services Requiring Authorization in Advance.**

If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the types listed in paragraphs 3.1.1 through 3.1.15, inclusive. These services are not included as part of Basic Services except to the extent otherwise provided in each Task Order. These services will be paid for by OWNER as indicated in Section 6.

- 3.1.1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans or advances in connection with a Task Order Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effect on the design requirements of the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the facility to be completed under the Task Order.
- 3.1.2. Services to provide record drawings of prior work, or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.
- 3.1.3. Services resulting from significant changes in the scope, extent or character of the portions of each Task Order Project designed or specified by ENGINEER or its design requirements including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction; and revising previously accepted reports, Drawings, Specifications or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such reports, Drawings, Specifications, or Contract Documents, or are due to any other causes beyond ENGINEER's control.
- 3.1.4. Services resulting from facts revealed about conditions, which are different from information about such conditions, provided under paragraph 4.5.
- 3.1.5. Providing renderings or scaled models for OWNER's use.
- 3.1.6. Preparing documents for alternate bids requested by OWNER for Contractor's work, which is not executed, or documents for out-of-sequence work.

- 3.1.7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance and overhead expenses; cash flow and financial evaluations, rate schedules and appraisals; assistance in obtaining financing; evaluating processes available for licensing and assisting OWNER in obtaining process licensing; detailed quantity surveys of materials, equipment and labor; and audits or inventories required in connection with construction performed by OWNER.
- 3.1.8. Furnishing services of ENGINEER's Consultants for other than Basic Services; and furnishing data or services of the types described in paragraph 4.5.
- 3.1.9. Participating in structured independent review processes, including, but not limited to, Construction Management, Peer Review, Value Engineering and Construct-ability Review requested by OWNER; and performing or furnishing services required to revise reports, Drawings, Specifications or Contract Documents as a result of such review processes.
- 3.1.10. Assistance in connection with bid protests, rebidding or renegotiating contracts for construction, materials, equipment or services.
- 3.1.11. Provide field surveys for design purposes and property, boundary, easement, right-of-way, topographic and utility services or data, including relevant reference points over and above that stipulated in each Task Order and property surveys or related engineering services needed for the transfer of interests in real property; and other special field surveys.
- 3.1.12. Preparation of operating, maintenance and staffing manuals to supplement Basic Services under paragraph 2.6.3.
- 3.1.13. Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration or other legal proceeding (except for assistance included as part of Basic Services under paragraphs 2.1.3 and 2.3.1).
- 3.1.14. Other additional services performed or furnished by ENGINEER in connection with each Task Order Project, including services, which are to be furnished by OWNER under Section 4, and services, not otherwise provided for in this Agreement.
- 3.1.15. When required by the Contract Documents in connection with the performance or furnishings of ENGINEER's services during the Construction Phase, ENGINEER shall perform or furnish, upon written authorization from OWNER, Additional Services of the types listed in paragraphs 3.1.15.1 through 3.1.15.4, inclusive. These services are not included as part of Basic Services except to the extent provided in each Task Order.
 - 3.1.15.1. Providing field surveys to enable Contractor to proceed with its work.
 - 3.1.15.2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the construction contract in evaluating and determining the acceptability of a substitution which is inappropriate for the Project or to evaluate an excessive number of substitutions.
 - 3.1.15.3. Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of materials, equipment or energy shortages.

- 3.1.15.4. Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective, neglected or delayed work of Contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, or (4) default by Contractor.
- 3.1.15.5. Evaluating more than two claims submitted by Contractor or others in connection with the work.

m. **SECTION 4 – OWNER’S RESPONSIBILITIES**

Except as otherwise provided in each Task Order, OWNER shall provide the following in a timely manner so as not to delay the services of ENGINEER.

- 4.1. A person designated in writing to act as OWNER’s Project Manager with respect to the services of each particular Task Order. Such person will transmit instruction, receive information, interpret and define OWNER’s policies and decisions with respect to ENGINEER’s services.
- 4.2. All criteria and information as to OWNER’s requirements for each Task Order, including design objectives and constraints, space, capacity and performance requirements, flexibility and expendability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.
- 4.3. Access to available information pertinent to each Task Order including previous reports and any other data relative to design or construction.
- 4.4. Examine alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by ENGINEER and render decisions pertaining thereto in a timely manner.
- 4.5. Data prepared by or services of others, including explorations and tests of subsurface conditions at or contiguous to the site, the services of an independent testing laboratory, or hydrographic surveys over and above that stipulated in each Task Order.
- 4.6. Arrange for access to and make provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this Agreement.
- 4.7. Advise ENGINEER of the identity and scope of services of independent consultants employed by OWNER to perform or furnish services in regard to each Task Order, including, but not limited to, Construction Management, Cost Estimating, Peer Review, Value Engineering and Construct-ability Review. If OWNER designates a person or entity other than, or in addition to, ENGINEER to represent OWNER at the site. OWNER shall define the duties, responsibilities and limitations or authority of such other party and the relation thereof to the duties, responsibilities and authority of ENGINEER.
- 4.8. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and substantial completion and final payment inspections.

n. **SECTION 5 – TIMES FOR RENDERING SERVICES**

All work under this Agreement shall be assigned within twelve (12) months from the date of the Contract unless both parties agree in writing to an extension beyond that date. The Contract may be extended for up to four (4) additional twelve-month periods should conditions be such that extension of the Contract is in the best interest of the OWNER.

5.1. ENGINEER's services and compensation under this Agreement will be agreed to in advance of the orderly and continuous progress of each Task Order. Unless specific periods of time or specific dates for providing services are specified in the Task Order Project, ENGINEER's obligation to render services hereunder will extend for all six phases, including extra work and required extensions thereto.

5.2 If in any Task Order, specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided and if such periods of time or dates are materially changed or extended through no fault of ENGINEER, the compensation ceiling provided for in affected Task Orders shall be subject to equitable adjustment. If OWNER has requested changes in the scope, extent or character of the Task Order, the time of performance of ENGINEER's services shall be adjusted in writing as an amendment to each Task Order affected.

o. **SECTION 6 – PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES**

6.1 Methods of Payment for Services and Expenses of ENGINEER.

6.1.1. *For Basic Services.* OWNER shall pay ENGINEER for Basic Services performed or furnished under Section 2 on the basis of Hourly Billing Rates and Other Direct Costs for work performed by principals and employees engaged directly on the Program and for reimbursable expensed incurred for the Program.

6.1.2. *Estimated Compensation for Basic Services.* ENGINEER's estimate of the amount that will become payable for Basic Services pursuant to paragraphs 6.1.1 will be based on each Task Order. Each Task Order amount for Basic Services under this Agreement will be based on a not-to-exceed estimate or lump sum amount, whichever is deemed appropriate by the OWNER. Notwithstanding the fact that the estimated amount for Basic Services is exceeded, ENGINEER shall receive compensation for all Basic Services furnished or performed under this Agreement, calculated as set forth in paragraph 6.1.1.

6.1.3. *Notice of Relationship of Payments to Estimated Compensation for Basic Services.* If it becomes apparent to ENGINEER at any time before Basic Services to be performed or furnished under this Agreement have been about eighty percent completed that the total amount of compensation to be paid to ENGINEER on account of Basic Services pursuant to paragraph 6.1.1. will exceed ENGINEER's estimated amount, ENGINEER shall give OWNER written notice thereof. Promptly thereafter OWNER and ENGINEER shall review the matter of compensation for such Basic Services, and either OWNER shall agree to additional compensation, or OWNER and ENGINEER shall agree to a reduction in the remaining services to be rendered by ENGINEER under this Agreement so that total compensation for such Basic Services will not exceed said estimated amount. The ENGINEER shall only be paid for services rendered if ENGINEER exceeds the estimated amount when OWNER and ENGINEER have agreed in advance to an increase in the compensation

due to ENGINEER or a reduction in the remaining services, as approved in the form of a Task Order Amendment. In cases where the work has progressed inefficiently, the OWNER has the right to ask for completion of the work without additional compensation.

6.1.4. *For Additional Services.* OWNER shall pay ENGINEER for Additional Services performed as provided in Paragraph 6.1.1.

6.1.5. *Service as a Witness.* For services performed by ENGINEER's principals and employees as consultants or witnesses in any litigation, arbitration or other legal or administrative proceeding under paragraph 3.1.13. Compensation will be on the basis provided in paragraph 6.1.1.

6.1.6. *Other Provisions Concerning Payments. Preparation of Invoices.* Invoices for Basic and Additional Services and Reimbursable Expenses will be prepared in accordance with OWNER's summary billing format and ENGINEER's standard invoicing practices and will be submitted to OWNER monthly for each Task Order. The invoice should include the Purchase Order Number, Contract Number and date of services, a listing of staff categories that performed the work, and the monthly report described in Section 2. The amount billed for Basic and Additional Services for each Task Order shall not exceed the fee ceiling as stipulated in the approved ENGINEER's Task Order.

6.2.1. *Unpaid Invoices.* If OWNER fails to make any payment due ENGINEER for services and expenses within thirty days after receipt of ENGINEER's invoice therefor, the amounts due ENGINEER will be increased at the rate of 1.0 percent per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and, in the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

6.2.2. *Payments Upon Termination by OWNER for Cause, Convenience, or Non-funding.* In the event of termination by OWNER, payments due ENGINEER in accordance with this Agreement for all such services performed or furnished by ENGINEER, and ENGINEER's Consultants, through the completion of such work will constitute total payment for such services. ENGINEER will be reimbursed for all previously authorized Additional Services and Reimbursable Expenses actually incurred.

6.2.3. *Termination by ENGINEER for Cause.* In the event of termination by ENGINEER for cause under paragraph 8.1.1, ENGINEER shall be entitled to receive full compensation as set forth in paragraph 6.2.2.

6.2.4. *Records of ENGINEER's Costs.* Records of ENGINEER's costs pertinent to ENGINEER's compensation under this Agreement will be kept in accordance with generally accepted accounting practices. Copies will be made available to OWNER at cost upon request of the OWNER.

p. **SECTION 7 – OPINIONS OF COST**

ENGINEER's opinions of Construction Costs and Total Project Costs provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional engineer generally familiar with the construction industry. It is understood that ENGINEER cannot and does not guarantee that bids or actual costs will not vary from opinions of Total Project or Construction Costs prepared by ENGINEER.

J. 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.

- A. **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.
- B. **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.

- C. **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.
- D. **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.
- E. **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.
- F. **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.
- G. **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.
- H. **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.

I. PAYMENT:

1. 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*).

2. To Subcontractors:

- a. 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.
- b. 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.

K. PRECEDENCE OF TERMS: The terms contained in all documents prepared by the City including but not limited to the RFP, General Terms and Conditions, and Special Terms and Conditions shall take precedence over any documents prepared or submitted by the Contractor. 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:

1. 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).

2. 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/offers) 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/offers) 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:

1. 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.

2. Employer's Liability - \$100,000.

3. 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.

4. 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.

K. CONTRACT
#201455

THIS CONTRACT was made and entered into this ____ day of _____, 2016, 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 Request for Proposal 201455 (RFP #’201455’), dated October 2016, to provide PROFESSIONAL ENGINEERING AND RELATED SERVICES FOR AN ANNUAL CONTRACT TO THE CITY OF WINCHSTER FOR VARIOUS PROJECTS, as more fully described and requested in the RFP, and;

WHEREAS, Contractor has submitted a Proposal in response to the RFP dated 2016, 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 RFP #201455 The City’s procurement and the Contractor’s response shall form part of the Contract. In the case of conflicts, discrepancies, errors or omissions among the City’s procurement, the Contractor’s response, and the main body of the Contract, the documents and amendments to them shall take precedence and govern in the following order:
 - a) Contract
 - b) Negotiation Summary
 - c) City’s Procurement Document(s)
 - d) Contractor’s Response
 - e) Other Documents

The City shall pay the Contractor the assigned hourly rates. The Contractor shall forward an invoice for such work to the public services director requesting services on or about the first and fifteenth days of each month during the term of this Contract. 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 twelve (12) months 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 four (4) additional twelve (12) month 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 RFP #201455. 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: _____