



REQUEST FOR PROPOSALS (RFP)

ISSUE DATE: August 13, 2017

RFP No. 2017-1

TITLE: **ANNUAL CIVIL ENGINEERING SERVICES CONTRACT FOR
SMALL PROJECTS**

ISSUED BY:
Town of Windsor, Virginia
8 E. Windsor Blvd.
Windsor, Virginia 23487

PERIOD OF CONTRACT: ONE (1) YEAR FROM THE DATE OF EXECUTION WITH OPTION OF FOUR (4) ADDITIONAL ONE-YEAR TERMS. THE CONTRACT SHALL RENEW AUTOMATICALLY, UNLESS THE TOWN GIVES WRITTEN NOTICE, SIXTY (60) DAYS IN ADVANCE OF THE EXPIRATION FOR EACH OF THE RENEWAL TERMS.

SEALED PROPOSALS WILL BE RECEIVED UNTIL **4:00 p.m., August 31, 2017** for furnishing the services described herein. See Section VII and VIII for specific instructions for the completion of proposals.

Inquiries for Information Should Be Directed to **Brian Camden, Alpha Corporation, via e-mail only** at: Brian.Camden@alphacorporation.com. All questions must be submitted via e-mail **before 5:00 p.m., August 25 2017**. If necessary, an addendum will be posted on the Town website at: www.windsor-va.gov. **It shall be the responsibility of the prospective offeror to monitor the Town's website for published addenda and to have all addenda signed by an authorized representative of the company. All addenda must be acknowledged with the signed proposal.**

All Proposals are to be delivered to:

Michael Stallings, Town Manager
Town of Windsor
8 E. Windsor Blvd.
P. O. Box 307
Windsor, VA 23487

SUBMITTED TO THE TOWN OF WINDSOR

In Compliance With This Request for Proposal And To All The Conditions Imposed Therein and Hereby Incorporated By Reference, The Undersigned Offers, And Agrees To Furnish Services requested in the solicitation.

THIS SECTION IS TO BE COMPLETED BY OFFEROR'S AUTHORIZED REPRESENTATIVE.

NAME AND ADDRESS OF FIRM:

_____ Date: _____

_____ Zip Code: _____

By: _____

(Sign in Ink)

Name: _____

(Please Print)

Title: _____

FEI/FINT No: _____

Phone: _____

E-mail: _____

Website: _____

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I. PURPOSE:

The Town of Windsor is seeking proposals from consulting engineering firms who wish to be considered to provide professional engineering on an annual basis for the design of various civil engineering projects (water systems, mapping, sidewalks, etc.) on an as needed basis. It is anticipated that award will be made to one consultant and a contract will be awarded under the procurement process to cover the requested services. After the discussion stage (oral presentations are generally conducted if two or more Offerors are determined to be fully qualified, responsible, and suitable by the Selection Panel), negotiations shall be conducted as specified. The successful firm will be required to execute a standard Town Architect-Engineer contract

II. BACKGROUND:

The selected firms will perform engineering services throughout the year on an "As Needed" basis. The proposed one-year limited services term contract with optional four (4) one-year renewable terms will not exceed a maximum value of \$100,000 per contract term and each project will not exceed a maximum value of \$500,000. This work is to be accomplished utilizing computerized design and drafting systems compatible with the Town of Windsor's automated design and drafting systems. The design work will be in 3 dimensions and incorporate Building Information Modeling techniques. Projects will be developed utilizing Town of Windsor policies and procedures and incorporate FHWA's guidelines, VDOT specifications, Hampton Roads Regional Construction Standards, and Town of Windsor's Manual as needed.

This Request for Proposal does not commit the Town of Windsor to award a contract, to pay any costs incurred in the preparation of a proposal for this request, or to procure or contract for services. The Town of Windsor reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified firm or to modify or cancel in part or in its entirety the Request for Proposal, if it is in the best interest of the Town of Windsor. Each award contract will be negotiated and awarded following the procedures in accordance with Virginia Code §§2.2-4302.2(A)(4) and 2.2-4303.1, Paragraph 3, Procurement of Professional Services; and Town of Windsor Regulations.

III. SCOPE OF SERVICES:

The Scope of Services is detailed in an attachment entitled "Attachment C – Detailed Scope of Services".

At any time, the Town of Windsor may consider projects assigned under this contract to be delivered through a design-build option. If the Town of Windsor decides to deliver a project through design-build option, the Consultants awarded a contract pursuant to this RFP and any of its team members may not be allowed to participate in ANY subsequent design-build contracts related to that project as determined in the sole discretion of the Town. The Town of Windsor will notify the Consultant(s) awarded a contract pursuant to this RFP if there is a change regarding the Town's intended project delivery method in advance of the issuance of an RFP for design-build services. The conflict of interest disqualification determination will be made on a case by case basis at such time.

IV. SCHEDULE OF EVENTS:

The Town will make every effort to adhere to the following schedule leading to the award of a contract; however, this schedule is subject to change. Offerors will be notified of significant schedule changes:

Issue RFP: August 13, 2017

Receive Questions: August 25, 2017

Receive Responses: August 31, 2017

Short List Interviews: September 14, 2017

Offeror Selection: September 28, 2017

Town Council Approval: October 10, 2017

V. CONFLICTS AND QUESTIONS:

Should there be conflicts between the proposal documents and the final executed contract document; the final contract shall take precedence.

Questions regarding this Request for Proposals should be directed in writing to Brian Camden, Alpha Corporation; Brian.camden@alphacorporation.com. All questions and requests for clarification must be received before **5:00 p.m., Friday, August 25, 2017.**

VI. PROPOSAL PREPARATION AND INSTRUCTIONS

In order to be considered for selection, Offerors must submit a complete response to this solicitation. One (1) original and two (2) copies of the proposal must be submitted to the Town. No other distribution of the proposal shall be made by the Offeror.

- A. Proposals shall be signed by an authorized representative of the offeror. All requested information must be submitted. Failure to submit all information requested may result in the Town requiring prompt submission of missing information, giving a lowered evaluation of the proposal, and/or finding the proposal not responsive. Mandatory requirements are those required by law or such that they are determined in the sole discretion of the Town Manager to be formalities that cannot be waived and are not subject to negotiation.
- B. Proposals should 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. Elaborate brochures and excessive promotional materials are not required or desired.
- 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 should reference the paragraph number of the corresponding section of the RFP. It is also helpful to cite the paragraph number, sub-number, 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-number should be cross 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 an area of the requirement 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. The Proposal shall be organized in the following order:

- Transmittal letter
- Table of Contents
- Understanding of Scope of Work
- Response to RFP Items in Section VIII, Parts A thru F
- Team organization chart
- Firm Data Sheet
- Certification Regarding Debarment form
- Certification of Compliance with Immigration Laws and Regulations

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 a single volume. The Offeror shall limit the proposal to 20 one-sided typewritten pages. The page limit does not include any tabs or divider sheets. The proposal must be on 8.5 inch by 11 inch paper, and prepared in a 10 to 12 pitch font. Appropriate brochures, photographs or printed materials may be submitted at your option.

E. Ownership of all data, materials and documentation originated and prepared for the Town pursuant to the RFP shall belong exclusively to the Town and shall be subject to public inspection in accordance with the Virginia Freedom of Information Act and Virginia Public Procurement Act. Data, materials, and documents prepared in furtherance of any contract issued as a result of this RFP shall not be distributed to any third parties without the Town's authorization. Any requests for data, materials, and documents by third parties (other than approved subconsultants) made to a Consultant prepared in furtherance of any contract issued as a result of this RFP should be redirected to the Town of Windsor as the owner and custodian of the records.

Trade secrets or proprietary information submitted by the Offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act, provided that the Offeror invokes the protection of Section 2.2-4342 of the Code of Virginia, in writing, either before or at the time the data 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 material submitted must be identified by some distinct method such as highlighting or underlining and must be indicated on the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire proposal as proprietary or trade secrets is not acceptable and will result in rejection and return of the proposal.

F. If more than one firm will participate in the contract, state the type of arrangement between the firms, the names and addresses of all firms, description of the work that each firm will perform, and the percentage of work to be performed by each. Indicate office locations at which the work will be performed. A one page organizational chart showing all firms involved and key personnel assignments and responsibilities is required to be included. It is the intent of this RFP that all services be provided complete in all respects without need for engaging separate technical expertise or professional services.

G. Indicate KEY PERSONNEL ONLY who will be assigned to this project and give the experience record of each. Key personnel are defined as those to whom the project will be assigned and who will be performing the actual design/services. The project manager shall have a minimum of five years' experience in designing/managing municipal water system projects. Indicate the location of the office where the person is currently working if different from where work is to be performed. For

part time personnel, personnel not employed on the date of the form, or personnel used on an “as needed basis” must have their status clearly indicated.

- H. Furthermore, all individuals identified as key personnel in the proposal shall remain on the Consultant’s Team for the duration of the procurement process and, if the Consultant is awarded a contract, the duration of the contract. If extraordinary circumstances require a proposed change, it must be submitted in writing to the Town of Windsor’s Project Manager, who, at his/her sole discretion, will determine whether to authorize a change. Unauthorized changes to the Consultant’s Team at any time during the procurement process may result in elimination of the Consultant’s Team from further consideration.
- I. Give names and detailed addresses of all affiliated and/or subsidiary companies. Indicate which companies are subsidiaries. If uncertain whether another firm is or is not an affiliate, doubt should be resolved in favor of affiliation and the firm should be listed accordingly.

Affiliate - Any business entity which is closely associated to another business entity so that one entity controls or has the power to control the other entity either directly or indirectly; or, when a third party has the power to control or controls both; or where one business entity has been so closely allied with another business entity through an established course of dealings, including but not limited to the lending of financial wherewithal, engaging in joint ventures, etc. as to cause a public perception that the two firms are one entity. Firms which are owned by a holding company or a third party, but otherwise meet the above conditions and do not have interlocking directorships or joint officers serving are not considered affiliates.

VII. SPECIFIC PROPOSAL INSTRUCTIONS:

- A. In three (3) page(s) or less, discuss the firm’s approach for this project.
- B. In three (3) page(s) or less, please provide information on your qualifications to perform the required work (evaluation factors 1-4).
- C. In two (2) page(s) or less, provide information that will indicate your firm’s ability to respond quickly to task assignments, be able to handle multiple tasks concurrently and be able to complete task on accelerated schedules (evaluation factor 5).
- D. In addition to the page restrictions listed above, a maximum of 10 additional pages may be included in the proposal. All pages are to be 8 1/2” X 11” and printed on one side with single-spaced type no smaller than 10 font size.
- E. Please indicate, by executing and returning the attached Certification Regarding Debarment forms, if your firm, subconsultant, subcontractor, or any person associated therewith in the capacity of owner, partner, director, officer or any position involving the administration of federal or state funds:
 - Is currently under suspension, debarment, voluntary exclusion or determination of ineligibility by any federal agency.
 - Has been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years.

- Has a proposed debarment pending; or has been indicted, convicted, or had a civil judgment rendered against it or them by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

Any of the above conditions will not necessarily result in denial of award, but it will be considered in determining offeror responsibility. For any condition noted, indicate to whom it applies, initiating agency, and dates of action. Providing false information may result in federal criminal prosecution or administrative sanctions.

F. If the Consultant or subconsultant does not have the in-house capability to provide non-professional services, each with an estimated cost of \$5,000 or greater, such as diving services, soil drilling, sampling services or laboratory testing, these services must be subcontracted in accordance with state or local procurement procedures (depending on the source of funds for the particular task order and/or project) once a contract is executed, with no DBE or SWaM credit in the selection of the most qualified firm or team. Clearly indicate these services in the proposal.

G. ADMINISTRATIVE:

1. The following services marked with an X will **NOT** be required:

- | | |
|--|--|
| Surveying ____ | Specifications ____ |
| Bridge and Structure Plans <u>X</u> | Materials Analysis <u>X</u> |
| Permit Drawings ____ | Environmental <u>X</u> |
| Hydraulic and Hydrologic Analysis ____ | Road Plans ____ |
| Traffic Data ____ | Traffic Analysis ____ |
| Signs and Signals Plans ____ | Lighting Plans ____ |
| Scour Analysis <u>X</u> | Geotechnical Borings and Analysis <u>X</u> |
| Utility Plans ____ | Landscape Plans ____ |

2. All business entities, except for sole proprietorships, are required to register with the Virginia State Corporation Commission (A Business Registration Guide is available on the Internet at <http://www.state.va.us/scc/division/clk/brg.htm>). Foreign Professional corporations and Foreign Professional Limited Liability Companies must possess a Commonwealth of Virginia Certificate of Authority from the State Corporation Commission to render professional services. Any business entity other than a professional corporation, professional limited liability company or sole proprietorships that do not employ other individuals for which licensing is required must be registered in the Commonwealth of Virginia with the Department of Professional and Occupational Regulation, Virginia Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects (<http://www.state.va.us/dpor>). Board regulations require that all professional corporations and business entities that have branch offices located in Virginia which offer or render any professional services relating to the professions regulated by the Board be registered with the Board. Registration involves completing the required application and submitting the required registration fee for each and every branch office location in the

commonwealth. All branch offices which offer or render any professional service must have at least one full-time resident professional in responsible charge who is licensed in the profession offered or rendered at each branch. All firms involved that are to provide professional services must meet this criterion prior to submitting a proposal to the Town of Windsor. Individual engineers shall meet the requirements of Chapter 4, Title 54.1 of the Code of Virginia.

3. The Town of Windsor will not consider for award any cost proposals submitted by any consultants and will not consent to subcontracting any portions of the contract to any subconsultants in violation of the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens. Firms must submit the completed the attached certification form with their proposals.
4. The method of payment for this contract will be lump sum. For purpose of determining the lump sum fee, an overhead rate shall be established in compliance with cost principles contained in the Federal Acquisition Regulations (FAR) of Part 31 of Title 48 of the Code of Federal Regulations. The overhead rate shall be established by an audit by a cognizant government agency or independent CPA firm.
5. All firms submitting Proposals (prime consultants, joint ventures and subconsultants) must have internal control systems in place that meet federal requirements for accounting. These systems must comply with requirements of 48CFR31, "Federal Acquisition Regulations, Contract Cost Principles and Procedures," and 23CFR172, "Administration of Negotiated Contracts." All firms selected for a project (prime consultants, joint ventures and subconsultants) must submit their FAR audit data to the Town of Windsor within ten work days of being notified of their selection. Should any firm on the Consultant' team fail to submit the required audit data within the ten work days, negotiations will be terminated by the Town of Windsor and the next most qualified team invited to submit a proposal.
6. Ethics in Public Contracting: By submitting a proposal, an Offeror certifies that its proposal is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer or subcontractor in connection with its proposal, and that it has 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.

VIII. DISCLOSURE OF PROPOSAL CONTENTS:

Records Exclusion from Public Disclosure to Inspector General: Consultants may be subject to audit by the Town Auditor or Inspector General of VDOT. Pursuant to the provisions of §2.2-3705.6 (22) of the Code of Virginia, trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including, but not limited to, financial records, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the Inspector General of the Virginia Department of Transportation for the purpose of an audit, special investigation, or any study requested by the Inspector General's Office in accordance with law may, subject to a determination by the Inspector General as described herein, be withheld from public disclosure under the Virginia Freedom of Information Act (FOIA). To enable the Inspector General to identify data or records that may be subject to this exclusion from disclosure under FOIA the private or nongovernmental entity shall, in accord with procedures adopted by the Inspector General, make a written request to the VDOT Inspector General:

- Invoking such exclusion upon submission of the data or other materials for which protection is sought
- Identifying with specific Town the data or other materials for which protection is sought and stating the reasons why protection is necessary

The VDOT Inspector General or the Windsor Town Manager shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial records of the private entity. The Town of Windsor shall make a written determination of the nature and scope of the protection to be afforded by it. Notwithstanding the foregoing, a Consultant's failure to comply with the requirements stated herein and procedures established by the Inspector General for seeking an exclusion pursuant to §2.2-3705.6 (22) of the Code of Virginia shall result in a denial of the exclusion. Requests for exclusion that are submitted after data or other materials for which protection is sought have been submitted will be denied.

If litigation directly or indirectly results from or arises out of a granted exemption for record disclosure pursuant to Virginia Code §§ 2.2-37-5.6(22), 2.2-4342, or any other applicable provision of FOIA or the Virginia Public Procurement Act, the Consultant will be responsible for all litigation costs incurred by the Consultant, the Town of Windsor, and/or VDOT associated with such litigation. In no event shall the Town of Windsor or its officers, employees or agents be liable to the contractor as a result of any disclosure of records or data collected by the Town of Windsor, its officers, employees or agents, pursuant to an audit, special investigation, or any study requested by the Inspector General's Office, whether or not the Inspector General has determined that the requested exclusion from disclosure under FOIA is necessary to protect the trade secrets or financial records of the private entity, and in no event shall the Town, or its officers, employees, or agents be liable to the contractor for any damages or other claims arising directly or indirectly from a determination that the exclusion from public disclosure will not be granted.

IX. SUBMITTAL PROCESS AND INFORMATION:

- A. Submittals shall be prepared simply and economically, providing a straightforward, concise description of the firm's capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content. Elaborate brochures and other representations beyond that sufficient to present a complete and effective proposal are neither required nor desired. One (1) original and five (5) copies of the proposal must be submitted to the Town Manager and received no later than **5:00 PM on August 24, 2017**. Responses received after this time will not be considered.

For submittal via US Postal Service regular mail, send to:

Michael Stallings, Town Manager
 Town of Windsor
 8 E. Windsor Blvd.
 P. O. Box 307
 Windsor, VA 23487
 RFP 2017-1, Annual Civil Engineering Services Contract for Small Projects

- B. The Town of Windsor assures compliance with Title VI of the Civil Rights Act of 1964, as amended. The consultant and all subconsultants selected for this project may be required to submit a Title VI Evaluation Report (EEO-D2) within ten work days of notification of selection when requested by the

Town. This requirement applies to all consulting firms when the contract amount equals or exceeds \$10,000.

- C. The Town of Windsor does not discriminate against an Offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.
- D. Any Offeror who desires to protest the award of a contract shall submit such protest in writing to the Town of Windsor no later than ten days after the announcement of the award. Public announcement of the award shall be posted on the Town of Windsor's website.
- E. Offerors that submit a proposal in response to this RFP may be required to make an oral presentation of their proposal with participation by key personnel. The Town reserves the right to request clarification of information submitted. Failure to provide this additional information within a reasonable time period, as specified by the Town, shall be reason for the Offeror's proposal to be considered non-responsive.
- F. The Town of Windsor shall not be responsible for any expense incurred by the Offeror in preparing and submitting a proposal, for answering any subsequent inquiries, interviews for evaluation, or contract negotiations. All submissions are final, and may not be withdrawn.
- G. The Town will only provide information (or access to the same) which is readily available, and does not propose to prepare any further special reports. The Town reserves the right to charge its normal fees for materials copied.
- H. The right is reserved, as the interests of the Town may require, to revise and/or amend the specifications prior to the date set for acceptance of proposals. The acceptance date may be postponed if deemed necessary by the Town Manager. Such revisions and amendments, if any, will be announced by an addendum to this solicitation.
- I. Late Proposals: To be considered for selection, proposals must be received in the Town Manager's Office by the designated date and hour. Proposals received in the issuing office after the date and hour designated may be disqualified and may not be considered. The Town is not responsible for delays in the delivery of mail by the U.S. Postal Service or private couriers. It is the sole responsibility of the Offeror to insure that its proposal reaches the Purchasing office by the designated date and hour. Receipt of proposals scheduled during a period of suspended Town business operations will be rescheduled for processing at the same time on the next business day.

X. SELECTION CRITERIA:

- A. Evaluation of proposals will be under the complete jurisdiction of the Town of Windsor and shall be in accordance with Virginia Code §2.2-4302.2, Paragraph 3, Procurement of Professional Services; and Town of Windsor regulations. A Selection Committee composed of representatives from the Town of Windsor will evaluate each proposal received and submit a recommendation to the Town Council. The Town will evaluate each proposal pursuant to its standard procurement procedures consistent with the procurement of services through competitive negotiation. Selection will be made on the basis of responsive/responsible determination, qualifications and experience, references, resources and cost of services. All factors will be scored based solely on the Town's evaluation.

B. Evaluation of Proposals: The evaluation committee will review the proposals and develop a shortlist of offerors (shortlist will include at least three (3) Offerors unless Section XII(D)(3) applies) to interview. During the review of the proposals, the Town will focus on the following factors to develop the shortlist of firms to interview.

<u>Factors</u>	<u>Point Value</u>
1. Specialized experience, expertise and qualifications of the firm and sub-consultant in municipal water systems	40%
2. Specialized experience, expertise and qualifications and depth of key project team members who will be assigned to this contract.	30%
3. Record of the firm in accomplishing work on other projects in the required time and within estimated consultant cost and construction cost.	25%
4. Completeness of the proposal, including whether the proposal is responsive to the outline of services in the RFP	5%
Total	100 %

C. After the review and rating of proposal(s) by the Selection Committee, the individual scores will be averaged and ranked. Offerors will be ranked in descending order of numerical predominance.

D. After ranking the Offerors based on proposals and oral presentations (if any), the recommendation of award shall be finalized through competitive negotiation, starting with the offerors ranked as number one (1) and two (2), and, moving to the next ranked offeror(s) if successful negotiations cannot be completed.

E. Oral Presentations: Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal. This will provide an opportunity for the Offeror to clarify or elaborate on the proposal. This is a fact finding and explanation session only and will not include negotiation. The Town will schedule the time and location of these presentations. Oral presentations are an optional form of individual discussions to the selection panel and may or may not be conducted. Should an Offeror receive a request for an oral presentation, the evaluation criteria relative to the oral presentation will be transmitted to those Offerors.

XI. AWARD OF CONTRACT:

A. The Town Manager shall appoint a Selection Committee. The Selection Committee shall consider proposals that comply with the requirements contained in this RFP. Based on analysis of the proposals submitted by the Offerors, the Committee shall rank the Offerors considered to be the most qualified based on the evaluation factors specified above.

The Selection Panel may elect to interview two or more Offerors. Based on the interviews, the Committee shall rank the Offerors considered to be the most qualified based on the evaluation factors specified above.

Following the interviews (if any), negotiations shall be conducted.

- B. Any and all costs associated with the preparation of responses to this RFP, including site visits, oral presentations and any other costs shall be entirely the responsibility of the Offeror and shall not be reimbursable in any manner by the Town.
- C. The Town reserves the right to reject any or all proposals, to waive any technicalities in proposals received, and to negotiate and to accept the proposal which shall be in the Town's best interest.
- D. The Town may cancel this RFP at any time prior to an award, and is not required to furnish a reason why a particular proposal was not deemed the most advantageous.

The Selection Committee shall conduct interviews as follows:

Following the interviews, negotiations shall be conducted as follows:

1. Negotiations shall be conducted by the Chairperson, or designee(s), with the Offerors ranked first and second. If a contract satisfactory and advantageous to the Town can be negotiated at a price considered fair and reasonable, and which defines precisely the scope of services to be provided, conditions of the professional agreement, work plan and schedule, personnel and method of payment, the award of the contract shall be made to those Offeror(s), otherwise, negotiations with the Offerors ranked first and/or second shall be formally terminated as set forth below, and negotiation conducted with next most highly ranked Offeror, and so on, until such a contract (or multiple contracts, if in the Town's best interest) can be negotiated at a fair and reasonable price.
2. If negotiations with an Offeror are to be terminated, the Chairperson of the Selection Committee shall forward a notice of intent to terminate negotiations to the Town Manager, with an explanation of the points which cannot be agreed upon, requesting the Town Manager's concurrence in this action. Upon receipt of the Town Manager's concurrence, the Chairperson of the Selection committee shall promptly notify the Offeror in writing and then begin negotiations with the next most highly ranked Offeror with whom negotiations have not yet been conducted. If the Town and any Offeror cannot reach agreement, their negotiations shall be terminated in writing.
3. Should the committee 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.

ATTACHMENT A

CERTIFICATION OF COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS

The Windsor Town requires that any person or entity doing business with the Town of Windsor, including its boards and commissions, shall include a sworn certification by the contractor or vendor of compliance with all federal immigration laws and regulations. These laws include the Federal Immigration Reform and Control Act, which makes it unlawful for a person or other entity to hire, recruit or refer for a fee for employment in the United States, an alien knowing the alien is unauthorized, and Section 40.1-11.1 of the Code of Virginia, which makes it unlawful for any employer to knowingly employ an alien who cannot provide documents indicating that he or she is legally eligible for employment in the United States. The state law, in particular, places an affirmative duty on employers to ensure that aliens have proof of eligibility for employment.

Accordingly this certification shall be completed and attached to all contracts and agreements for goods and services made by the Town of Windsor or any of its boards and commissions. Failure to attach a completed certification shall render the contract or agreement void.

Type or print legibly when completing this form.

1. Legal Name of Contractor or Vendor:

(Note: This is your name as reported to the IRS. This should match your Social Security card or Federal ID number.)

2. Type of Business Entity:

A. Sole proprietorship (Provide full name and address of owner):

B. Limited Partnership (Provide full name and address of all partners):

C. General Partnership (Provide full name and address of all partners):

D. Limited Liability Company (Provide full name and address of all managing members):

E. Corporation (Provide full name and address of all officers):

3. Doing Business As:

If Applicable (Note: This is the name that appears on your invoices but is not used as your reporting name.)

4. Name and Position of Person Completing this Certificate:

5. Physical Business Address:

6. Primary Correspondence Address (If different from physical address):

7. Number of Employees:

8. Are all Employees Eligible for Employment in the United States?

Yes _____

No _____

Under penalties of perjury, I declare on behalf of the contractor/vendor listed above that to the best of my knowledge and based upon reasonable inquiry, each and every one of the contractor's/vendor's employees are eligible for employment in the United States as required by the Federal Immigration Reform and Control Act of 1986 and Section 40.1-11.1 of the Code of Virginia. I further declare on behalf of the contractor/vendor shall use due care and diligence to ensure that all employees hired in the future will be eligible for employment in the United States. I affirm that the information provided herein is true, correct, and complete.

Sworn this ____ day of _____, 20__ on behalf of _____ as evidenced by
the following signature and seal:

Name of Contractor/Vendor: _____

Printed Name of Signatory: _____

Signature: _____

Date: _____

ATTACHMENT B

LITIGATION DISCLOSURE FORM

Respond to each of the questions below by checking the appropriate box. Failure to fully and truthfully disclose the information required by this Litigation Disclosure Form may result in the disqualification of your bid or proposal from consideration or termination of the contract, once awarded. For purposes of this disclosure form, "you" means the individual or entity in whose name the bid or proposal is submitted.

1. Have you or any principal, officer or director of your company, or any individual who will be assigned to work under any contract awarded pursuant to this solicitation, been convicted of a felony, or a misdemeanor involving moral turpitude, during the last seven (7) years?

Yes

No

2. Have you or any principal, officer or director of your company, or any individual who will be assigned to work under any contract awarded pursuant to this solicitation, been terminated (for cause or otherwise) from any work being performed for the Town of Windsor or any other governmental or private entity during the last seven (7) years?

Yes

No

3. Have you or any principal, officer or director of your company, or any individual who will be assigned to work under any contract awarded pursuant to this solicitation, been involved in any claim or litigation with the Town of Windsor or any other governmental or private entity during the last seven (7) years?

Yes

No

4. Has any parent company or wholly owned subsidiary of your company been involved in any claim or litigation with the Town of Windsor or any other governmental or private entity during the last seven (7) years?

Yes

No

If you answered "Yes" to any of the above questions, please state the name(s) of the person(s), the nature, and the status and/or outcome of the conviction, termination, claim or litigation, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your proposal.

ATTACHMENT C

TOWN OF WINDSOR RFP # 2017-1: DETAILED SCOPE OF SERVICES ANNUAL CIVIL ENGINEERING CONTRACT FOR SMALL PROJECTS

I. SCOPE OF SERVICES

The Consultant(s) may be called on to provide personnel, diagrams, plans and informational materials to assist the Town in the preparation and the conduct of public hearings, depending on a particular project.

The Consultant(s) may be called on to perform various tasks related to municipal water systems within the Town, these tasks will include the development and / or the update of the municipal water systems.

A. Utility Projects:

The Town wishes to improve the water distribution systems in selected areas and at specific locations throughout the Town of Windsor. In order to complete these projects, the Town will award contracts for engineering services.

The Consultant(s) shall provide the Town with the necessary plans, specifications, contract documents, and final applications for environmental permits in order that the Town may solicit competitive bids for construction of the water system improvements. Said plans and specifications shall include, but not necessarily be limited to the following items:

1. Earthwork
2. Utility Mapping
3. Water Distribution Piping Design
4. Hydraulic Flow Analyses
5. Utility Designation and Relocation
6. Erosion/Sediment Control

The Consultant(s) may be called on to provide personnel, diagrams, plans, and informational materials to assist the Town in the preparation and the conduct of public hearings, depending on the particular project.

II. BASIC SERVICES OF CONSULTANT

A. Basic Services

The Consultant(s) shall perform professional engineering services as hereinafter stated which includes normal civil engineering services, normal surveying services incidental thereto and environmental work necessary to obtain environmental permits required for project construction. The Consultant(s) represents that they will perform all tasks in accordance with generally accepted professional standards and the Consultant(s) further represents that they will provide the Town advice and consultation within the Consultant(s) authority and capacity as a professional engineer. The Consultant(s) will comply with the regulations, laws, ordinances, and requirements of all governmental environmental impact statements applicable to the project.

B. Study and Preliminary Design Phase

Prior to issuance of an individual Work Order the Consultant shall:

1. Meet with Town personnel to define a scope of services, establish time constraints, and to review available plans and data.
2. After determining a scope of services, and if it is determined that the work can be performed successfully, in a timely manner, and at a total cost negotiated and considered to be fair and reasonable, the Consultant will be assigned the project and an individual work order be issued.
3. The specific projects typically include all necessary research, field, and survey work. On most projects, the Consultant will be required to prepare preliminary design documents and/or draft study.
4. Plans will be submitted electronically in Autocad Civil 3D format that can be read and edited with free viewer. Plans will be in 3D format with building information data.
5. Based on the information contained in the preliminary design documents, the Consultant will be expected to submit an opinion of the estimated project cost including, but not limited to design and construction costs and contingencies. The Consultant will be expected to meet with Town representatives and review the preliminary design/study.
6. The Consultant shall furnish all such documents, plans and design data as may be required for, and assist Town in the preparation of the documents for submittal to the appropriate local, State, or Federal agency. The Consultant shall attend and participate in meetings and hearings as authorized by Town.

C. Final Design Phase

Upon completion of the Preliminary Design Phase and notification from the Town that the preliminary design documents are acceptable, the Consultant shall:

1. Prepare the final construction plans and specifications using VDOT Specifications, Hampton Roads Regional Standards, the Town of Windsor right of way/easement plats, and, prepare the Contract Documents (in such form acceptable to the Town Manager and Town Attorney's Office) and assist in the preparation of associated documents. It is expected that each project will have a 30%, 60%, 90%, and 100% submittal. Plans will be submitted in PDF and electronically in Autocad format that can be read and edited with free viewer. Plans will be in 3D format with building information data.
2. Furnish all such documents, plans, studies, and design data as may be required and assist in the preparation of any required documents so that Town may obtain approval from appropriate local, State, or Federal agencies. The Consultant shall attend and participate in administrative hearings and meetings as authorized by Town.
3. Furnish a revised estimate of project costs based on the final plans and specifications and other related documents.
4. Prepare revisions/addendum as required.

D. Bidding Phase

After authorization to proceed with the Bidding Phase the Consultant shall:

1. Assist in obtaining bids (or negotiating proposals) for each project.
2. Consult and advice as to the acceptability of substitute materials and equipment proposed by the contractor.
3. Consult and advice as to the acceptability of prime contractors and other persons and organizations proposed by the prime contractor.
4. Assist in the evaluation of bids or proposals.

5. If necessary, prepare bid tabulations, recommendations for award, and assist in the preparation of the final contract document.

E. Construction Phase

The Consultant may be responsible for providing control staking, easement and right-of-way staking, and general consultation during the construction phase. Control staking may include setting iron pins at property corners (including easements), providing one or more elevation bench marks at the site and providing centerline offset stakes for water and sewer main construction. Detailed daily inspections of the construction work will generally be performed by Town. The Consultant's responsibilities during the construction phase may include but not be limited to the following:

1. Furnish Town and the contractor with additional sets of plans and specifications as needed.
2. Consult with and advise Town on matters relating to the construction activities.
3. Make periodic visits, as authorized, to the job site to observe as an experienced and qualified design professional the progress and quality of the executed work and to determine if the work is proceeding in accordance with the final plans, specifications and contract documents. During such visits and on the basis of on-site observations, the consultant shall keep Town informed in writing of the progress of work, shall endeavor to guard against defects and deficiencies in the work of the contractor, shall notify Town of any observed defects or deficiencies in the work of the contractor and shall recommend disapproval or rejection of work failing to conform with the final plans, specifications and contract documents.
4. Review and approve shop drawings and samples, the results of test and inspections and other data which the contractor is required to submit, for conformance with the design concept of the project and compliance with the information given in the final plans. Specifications and contract documents; determine the acceptability of substitute materials and equipment proposed by the contractor; and receive and review maintenance and operating instructions. Schedules, guarantees, bonds, and certificates of inspection which are to be assembled by the contractor in accordance with the final plans, specifications and contract documents.
5. Issue directives of Town pertaining to change orders (as authorized). The Consultant may, as Town's representative, require special inspection or testing of the work and shall act as an interpreter of the requirements of the final plans, specifications and contract documents.
6. Based on the Consultant's on-site observations as an experienced and qualified design professional and on its review of the contractor's applications for payment and the accompanying data and schedules, the Consultant shall advise as to the amount owing to the contractor and shall indicate whether the amount requested is approved (subject to an evaluation of the work as a functioning project upon substantial completion and to the results of any subsequent tests called for in the final plans, specifications, and contract documents.)
7. Participate in a final inspection to determine if the project has been completed in accordance with the final plans, specifications and contract documents. Provide a written report summarizing the findings.
8. Provide a set of reproducible mylar record drawings to Town and electronic file format if required.

ATTACHMENT D

FIRM DATA SHEET

Funding: ____ (S=State F=Federal) Project No.: 2017-1 Annual Civil Engineering

Division: _____

EOI Due Date: _____

The prime consultant is responsible for submitting the information requested below on all firms on the project team, both prime and all subconsultants. All firms are to be reported on one combined sheet unless the number of firms requires the use of an additional sheet. Failure to submit all of the required data will result in the proposal being considered.

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

YD = DBE Firm Certified by DMBE

N = DBE or SWaM Firm Not Certified by DMBE

NA = Firm Not Claiming DBE or SWaM Status.

YS = SWaM Firm Certified by DMBE. Indicate whether small, woman-owned, or small business.

ATTACHMENT E

**CERTIFICATION REGARDING DEBARMENT
PRIMARY COVERED TRANSACTIONS
(To be completed by a Prime Consultant)**

Project: RFP 2017-1 Annual Civil Engineering

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
 - b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; and have not been convicted of any violations of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1) b) of this certification; and
 - d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

The undersigned makes the foregoing statements to be filed with the proposal submitted on behalf of the offeror for contracts to be let by the Commonwealth Transportation Board.

Signature

Date Title

Name of Firm

ATTACHMENT F

**CERTIFICATION REGARDING DEBARMENT
LOWER TIER COVERED TRANSACTIONS
(To be completed by a Sub-consultant)**

Project: RFP 2017-1 Annual Civil Engineering Contract

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

The undersigned makes the foregoing statements to be filed with the proposal submitted on behalf of the offeror for contracts to be let by the Commonwealth Transportation Board.

Signature

Date Title

Name of Firm

ATTACHMENT G

**AGREEMENT
BETWEEN
THE TOWN OF WINDSOR
AND**

**FOR
RFP # 2017-1 ANNUAL CIVIL ENGINEERING SERVICES
FOR SMALL PROJECTS
PROJECT CODE: _____**

THIS AGREEMENT, dated the _____ of _____ 20__, (the “Agreement”) by and between the **TOWN OF WINDSOR, VIRGINIA**, a municipal corporation (the “Town”), and _____, whose principal place of business is located at _____ (the “Consultant”). The Town and the Consultant shall be collectively referred to as the “parties.”

WHEREAS, the Town requires Civil Engineering Services on an on-call, or indefinite delivery/indefinite quantity basis, as described in its Request for Proposals RFP No. 2017-1 Annual Civil Engineering Services for Small Projects dated August 13, 2017 for the subject services, a copy of which is attached hereto and which is incorporated herein by reference, and

WHEREAS, the Consultant avers that it is qualified and willing to undertake the services delineated herein.

NOW, THEREFORE, for and in consideration of the mutual promises contained in this Agreement, and other valuable consideration, the sufficiency of which is hereby acknowledged, the Town and the Consultant agree as follows:

I. SCOPE OF SERVICES.

The Consultant shall render the Town complete professional and/or non-professional services as follows:

Provide, in the manner described in the RFP and its proposal submitted to the Town in response to the Town (which are incorporated by reference herein), all services described therein.

The Consultant represents that it will perform all tasks in accordance with generally accepted professional and/or industry standards and the Consultant further represents that it will provide the Town the best possible advice and consultation within the Consultant’s authority and capacity.

Work orders, task orders, or statements of work shall be provided to the Consultant for services to be performed pursuant to this Agreement and will be attached to a Purchase Order. All such work orders, task orders, or statements of work shall be signed by the Town Manager and a Purchase Order shall be issued prior to the commencement of work.

The above recitals and referenced documents are incorporated herein by reference.

II. COMPENSATION TO THE CONSULTANT.

The Town shall pay the Consultant, compensation for the services provided by Consultant, which are subject to the payment provisions set forth in the RFP and in Section III below.

A. The fees will be based on the not to exceed weekly rate, hourly rate, and/or fixed cost schedules listed in the Consultant's Fee Proposal dated _____, a copy of which is attached hereto as Exhibit A and which is incorporated herein by reference.

Administrative and clerical costs are directly compensable only for specific project related tasks e.g., report preparation, etc. General administrative and clerical functions are considered overhead costs and are not directly compensable.

B. The Town shall compensate Consultant for its reasonable reimbursable expenses and non-salary direct costs, if any, as specified in the Fee Proposal and any project assignment fee proposal approved by the Town. The costs for reproduction of plans and specifications submitted to the Town for review and final bid purposes; and for record drawings shall be reimbursed at current, local commercial reproduction rates without a markup, unless otherwise specified in Exhibit A.

III. PAYMENT OF COMPENSATION.

A. To Consultant: The Consultant shall submit to the Town, not more than once a month, an itemized invoice, setting forth its fees for the services it performed as well as its reimbursable expenses and non-salary direct costs, if any, which it has performed and its charge therefore, in accordance with Paragraph II above. The Town shall pay such invoice within thirty (30) days from the date of the invoice or its delivery, whichever occurs last. In instances where there is a defect or impropriety in an invoice or in the goods or services received, the Town shall notify the Consultant within thirty (30) days after the receipt of the invoice if all or part of the invoice amount is disputed.

B. By Consultant: Within seven days of the postmark of payment by the Town to the Consultant for work performed by a subcontractor, the Consultant must (1) pay the subcontractor for the proportionate share of the total payment received from the Town attributable to the work performed by the subcontractor, or, (2) notify the Town and the subcontractor, in writing, of the intention to withhold all or part of a payment with the reasons for the nonpayment.

IV. CONTRACT TERM.

The term of this Agreement, unless earlier terminated, shall be for a period on one year from full execution of this Agreement, with an optional renewal at the Town's discretion for up to four (4) additional one-(1) year terms. The total of all work performed pursuant to this contract shall not exceed a maximum value of \$100,000, and each project will not exceed a maximum value of \$200,000. All work must be completed before the expiration date of this Agreement, except that the Town may extend the term of the existing Agreement to allow completion of any work undertaken but not completed during the original term of the Agreement pursuant to any outstanding work order, task order, or statement of work.

V. TERMINATION OF AGREEMENT.

The Town may terminate the Agreement for cause or for convenience according to the termination provisions set forth in the RFP.

VI. ASSIGNMENT.

Neither the Town nor the Consultant shall assign, sublet or transfer its rights in this Agreement without the written consent of the other.

VII. RESPONSIBILITY OF THE CONSULTANT.

The Consultant shall, without additional cost or fee to the Town, correct or revise any errors or deficiencies in its performance. Neither the Town's review, approval or acceptance of, nor payment for, any of the services required under this Agreement shall be deemed a waiver of rights by the Town, and the Consultant shall remain liable to the Town for all costs which are incurred by the Town as a result of the Consultant's errors or deficient performance of any of the services furnished under this Agreement.

The Consultant shall indemnify, defend, and hold harmless the Town of Windsor, its officers, agents, volunteers, servants, employees, and officials according to the indemnification provisions set forth in the RFP.

VIII. INSURANCE.

The Consultant certifies that it has, and will maintain for the term of this Agreement, the insurance coverages set forth in the RFP.

IX. COMPLIANCE WITH LAWS AND REGULATIONS.

The Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations.

X. NON-DISCRIMINATION.

The Consultant shall conform to the anti-discrimination provision set forth in the RFP at Appendix A, Sections I.

A. In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the Consultant agrees as follows:

a. The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or 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 Consultant. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. The Consultant, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, will state that 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 Consultant 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.

B. The Consultant, if engaged in work pursuant to this agreement associated with a federal-aid highway project, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in discrimination prohibited by section 21.5 of the Federal Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Federal Regulations.

XI. SOLICITATIONS FOR SUBCONSULTANTS AND SUBCONTRACTORS, INCLUDING PROCUREMENT OF MATERIALS AND EQUIPMENT.

In all solicitations either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Consultant, if engaged in work pursuant to this agreement associated with a federal-aid highway project, of the Consultant's obligations under this agreement and the Federal Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

XII. INFORMATION AND REPORTS.

The Consultant, if engaged in work pursuant to this agreement associated with a federal-aid highway project, shall provide all information and reports required by the Federal Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Town or VDOT to be pertinent to ascertain compliance with such Federal Regulations, orders, and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Town or VDOT, as appropriate, and shall set forth what efforts it has made to obtain the information.

XIII. SANCTIONS FOR NONCOMPLIANCE.

In the event of the Consultant's noncompliance with the applicable nondiscrimination provisions of this agreement, the Town shall impose such contract sanctions as it or VDOT may determine to be appropriate, including, but not limited to: (1) withholding of payments to the Consultant under the contract until the Consultant complies; and/or (2) cancellation, termination, or suspension of the contract, in whole or part.

XIV. INCORPORATION OF PROVISIONS IN SUBCONTRACTS.

The Consultant, if engaged in work pursuant to this agreement associated with a federal-aid highway project, will include the provisions of Sections IX, X.B, XI, XII, and XIII in every subcontract or purchase order, including procurements of materials and leases of equipment, unless exempt by the Federal Regulations. The Consultant shall take such action with respect to any subcontract or procurement as the Town or VDOT may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a Consultant becomes involved in, or is threatened with litigation with a subconsultant, subcontractor, or supplier as a result of such direction, the Consultant may request the Town and/or VDOT to enter into such litigation to protect the interests of the Town, VDOT, and the United States.

XV. DRUG-FREE WORKPLACE.

During the performance of this Agreement, the Consultant shall conform to the drug-free workplace provision set forth in the RFP.

XVI. ETHICS IN PUBLIC CONTRACTING.

The Consultant hereby certifies that it has familiarized itself with Chapter 54, Article VII. entitled Ethics in Public Contracting, of the Code of the Town of Windsor, Virginia, and further, that all amounts received by the Consultant, pursuant to this Agreement shall be proper and in accordance therewith.

XVII. NO EMPLOYMENT OF ILLEGAL IMMIGRANTS.

The Consultant hereby certifies, under penalties of perjury, that to the best of its knowledge and based upon reasonable inquiry, each and every one of the Consultant's employees is eligible for employment in the United States as required by the Federal Immigration Reform and Control Act of 1986 and Section 40.1-11.1 of the Code of Virginia. The Consultant further declares it shall use due care and diligence to ensure that all employees hired in the future will be eligible for employment in the United States.

XVIII. NO THIRD PARTY BENEFICIARIES.

Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement, except rights expressly contained herein.

XIX. CONSTRUCTION AND INTERPRETATION OF AGREEMENT.

A. The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof.

B. If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by either party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other

term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties to this Agreement, and the parties hereto agree, that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, the parties in good faith shall supply as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

C. The captions of the articles, sections and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

D. References in this instrument to this "Agreement" mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by reference) or other documents expressly incorporated by reference in this instrument. Any references to any covenant, condition, obligation and/or undertaking "herein," "hereunder" or "pursuant hereto" (or language of like import) mean, refer to and include the covenants conditions, obligations and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument. All terms defined in this instrument shall be deemed to have the same meanings in all riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument unless the context thereof clearly requires the contrary. Unless expressly provided otherwise, all references to Articles and Sections refer to the Articles and Sections set forth in this Agreement. Unless otherwise stated in this Agreement, words which have well-known technical or construction industry meanings are used in this Agreement in accordance with such recognized meaning. All references to a subsection "above" or "below" refer to the denoted subsection within the Section in which the reference appears.

XX. COUNTERPARTS.

This instrument may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

A. This Agreement and its exhibits constitute the entire and exclusive agreement between the parties relating to the specific matters covered herein and therein. All prior or contemporaneous verbal or written agreements, understandings, representations and/or practices relative to the foregoing are hereby superseded, revoked and rendered ineffective for any purpose. This Agreement may be altered or amended only by an instrument in writing signed by each party hereto, or its permitted successor or assignee. In addition, any amendment to this Agreement which would materially expand the obligations or materially impair the rights of the Town under this Agreement shall be binding upon the Town only if the Town has approved such amendment in writing. No verbal agreement or implied covenant shall be held to vary the terms hereof, any statute, law or custom to the contrary notwithstanding.

B. If any provisions of this Agreement are rendered obsolete or ineffective in serving their purpose by change in law, passage of time, financing requirements or other future events or circumstances, the parties agree to negotiate in good faith to appropriate amendments to or replacements of such provisions in order to restore and carry out the original purposes thereof to the extent practicable; provided, however, that neither party is obligated to agree to any amendment or replacement which would reduce its rights or enlarge its responsibilities under this Agreement in any material respect.

XXI. CONTRACTUAL DISPUTES.

A. Contractual claims, whether for money or other relief, shall be submitted in writing to the Town's Project Manager within 10 days of the time of the occurrence or at the beginning of the work upon which the claim is based. Such notice shall state that it is a "notice of intent to file a claim" and include a written statement describing the act or omission of the Town or its agents that allegedly caused or may cause damage to the Consultant and the nature of the claimed nature. The filing of a timely notice is a prerequisite to recovery of a contractual claim by the Consultant. Failure to submit such a notice of intent within the time and manner required shall be a conclusive waiver of the claim by the Consultant. Oral notice, the actual knowledge of a Town employee or official, or an untimely written notice shall not be sufficient to satisfy the requirements of this Section. All claims shall be submitted in writing to the Windsor Town Manager within 30 days of the time of occurrence or at the beginning of the work upon which the claim is based, along with all practically available supporting evidence and documentation.

B. No written decision denying a claim or addressing issues related to the claim shall be considered a denial of the claim unless the written decision is signed by the Windsor Town Manager or his designee. The Consultant may not institute legal action prior to receipt of the final written decision on the claim unless the Town Manager or designee fails to render a decision within 90 days of submission of the claim. Failure of the Town Manager or designee to render a decision within 90 days shall not result in the Consultant being awarded the relief claimed or any other relief or penalty. The sole remedy for the Town Manager or designee's failure to render a decision within 90 days shall be the Consultant's right to institute immediate legal action.

C. The decision of the Town Manager or designee shall be final and conclusive unless the Consultant appeals within six months of the date of the final decision (or the termination of a mediation procedure as provided in the RFP) on the claim by instituting legal action as provided in Virginia Code Section 2.2-4364.

XXII. GOVERNING LAW AND VENUE.

This Agreement is subject to the provisions of the Code of the Town of Windsor, Virginia; and the Virginia Public Procurement Act, Virginia Code §2.2-4300 et seq., and shall be governed in all respects by the laws of the Commonwealth of Virginia. Any litigation with respect thereto shall be brought in the courts of **Isle of Wight County, Virginia.**

XXIII. SEVERABILITY.

If any provision in this Agreement is determined by a court of competent jurisdiction to be invalid and unenforceable, then the remaining provisions shall survive and remain valid and enforceable.

XXIV. MODIFICATIONS.

The scope of the services to be provided under this Agreement and the compensation therefore may be modified in writing by the parties' authorized representatives, from time to time, by the mutual agreement of the parties, provided that such modifications are in compliance with applicable law.

The Town of Windsor issuing a project assignment or task order arising out of this Agreement may order changes within the general scope of the Agreement at any time by written notice to the Consultant. Changes within the scope of the Agreement include, but are not limited to, things such as services to be performed and the place of performance. The Consultant shall comply with the notice upon receipt. The Consultant shall be compensated for any additional costs incurred as the result of such change order and shall give the Town a credit for any savings. Said compensation shall be determined by mutual agreement between the parties in writing.

XXV. PRECEDENCE OF TERMS AND CONDITIONS

In the event of a conflict with the terms and conditions in this Agreement and those in the RFP or Consultant's proposal, those in this Agreement shall apply.

XXVI. AVAILABILITY OF FUNDS.

It is understood and agreed between the parties herein that the Town of Windsor shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Agreement.

XXVII. NON-DISCLOSURE.

Virginia Code Sections 2.2-3705.1 and 2.2-4342 stipulate that the Town is not required to disclose "records relating to the negotiation and award of a specific contract where competition or bargaining is involved and where the release of such records would adversely affect the bargaining position or negotiating strategy of the public body" and inspection of procurement records shall be subject to "reasonable restrictions to ensure the security and integrity of the records." Disclosure to, or discussion with, unauthorized third parties of the content of construction or project plans and procurement solicitations prepared by or reviewed by the Consultant as part of this Agreement is prohibited. It is specifically understood that such disclosures could substantially interfere with and adversely impact the Town's procurement process, resulting in direct and consequential losses to the Town. Disclosures to authorized third parties, such as approved subconsultants on a need-to-know basis, is permitted if they have agreed in writing to the same non-disclosure requirements of this section.

XXVIII. NOTICES.

All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been received by the other party by U.S. Mail or hand-delivery. Notices to the Town shall be addressed as follows: Michael Stallings, Town Manager, Town of Windsor, Windsor, Virginia. Notices to the Consultant shall be addressed as follows: _____ Consultant shall notify the Town in writing within ten days of a change of address.

has acknowledged the same before me in my presence in the Town and State aforesaid, this day of _____, 20__.

Notary Public

My commission expires: _____ . Registration No: _____

Approved as to form:

Assistant Town Attorney

APPENDIX A

SECTION I

REQUIRED GENERAL TERMS AND CONDITIONS PROFESSIONAL SERVICES

- A. PROCUREMENT ORDINANCE
- B. APPLICABLE LAWS AND COURTS
- C. ANTI-DISCRIMINATION
- D. ETHICS IN PUBLIC CONTRACTING
- E. PROHIBITION ON EMPLOYMENT OF UNAUTHORIZED ALIENS
- F. DEBARMENT STATUS
- G. ANTITRUST
- H. MANDATORY USE OF TOWN FORM AND TERMS AND CONDITIONS
- I. CLARIFICATION OF TERMS
- J. PAYMENT
- K. PRECEDENCE OF TERMS
- L. QUALIFICATIONS OF OFFERORS
- M. TESTING AND INSPECTION
- N. ASSIGNMENT OF CONTRACT
- O. CHANGES TO THE CONTRACT
- P. DEFAULT
- Q. INSURANCE
- R. ANNOUNCEMENT OF AWARD
- S. DRUG-FREE WORKPLACE
- T. NONDISCRIMINATION OF CONSULTANTS
- U. AVAILABILITY OF FUNDS
- V. PROPOSAL PRICE CURRENCY
- W. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH
- X. TERMINATION OF CONTRACT
- Y. DELIVERY OF MATERIALS
- Z. COMPENSATION DUE THE CONSULTANT
- AA. LITIGATIONS WITH THE TOWN
- BB. PRIOR DEFAULTED CONTRACTS
- CC. CRIMINAL CONVICTIONS
- DD. TERM OF CONTRACT

- A. **PROCUREMENT ORDINANCE**: This solicitation is subject to the provisions of the Town of Windsor Procurement Ordinance and applicable provisions of the Virginia Public Procurement Act consistent with Virginia Code Section 2.2-4343(12). A copy of the Town's ordinance is available for review at the purchasing office or accessible on the Internet at www.windsor-va.gov under "Ordinances".
- B. **APPLICABLE LAWS AND COURTS**: This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia, and any litigation with respect thereto shall be brought in the courts of the **Isle of Wight County, Virginia**, or the United States District Court for the Eastern District of Virginia, if independent federal jurisdiction exists. The Consultant shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION**: By submitting their proposals, offerors certify to the Town 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).

- D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their 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.
- E. **PROHIBITION ON EMPLOYMENT OF UNAUTHORIZED ALIENS:** Consultant does not and shall not during the performance of the contract knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.
- F. **DEBARMENT STATUS:** By submitting their proposals, offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting proposals on contracts for the type of services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- G. **ANTITRUST:** By entering into a contract, the Consultant conveys, sells, assigns, and transfers to the Town of Windsor 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 services purchased or acquired by the Town of Windsor under said contract.
- H. **MANDATORY USE OF TOWN FORM:** Failure to submit a proposal on the official form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Town reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.
- I. **CLARIFICATION OF TERMS:** If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the buyer whose name appears on the face of the solicitation no later than 5 working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.
- J. **PAYMENT:**
1. To Prime Consultant:
 - a. Invoices for items ordered, delivered and accepted shall be submitted by the Consultant directly to the payment address shown on the purchase order/contract. All invoices shall show the Town contract number and/or purchase order number; social security number (for individual Consultants) 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 services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the Consultant at the contract price, regardless of which Town 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, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.

- 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, Consultants 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 Town shall promptly notify the Consultant, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Consultant may not institute legal action unless a settlement cannot be reached within 30 days of notification. The provisions of this section do not relieve a department 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 Consultant awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) within 7 days of the Consultant's receipt of payment from the Town for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify the Town Manager and the subcontractor(s), in writing, of the Consultant's intention to withhold payment and the reason.
- b. The Consultant 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 Consultant that remain unpaid 7 days following receipt of payment from the Town, 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 Consultant's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Town.

- K. **PRECEDENCE OF TERMS:** Paragraphs A-J of these General Terms and Conditions 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.
- L. **QUALIFICATIONS OF OFFERORS:** The Town may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services and the offeror shall furnish to the Town all such information and data for this purpose as may be requested. The Town reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Town further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Town that such offeror is properly qualified to carry out the obligations of the contract and to provide the services contemplated therein.
- M. **TESTING AND INSPECTION:** The Town reserves the right to conduct any test or inspection it may deem advisable to assure services conform to the specifications.
- N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Consultant in whole or in part without the written consent of the Town.
- O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
 - 1. The parties may agree in writing to modify the terms, conditions, or scope of the contract. Any additional services to be provided shall be of a sort that is ancillary to the contract services, or within the same broad product or service categories as were included in the contract award. Any 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.

2. The Town Manager may order changes within the general scope of the contract at any time by written notice to the Consultant. 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 Consultant shall comply with the notice upon receipt, unless the Consultant intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice, in which case the Consultant shall, in writing, promptly notify the Town Manager of the adjustment to be sought, and before proceeding to comply with the notice, shall await the Town Manager's written decision affirming, modifying, or revoking the prior written notice. If the Town Manager decides to issue a notice that requires an adjustment to compensation, the Consultant shall be compensated for any additional costs incurred as the result of such order and shall give the Town Manager a credit for any savings. Said compensation shall be determined by one of the following methods:

- a. By mutual agreement between the parties in writing; or
- b. 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 Consultant accounts for the number of units of work performed, subject to the Town Manager's right to audit the Consultant's records and/or to determine the correct number of units independently; or
- c. By ordering the Consultant 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 Consultant shall present the Town Manager with all vouchers and records of expenses incurred and savings realized. The Town Manager shall have the right to audit the records of the Consultant 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 Town Manager within 30 days from the date of receipt of the written order from the Town Manager. 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 Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Consultant from promptly complying with the changes ordered by the Town Manager or with the performance of the contract generally.

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

Q. **INSURANCE:** By signing and submitting a proposal under this solicitation, the 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 offeror further certifies that it and any subcontractors will maintain these insurance coverage 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. The Town must be named as an additional insured on the Acord insurance certificate reflecting Commercial General Liability and any other required insurance coverages. Coverages afforded under the required policies listed below shall not be cancelled by Consultant or allowed to lapse or expire. However, in the event that any insurance coverage required by this contract is canceled by the insurance company or lapses due to no fault of the Consultant, Consultant shall (i) provide the Town with not less than thirty (30) calendar days prior written notice that said insurance policy has lapsed or has been canceled due to no fault of Consultant and (ii) restore said insurance policy with the same insurance company or obtain a replacement insurance policy that satisfies the insurance obligations required in this contract within thirty (30) calendar days from the date of any notice to Consultant that its insurance policy has been canceled or has lapsed.

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. Consultants who fail to notify the Town 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.
2. Employer's Liability \$100,000 each accident, \$100,000 each disease & \$500,000 disease policy limit.
3. Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Town of Windsor must be named as an additional insured and so endorsed on the policy.
4. Automobile Liability - \$1,000,000 combined single limit. (Required only if a motor vehicle not owned by the Town is to be used in the contract. Consultant must assure that the required coverage is maintained by the Consultant (or third party owner of such motor vehicle.)

5. Specific 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.)	\$1,725,000 per occurrence, \$3,000,000 aggregate
(Limits increase each July 1 through fiscal year 2031, as follows: July 1, 2013 - \$2,100,000, July 1, 2014 - \$2,150,000. This complies with <i>Code of Virginia</i> § 8.01-581.15.	
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

6. Excess Liability, , including Employer's Liability, Automobile Liability, and Commercial General Liability - \$5,000,000 aggregate

R. **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 Town Manager will publicly post such notice on the Town's website (www.windsor-va.gov) for a minimum of 10 days.

S. **DRUG-FREE WORKPLACE:** During the performance of this contract, the Consultant agrees to (i) provide a drug-free workplace for the Consultant'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 Consultant'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 Consultant that the Consultant 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 Consultant, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- W. **NONDISCRIMINATION OF CONSULTANTS:** An offeror or Consultant shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, or disability, or against faith-based organizations. 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 Town 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.
- X. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the Town shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
- Y. **PROPOSAL PRICE CURRENCY:** Unless stated otherwise in the solicitation, offerors shall state bid prices in US dollars.
- Z. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A Consultant organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the *Virginia Public Procurement Act* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.
- AA. **TERMINATION OF CONTRACT:** The Town may terminate the contract for cause or for convenience after giving 30 days’ notice in writing to the Consultant. The written notice shall state whether the termination is for convenience or cause. If mailed, the notice shall be mailed certified return receipt requested to the address listed on the proposal, unless notice of a change of address has been provided.

Termination for Cause: If the Consultant should breach the contract or fail to perform the services required by the contract, the Town may terminate the contract for cause by giving written notice or may give the Consultant a stated period of time within which to remedy its breach of contract. If the Consultant shall fail to remedy the breach within the time allotted by the Town, the contract may be terminated by the Town at any time thereafter upon written notice to the Consultant or, in the alternative, the Town may give such extension of time to remedy the breach as the Town determines to be in its best interest. The Town’s forbearance by not terminating the contract for a breach of contract shall not constitute a waiver of the Town’s right to terminate nor acquiescence in future act or omissions by the Consultant of a like nature. If the contract is terminated for cause, breach of contract or failure to perform, the Consultant may be subject to a claim by the Town for the costs and expenses incurred in securing a replacement Consultant to fulfill the obligations of the contract. In the event a Cure Notice is required, the Town will use the address provided to the Town in proposals. It shall be the Consultant’s responsibility to notify the Town in writing within 10 days of knowing a change of address. The written notice shall include the Town’s contract number and the effective date of the address change.

In the event the Consultant breaches the contract or fails to perform the services required by the contract, in addition to terminating this contract for cause, the Town reserves the right, in its sole discretion, to terminate for cause any other open contract the Consultant has with the Town.

Termination for Convenience: The contract may be terminated by the Town in whole or in part for the convenience of the Town without a breach of contract by delivering to the Consultant a written notice of termination specifying the extent to which performance under the contract is terminated and the effective date of the termination. Upon receipt of such a notice of termination, the Consultant must stop work, including but not limited to work performed by subcontractors and subconsultants, at such time and to the extent specified in the notice of termination.

If the contract is terminated in whole or in part for the convenience of the Town, the Consultant shall be entitled to those fees earned for work done prior to the notice of termination and thereafter shall be entitled to any fees earned for work not terminated, but shall not be entitled to lost profits for the portions of the contract which were terminated. The Consultant will be compensated for reasonable costs or expenses arising out of the termination for the convenience of the Town for delivery to the Town of all products of the services for which the Consultant has or will receive compensation.

- BB. DELIVERY OF MATERIALS:** Any contract cancellation notice shall not relieve the Consultant of the obligation to deliver to the Town all products or services for which the Consultant has been or will be compensated. Unless otherwise agreed to in writing, the Consultant shall deliver the materials or other deliverables to the Town within 30 days of the Notice of Termination of the Contract. Failure to do so may result in action for “breach of contract” or “failure to perform”.
- CC. COMPENSATION DUE THE CONSULTANT:** Upon such termination, the Consultant shall be entitled to the compensation accrued to the date of termination. Payment of the balance of the accrued compensation shall be dependent on the Consultant providing the required project material to the Town. Said fees which have been earned shall be billed to the Town in accordance with the normal billing process, but in no case later than 60 days after the last work is performed. Any termination by the Town for default, found by a court of competent jurisdiction not to have been justified as a termination for default, shall be deemed a termination for the convenience of the Town.
- The Consultant shall submit invoices for all such amounts in accordance with the normal billing process, but in no event later than 60 days after all services are performed. All amounts invoiced are subject to deductions for amounts previously paid. All payments due the Consultant under this contract are subject to appropriation by the Virginia General Assembly and/or Windsor Town Council.
- DD. LITIGATION WITH THE TOWN:** The Town in its sole discretion may choose not to make an award to an offeror who is in litigation with the Town at the time of proposal evaluation. This provision also applies if any parent company, principal, officer, or wholly owned subsidiary of the offeror is in litigation with the Town at the time of the proposal evaluation.
- EE. PRIOR DEFAULTED CONTRACTS:** The Town in its sole discretion may choose not to make an award to a offeror who has previously defaulted on a contract with the Town. This provision also applies if any parent company, principal, officer, or wholly owned subsidiary of the offeror has previously defaulted on a contract with the Town.
- FF. CRIMINAL CONVICTIONS:** The Town in its sole discretion may choose not to make an award to an offeror if any principal, officer, director, or staff member of the firm assigned to work under a contract awarded pursuant to this solicitation has been convicted of a felony or a misdemeanor involving moral turpitude in the past 10 years.
- GG. TERM OF CONTRACT:** The period of performance of this contract is one year with the Town reserving the exclusive right to extend the contract for up to four (4) additional one year terms. The contract shall renew automatically for each eligible year of renewal unless the Town gives written notice 60 days in advance of the expiration date for each of the renewals terms. All work must be completed before the expiration of the contract, except that the Town may extend the term of the contract to allow completion of any work undertaken but not completed during the term of the contract pursuant to any outstanding work order, task order, or statement of work.

APPENDIX A

SECTION II

SPECIAL TERMS AND CONDITIONS PROFESSIONAL SERVICES

1. ADVERTISING
2. AUDIT
3. AWARD OF CONTRACT
4. AWARD TO MULTIPLE BIDDERS
5. PROPOSAL ACCEPTANCE PERIOD
6. IDENTIFICATION OF PROPOSAL ENVELOPE
7. REFERENCES
8. SMALL BUSINESS SUBCONTRACTING
9. STATE CORPORATION COMMISSION IDENTIFICATION NUMBER
10. CONSULTANT/SUBCONTRACTOR LICENSE REQUIREMENT
11. DISPUTE RESOLUTION
12. INDEMNIFICATION
13. PRICE ESCALATION/DE-ESCALATION
14. SUBCONTRACTS

1. **ADVERTISING:** In the event a contract is awarded for supplies, equipment, or services resulting from this proposal, no indication of such sales or services to the Town of Windsor will be used in product literature or advertising. Without prior written approval from the proper authority of the Town, the Consultant shall not state in any of its advertising, product literature, or other promotional materials that the Town of Windsor or any department or agency of the Town has purchased or uses its products or services.
2. **AUDIT:** The Consultant shall retain all books, records, and other documents relative to this contract for 5 years after final payment, or until audited by the Town, whichever is sooner. The Town auditors shall have full access to and the right to examine any of said materials during said period.
3. **AWARD OF CONTRACT:** The Town 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 properly designated pursuant to Virginia Code Section 2.2-4342(F) by 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 Town Manager 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 Town Manager 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 Town reserves the right to make multiple awards as a result of this solicitation. Should the Town' Procurement Administrator 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.
4. **AWARD TO MULTIPLE BIDDERS:** The Town of Windsor reserves the right to make multiple awards as a result of this solicitation. The award(s) will be made to the highest ranked offers who meet the requirements of the solicitation and with whom competition negotiations are successful. The Town reserves the right to

conduct any tests it may deem advisable and to make all evaluations. The Town also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.

5. **PROPOSAL ACCEPTANCE PERIOD:** Any proposal in response to this solicitation shall be valid for 90 days. At the end of the 90 days the proposal may be withdrawn at the written request of the offeror. If the proposal is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.
6. **IDENTIFICATION OF PROPOSAL ENVELOPE:** If a special envelope is not furnished, or if return in the special envelope is not possible, the signed proposal should be returned in a separate envelope or package, sealed and identified as follows:

From:

_____	_____	_____
Name of Offeror	Due Date	Time
_____	_____	
Street or Box Number	RFP No	
_____	_____	
Town, State, Zip Code	RFP Title	

DMBE-certified Small Business No. _____

Name of Contract/Purchase Officer or Buyer _____

7. **REFERENCES:** Offerors shall provide a list of at least 3 references where similar services have been provided. Each reference shall include the name of the organization, the complete mailing address, the name of the contact person and telephone number.

	<u>ORGANIZATION</u>	<u>ADDRESS</u>	<u>CONTACT PERSON</u>	<u>TELEPHONE</u>
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____

8. **SMALL BUSINESS SUBCONTRACTING:** Unless the offeror is registered as a DSBSD-certified (formerly DMBE) small business and where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the Consultant is encouraged to offer such subcontracting opportunities to DSBSD-certified small businesses. This shall not exclude DSBSD-certified women-owned and minority-owned businesses when they have received DSBSD small business certification. No offeror or subcontractor shall be considered a Small Business, a Women-Owned Business or a Minority-Owned Business unless certified as such by the Virginia Department of Small Business and Supplier Diversity (DSBSD) by the due date for receipt of proposals. If small business subcontractors are used, the prime Consultant agrees to report the use of small business subcontractors by providing the purchasing office at a minimum the following information: name of small business with the DSBSD certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product/service provided.

9. **STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:** Pursuant to Code of Virginia, §2.2-4311.2 subsection B, a offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its proposal the identification number issued to it by the State Corporation Commission (SCC). **Any offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its proposal a statement describing why the offeror is not required to be so authorized.** Indicate the above information on the SCC Form provided. Consultant agrees that the process by which compliance with Titles 13.1 and 50 is checked during the solicitation stage (including without limitation the SCC Form provided) is streamlined and not definitive, and the Town's use and acceptance of such form, or its acceptance of Consultant's statement describing why the offeror was not legally required to be authorized to transact business in the Commonwealth, shall not be conclusive of the issue and shall not be relied upon by the Consultant as demonstrating compliance.

SCC Identification Number: _____ **(REQUIRED)**

10. **CONSULTANT/SUBCONTRACTOR LICENSE REQUIREMENT:** By my signature on this solicitation, I certify that this firm/individual and subcontractor is properly licensed for providing the services specified.

Contractor Name: _____

License # _____ Type _____

Subcontractor Name: _____

License # _____ Type _____

11. **DISPUTE RESOLUTION:**

- A. As to any dispute arising out of this Contract, either party may file a Demand for Non-binding Mediation within thirty (30) days of the date the circumstances that give rise to the dispute occurred. The demand will include a basic statement of the grounds of the dispute. The opposing party shall file a response within fifteen (15) days of receipt of the Demand for Mediation, either accepting or rejecting the proposed mediation. If accepted, such acceptance shall provide a response to the allegation set forth in the Demand for Mediation. Failure to file a response within fifteen (15) days shall be deemed a rejection of mediation. Parties may mutually agree upon a location for mediation and choose any mediator qualified under the laws of the Commonwealth of Virginia. The fees and other charges of the mediator shall be shared equally by the parties.
- B. Should mediation fail or be refused, and the Consultant is the moving party in the dispute, the Consultant must file a Demand for Arbitration within thirty (30) days of the date of the termination of the mediation procedure. The Town may file a response within thirty (30) days, either accepting or rejecting arbitration. If the Town fails to file a response within thirty (30) days, this shall be deemed a rejection of the arbitration. If the Town accepts arbitration, it will also provide a response to the allegations set forth in the Demand for Arbitration.
- C. Should mediation fail or by refused, and the Town is the moving party, it may either file a Demand for Arbitration or litigate the matter in a Court of proper jurisdiction. If the Town elects to file a Demand for Arbitration, it must do so within thirty (30) days of the termination of the mediation procedure. The Consultant shall file its response within thirty (30) days of the Demand for Arbitration.
- D. If the dispute is to be arbitrated, each party must choose an arbitrator within fifteen (15) days of the Response to the Demand for Arbitration. Those two arbitrators shall choose a third arbitrator. In the alternative, the parties may choose to use the American Arbitration Association ("AAA") to administer the

arbitration. In either event, the course of the arbitration will proceed under AAA rules. Also, during any arbitration proceeding, the Federal Rules of Evidence shall apply.

E. If the Town refuses to arbitrate after a Demand for Arbitration is filed by the Consultant, then the Consultant may file legal action as provided in Virginia Code Section 2.2-4363.

12. **INDEMNIFICATION:** Consultant shall, for itself, its agents, servants, employees, subcontractors, and subconsultants, to perform all work hereunder or associated herewith in accordance with any and all applicable professional standards and in accordance with sound engineering/architectural practice and principles. The following provisions shall apply to the fullest extent permitted by law and regulations and shall not require indemnification for claims to the extent caused by or resulting solely from the negligence of the Town, its agents, or employees.

As to all matters of professional responsibility, Consultant shall indemnify and hold harmless the Town and its officers, agents, volunteers, servants, employees and officials from and against any and all liability, losses, reasonable attorney's fees and litigation expenses or other expenses suffered by any party or entity as the result of any claim found to have been caused in whole or part by the negligent or willful acts, errors, or omissions of Consultant, or those for whom Consultant is legally liable. With the prior approval of the Town, Consultant may assume the defense of any such professional liability claim(s) made against the Town, its agents, volunteers, servants, employees or officials.

As to all matters of liability related to or arising out of this contract other than professional liability, Consultant shall indemnify and hold harmless the Town, its agents, volunteers, servants, employees and officials from and against any and all liability, losses, reasonable attorney's fees and litigation expenses, or other expenses suffered by any party or entity as a result of any claim found to have been caused in whole or part by the negligent or willful acts, errors, or omissions of Consultant or those for whom Consultant is legally liable. With the prior approval of the Town, Consultant may assume the defense of any such claim(s) made against the Town, its agents, volunteers, servants, employees or officials.

13. **PRICE ESCALATION/DE-ESCALATION:** Price adjustments may be permitted for changes in the Consultant's cost of materials/labor not to exceed the increase in the following index: CPI. No price increases will be authorized for 365 calendar days after the effective date of the contract. Price escalation may be permitted only at the end of this period and each 365 days thereafter and only where verified to the satisfaction of the purchasing office.

Consultant shall give not less than 90 days advance notice of any price increase to the purchasing office. Any approved price changes will be effective only at the beginning of the calendar month following the end of the full 90-day notification period. Documentation shall be supplied in general with the Consultant's request for increase which will verify that the requested price increase is general in scope and not applicable just to the Town of Windsor.

The purchasing office will notify the using department and Consultant in writing of the effective date of any increase which it approves. However, the Consultant shall fulfill all task orders received prior to the effective date of the price adjustment at the old contract prices. The Consultant is further advised that decreases which affect the cost of materials are required to be communicated immediately to the purchasing office.

SUBCONTRACTS: No portion of the work shall be subcontracted without prior written consent of the Town Manager. In the event that the Consultant desires to subcontract some part of the work specified herein, the Consultant shall furnish the Town Manager the names, qualifications and experience of their proposed subcontractors. The Consultant 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.