



TOWN OF LEESBURG, VIRGINIA
REQUEST FOR PROPOSALS

CONSTRUCTION MANAGEMENT AND PROJECT MANAGEMENT
FOR LEESBURG CAPITAL IMPROVEMENT PROJECTS

RFP NO. 300810-FY12-02

The Town of Leesburg requests proposals from interested construction management firms to provide construction management and project management for various capital projects.

Proposals shall be submitted no later than 4:00 p.m., Wednesday, April 25, 2012, to Ms. Renée LaFollette, PE, Acting Director, Department of Capital Projects, Town of Leesburg, 25 West Market Street, Leesburg, VA 20176. All proposals must indicate RFP title, number and proposal date on the external shipping material.

Interested Offerors should download a copy of the RFP from the bid board on the Town's website: <http://www.leesburgva.gov/services/finance/solicitations/default.aspx>, or contact Cindy Steyer at 703-779-4007 for additional information. All addenda issued for this project will only be posted on the Town's Bid Board.

Renée LaFollette, PE, Acting Director
Department of Capital Projects



**TOWN OF LEESBURG, VIRGINIA
REQUEST FOR PROPOSALS
RFP NO. 300810-FY12-02**

**CONSTRUCTION MANAGEMENT AND
PROJECT MANAGEMENT SERVICES FOR
LEESBURG CAPITAL IMPROVEMENT PROJECTS**

Issue Date: March 28, 2012

Due Date: April 25, 2012

RFP No. 300810-FY12-02

Remittance Address: By Mail or Hand Delivered
Town of Leesburg
Department of Capital Projects
25 West Market Street
Leesburg, Virginia 20176

Technical Contact: Renée LaFollette, P.E.
Acting Director
Department of Capital Projects
Phone: 703-737-6071
Fax: 703-737-7065
Email: rlafollette@leesburgva.gov

Procurement Contact: Kathy S. Elgin, CPPO
Chief Procurement Officer
Email: kelgin@leesburgva.gov

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**CONSTRUCTION MANAGEMENT AND
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I. GENERAL INFORMATION

The Town of Leesburg (TOL) is requesting proposals from qualified firms with substantial, professional experience in construction management and inspection of neighborhood improvement projects, to include storm drainage, curb, gutter, sidewalk, roadways, trails, buildings, and public relations. The Town may choose to retain more than one firm for this annual contract.

II. CONTRACT PERIOD AND AWARD:

The initial contract period shall be one (1) year. This contract may be renewed for up to four (4) additional one-year terms **upon mutual agreement of both parties**. (Pursuant to **the Virginia Public Procurement Act, Section 2.2-4300 et seq., the “VPPA”**).

Individual or multiple tasks may be awarded to a firm based on any one of the following criteria:

1. The ability to meet specific Town schedule requirements.
2. The availability of staff.
3. Cost effectiveness.
4. Expertise of staff.

III. SCOPE OF SERVICES

The Construction Manager will be expected to work in full cooperation with the Town of Leesburg, and its designees including the Director of Capital Projects. The overall scope of work includes full participation as a member of the project team while providing coordination for value engineering sessions, when feasible, project and construction management services, constructability reviews, estimating, and some small specialty type projects to include design consultation and inspections. The Town of Leesburg reserves the right to expand or delete services as necessary. This change in services after contract award will be facilitated through a change order process.

The successful firm will be required to provide a cost proposal for the tasks involved for the project, along with a technical proposal and project schedule.

The following comprises the Town of Leesburg’s anticipated scope of work for the construction management services:

A. **Design Review and Recommendations**

Anticipated work tasks for the Construction Manager (CM) may include:

- Familiarize themselves thoroughly with the current plans and specifications and follow the remaining development of design through construction drawings.
- Perform a review and provide a written report covering suggestions, recommendations and cost saving alternatives dependent upon project schedule.
- Identify long lead-time procurement items and conditions characteristic to construction and paving projects, which may impede construction, and make appropriate recommendations dependent upon project schedule.
- Perform a constructability review and make recommendations on contract packaging, construction sequencing, construction cost, access to work, safety, construction methods, materials and minimization of construction interference as well as design detail improvements dependent upon projects schedule.
- Perform a quantity take-off that could result in the actual bid tab used for the contractors' bidding purpose.
- Participate in neighborhood meetings.

B. **Bidding and Evaluation**

Anticipated work tasks during the bidding and evaluation phase of the project may include:

- Review bid documents and make recommendations as appropriate dependent upon project status.
- Prepare a recommended bidder's list dependent upon project status.
- Attend and participate in pre-bid meetings.
- Review all bids received and make recommendations on award of construction contract.

C. **Construction**

Anticipated work tasks during the construction phase of the project may include:

- Organize, facilitate and document pre-construction meetings.
- Ensure that the project is completed in accordance with the plans, specifications and requirements of the Town. The Construction Manager will be responsible to the Capital Projects Director or designee for all aspects of the project.

- The Construction Manager will provide and be fully responsible for full-time on-site representation for construction inspection services. Full-time is defined as a minimum of eight (8) hours per workday, on site.
- Implement a quality control/quality assurance program.
- Coordinate all work activities and ensure all work is in accordance with the design documents provided by the engineer and approved by the Town.
- Be responsible for resolution of conflicts with schedule, budget, construction, and site considerations. Resolve conflicts between the design and actual on-site conditions.
- Coordinate activities with engineers, contractors and project managers of other projects on the site.
- Review and evaluate contractors schedule submissions.
- Review and evaluate submittals and shop drawings and make recommendations for approval or other appropriate action.
- Review, evaluate and make recommendations on change orders.
- Prepare project closeout documents.
- Be responsible for resolution of citizen complaints dealing specifically with the project construction activities.

D. **Project Management Information**

Anticipated project management work tasks may include:

- Stress importance of safety. All safety procedures should be in accordance with OSHA and all other mandated regulations.
- Design, implement and utilize a Project Management Information System (PMIS) to facilitate the rapid and accurate exchange and monitoring of information between all parties. The PMIS shall include as a minimum the following:
 - Narrative reporting on a monthly basis
 - Schedule control on a monthly basis
 - Cost control and estimating on a monthly basis
 - Project accounting
 - Action reports
 - Complaint log
 - Daily quality control/inspection reports
 - Non-conformance reports
 - Change order log
 - On-site document control system to ensure that current drawings are available to the contractors performing the work
 - Submittal log with required submission and return dates to avoid schedule delays
- Provide accurate reports, documents and data monthly on assessment of project status and of the work remaining to be accomplished. The information provided shall provide a sound basis for identifying variances and problems and shall include recommendations for making management decisions.

- Review contractor payment requests and recommend payment.

IV. PROPOSAL FORMAT

Proposals are to be submitted in a format which allows uniform review and easy access to information by the evaluation committee. A Table of Contents shall be provided and pages and exhibits numbered in an organized manner. All proposal pages shall be printed in vertical format to the extent possible.

The items to be addressed in the proposal are listed below. All proposals shall provide a delineation of capabilities to satisfy the requirements of this request. Emphasis should be on completeness and clarity of content. Proposals are limited to thirty (30) single-sided pages or fifteen (15) double-sided pages. Covers, dividers (i.e. sheets that are blank on both sides), letter of interest, table of contents and any addenda will not be counted as part of the sheet count.

A. Introductory Letter of Interest

B. Understanding and Approach

1. Understanding of the Scope of Services and the key issues involved, including demonstrated approach to working with the Town of Leesburg, if applicable
2. Approach to comprehensive construction management and inspection related consulting services
3. Quality assurance program
4. Approach to meeting scheduled commitments, including methods of responding in short time periods, and cost control techniques

C. Qualifications and Experience

1. Provide specific information regarding your firm's or team's experience and qualifications related to the services to be provided under this contract.
 - Prime consultant – Primary services offered, firm size, location(s) where work will be performed, history of working directly for local governments, and other related information
 - Sub-consultants – Role of sub-consultant and services to be provided under this contract, location where work will be performed, history of working with the prime consultant, history of working with local governments, and other related information.
2. Provide information on at least five similar projects completed within the last 10 years. The projects should focus, to the greatest extent possible, on your firm's past or present experience with local government entities on projects similar to those shown in the Town's approved Capital Improvements Program. The

projects should demonstrate your firm's ability to ensure the timely completion of the proposed services in the most efficient manner and should represent experience by personnel proposed to be assigned to the Town's projects.

The project descriptions should include the following minimum information:

- project name;
- client including contact and telephone number;
- dates;
- description of project (photos may be included) including your firm's role in the project;
- dollar value of project; and
- key personnel involved with project.

Typical Project types:

- Roadway Improvement Projects
- Storm Drainage Projects
- Sidewalk/Trail Projects
- Neighborhood Improvement Projects

D. Firm Staffing

1. Provide an organization chart, including, at a minimum:

- Project Manager
- Key Task Leaders
- Quality Management Team Personnel
- Other Key Staff

For each person shown on the chart, clearly indicate their role and office location. If the person is from a sub-consultant, that should be noted.

2. Provide staff resumes describing the qualifications and specific experience for each project team member listed on the organizational chart.

3. Include current backlog versus capacity of the firm.

E. Supplemental Materials (optional)

This optional section can include materials such as technical papers, company brochures/publications, or industry awards that directly relate to the elements of this project. These pages will count toward the 30-page limit.

F. RFP Submission Form

See Section IX

V. PROPOSAL/SELECTION PROCESS

An Evaluation Committee consisting of the Acting Director of Capital Projects and others will review the proposals. The Chief Purchasing Officer will participate as a non-voting member of this committee. The evaluation and selection of the Construction Management firm will be based on the criteria set forth in this RFP.

The Town intends to award this contract on the basis of competitive negotiation as outlined in the Virginia Public Procurement Act – Section 2.2-4301.3.a “Competitive Negotiations; Procurement of Professional Services.” Based on the Proposal Evaluation Criteria listed below in Section VI, the committee will determine the highest-ranked offeror. Offerors may be required to make a verbal presentation of their proposal. Offerors may be required to provide a non-binding estimate of man-hours and cost at this meeting. The Evaluation Committee will schedule the time and location for this presentation, if it is necessary. After the presentations, the firms will be re-ranked. Negotiations will be conducted with the offeror ranked first. If these negotiations are unsuccessful, they will be formally concluded and the second ranking firm will be contacted.

The contract for these services will be based on hourly rates for services provided with an upper, not to exceed limit for each phase of professional services.

VI. EVALUATION OF PROPOSALS/SELECTION CRITERIA

EVALUATION CRITERIA

The following criteria will be used in the evaluation of proposals and developing a short list of Offerors:

- A. Understanding and Approach
 - 1. Understanding of Services Required
 - 2. Technical Approach
 - 3. Management Approach
 - a. Quality Assurance
 - b. Schedule
 - c. Cost Control
- B. Qualifications and Experience
 - 1. Firm (Team) Capabilities and Experience
 - 2. Projects
- C. Staffing
 - 1. Project Manager(s)
 - 2. Technical Staff

VII. TERMS AND CONDITIONS

- A. **Rejection of Proposals** - The Town reserves the right to reject any or all proposals, to waive any informality in any proposals or reject any item or combination of items.
- B. **Contract Execution** - In the event that the offeror to whom the proposal is awarded does not execute a contract within 30 days after the award of proposal, the Town may give notice to such offeror of intent to award the proposal to the next most qualified offeror, or to call for new proposals, and may proceed accordingly.

Any exceptions to this contract must be clearly noted in your proposal.

- C. **Inquiries** - All inquiries concerning this RFP must be directed, **in writing**, to Renée LaFollette, P.E., Acting Director, Department of Capital Projects, 25 West Market Street, Leesburg, VA 20176, by Fax at 703-737-6045 or by email to CapitalBidQuestions@leesburgva.gov. Questions will be entertained until close of business 5 days prior to the bid due date. Emails sent directly to the Director or other staff will not be answered. A copy of all written questions received, and subsequent responses provided, will be posted on the Town Bid Board only. It is the Offeror's responsibility to register with the Bid Board to receive the updates.
- D. **Understanding of RFP** - Offerors shall thoroughly examine and be familiar with the RFP. The failure or omission of any offeror to receive or examine this document shall in no way relieve any offeror of obligations with respect to this proposal or the subsequent contract. The submission of a proposal shall be taken as prima facie evidence of compliance with this paragraph.
- E. **Assignment of Contract** - The firm is prohibited from assigning, transferring, conveying, subletting, or otherwise disposing of this contract or its rights, title or interest therein or its power to execute such contract or its rights, title or interest therein or its power to execute such contract to any other person, company or corporation without the consent and approval in writing by the Director of Capital Projects.
- F. **Exceptions to RFP** – Offerors taking exception to any part or section of this RFP shall clearly indicate such exceptions in their proposal. Failure to indicate any exceptions shall be interpreted as the offeror's intent to fully comply with the RFP as written. Conditional or qualified proposals are subject to rejection in whole or in part.
- G. **Laws and Regulations** – It shall be understood and agreed that any contract awarded on this proposal shall comply fully with all local, state and federal laws and regulations. Any litigation arising from this contract will be conducted in the Circuit Court of Loudoun County, a court within the Commonwealth of Virginia.

- H. **Collusion Among Offerors** – More than one proposal from an individual, firm, partnership, corporation or association under the same or different name will be rejected. Reasonable grounds for believing that an offeror has an interest in more than one proposal for the work contemplated will cause rejection of all proposals in which the offeror is interested. Any or all proposals will be rejected if there is any reason for believing that collusion exists among the offerors. Participants in such collusion may not be considered in future proposals for the same work. Each offeror, by submitting a proposal and the attached RFP Submission Form, certifies that it is not a party to any collusive action.
- I. **Qualification of Offerors** – Each offeror may be required, before the award of any contract, to show to the complete satisfaction of the Evaluation Team that it has the necessary facilities, abilities, and financial resources to furnish the service or material specified herein in a satisfactory manner, and the offeror may also be required to show past history and reference which will enable the Evaluation Team to be satisfied as to the offeror’s qualifications. Failure to qualify according to the foregoing requirements will justify proposal rejection.
- J. **Liability** – The successful offeror will not be held responsible for failure to perform the duties and responsibilities imposed by the contract due to legal strikes, fires, civil disobedience, riots, rebellions, acts of God and similar occurrences beyond the control of the successful offeror that make performance impossible or illegal, unless otherwise specified in the agreement.
- K. **Relation to Town** – It is the intent of the parties hereto that the successful offeror shall be considered as an independent contractor and that neither it nor its employees shall, under any circumstances, be considered servants or agents of the town and that these bodies shall be at no time legally responsible for any negligence on the part of said successful offeror, its servants or agents, resulting in either bodily or personal injury or property damage to any individual, firm, or corporation.
- L. **Expenses Incurred in Preparing Proposal** – The Town accepts no responsibility for any expense incurred in the proposal preparation and presentation. Such expenses are to be borne exclusively by the offeror.
- M. **Offeror Responsibility** – Before submitting a proposal, each offeror shall make all investigations and examinations necessary to ascertain all conditions and requirements affecting the full performance of the contract. Before submitting a proposal, each offeror shall make all investigations and examinations necessary to verify any representations made by the Department of Capital Projects that the offeror will rely upon. No pleas of ignorance of such conditions and requirements resulting from failure to make such investigations and examinations will relieve the successful offeror from its obligation to comply in every detail with all provisions and requirements of the contract documents or will be accepted as a

basis for any claim whatsoever for any monetary consideration on the part of the successful offeror.

- N. **Protest of Award or Decision to Award** – An offeror may protest an award or decision to award a contract under procedures as set forth in the Town of Leesburg Procurement Policy.
- O. **Ethics in Public Contracting** – This specification incorporates by reference, but is not limited to, the provisions of law contained in the Virginia Conflict of Interest Act, the Virginia Governmental Frauds Act, Articles 2 and 3 of Chapter 10 of Title 18.2, the Virginia Public Procurement Act, Chapter 7 of Title 11 of the Code of Virginia, as amended, and the Town of Leesburg Procurement Policy.
- P. **Insurance Requirements** – Construction Manager shall secure at its own expense general liability insurance in an amount not less than \$2,000,000 solely contained in a Commercial General Liability Policy or in combination with an Umbrella or Excess Policy. Included shall be coverage for Bodily Injury and Property Damage resulting from the operations, products, and completed operations of the contractor.

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

Construction Manager shall also carry Workers Compensation insurance, which meets the statutory requirements of the Commonwealth of Virginia.

Construction Manager shall also carry Professional Liability (E&O) Insurance for any errors or omissions in the services it provides to the Town, in an amount of not less than \$2,000,000.

In addition, Construction Manager shall also carry other insurance coverage deemed by the Town to be appropriate to his agreement.

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

A Certificate of Insurance identifying coverage and naming the Town of Leesburg as additional insured shall be furnished to the town. A copy of the endorsement to the Construction Managers policy shall be provided as proof of this requirement.

Liability coverage shall contain wording prohibiting cancellation of coverage, failure to renew, or reduction in limit without the insurer first giving thirty (30) days prior written notice of such action to the town.

- Q. **Business, Professional, and Occupational License (BPOL)** – All firms conducting business for the Town of Leesburg are required to be licensed in accordance with the Town’s “Business, Professional, and Occupational Licensing (BPOL) Tax” Ordinance (excerpt below). Wholesale and retail merchants without a business location in Leesburg, Virginia are exempt from this requirement. Questions concerning the BPOL Tax should be directed to the Department of Finance, telephone 703-771-2715.

Town Code, Leesburg, VA, Sec. 17-163 License requirement

Every person engaging in the Town in any business, trade, profession, occupation or calling (collectively hereinafter "a business") as defined in this article, unless otherwise exempted by law, shall apply for a license for each such business if:

- (1) Such person maintains a definite place of business in the Town of Leesburg;
- (2) Such person does not maintain a definite office anywhere but does maintain an abode in the Town, which abode for the purposes of this article shall be deemed a definite place of business; or
- (3) There is no definite place of business but such person operates amusement machines, is engaged as a peddler or itinerant merchant, carnival or circus as specified in § 58.1-3717, 3718 or 3728, respectively of the Code of Virginia, or is a contractor subject to § 58.1-3715 of the Code of Virginia, or is a public service corporation subject to § 58.1-3731 of the Code of Virginia. A separate license shall be required for each definite place of business. A person engaged in two or more businesses or professions carried on at the same place of business may elect to obtain one license for all such businesses and professions if all of the following criteria are satisfied: (i) each business or profession is licensable at the location and has satisfied any requirements imposed by state law or other provisions of the articles [Code] of the Town of Leesburg; (ii) all of the businesses or professions are subject to the same tax rate, or, if subject to different tax rates the licensee agrees to be taxed on all businesses and professions at the highest rate; and (iii) the taxpayer agrees to supply such information as the assessor may require concerning the nature of the several businesses and their gross receipts.

- R. **Other Licenses and Permits** – The Offeror shall pay all Town, County, State, and Federal taxes required by law enacted at the time proposals are received and resulting from the work or traceable work thereto, under whatever name levied.
- S. **Ownership of Documents** – The Offeror agrees that all information, finished or unfinished documents, data, studies, surveys, drawings, maps, specifications, models, photographs, records, reports and other material gathered and/or prepared by or for it under the terms of the Contract shall, at the Town’s option, be

delivered to, become, and remain the property of the Town. The Town shall also have the right to use and reproduce the data and reports submitted hereunder, without additional compensation to the Offeror.

T. **Employment Discrimination by Contractors Prohibited** – Every contract in excess of \$10,000 shall include the following provisions:

- a. During the performance of a contract, the Contractor shall agree that he will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, age, disability or any other basis prohibited by federal or state law relating to discrimination in employment in the solicitation and award of public contracts except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor; that he will post in conspicuous places, available to employees and applicants for employment, notices setting forth nondiscrimination practices, and that he will state, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that he is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient to meet this requirement.
- b. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

U. **Provision for Multiple Projects** – Pursuant to section 2.2-4301 of the VPPA

The resulting contract will allow for work on multiple projects provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the contract term is limited to one year, or a cumulative total project fee sum of \$500,000, whichever comes first, and (iv) the project fee of any single project shall not exceed \$100,000. Such contract may be renewable for four (4) additional one-year terms at the option of the public body. Under such contract, the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed. Any unused amounts from the first contract term shall not be carried forward to the additional term.

In the event that these limits are modified in the VPPA during the initial or renewal terms of this contract, the Town reserves the right to amend the limits of this contract to coincide with the change(s).

V. **Drug Free Workplace** – Pursuant to section 2.2-4312 of the VPPA. Drug-free workplace to be maintained by contractor; required contract provisions.

All public bodies shall include in every contract over \$10,000 the following provisions:

During the performance of this contract, the Offeror agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Offeror that the Offeror 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 Offeror in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

W. Payment Clauses – Pursuant to Section 2.2-4354 of the VPPA –

1. Within seven days after receipt of amounts paid to the Offeror by the Town for work performed by the subcontractor under the resulting contract the Offeror will:
 - a. Pay the subcontractor for the proportionate share of the total payment received from the agency attributable to the work performed by the subcontractor under that contract; or
 - b. Notify the agency and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
2. Individual contractors must provide their social security numbers and proprietorships, partnerships, and corporations to provide their federal employer identification numbers.
3. The Offeror will pay interest to the subcontractor on all amounts owed by the Offeror that remain unpaid after seven days following receipt by the Offeror of payment from the Town for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 1.
4. "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month."

The Offeror will include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the Town. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

X. Dispute Resolution – Pursuant to Section 2.2-4363 of the VPPA – 3.Disputes

1. Notwithstanding any provision of law to the contrary, all claims, disputes, and other matters or questions between the Offeror and the Town arising from or relating to this Contract, shall be resolved under this paragraph:
2. The Offeror shall immediately notify the Project Manager in writing of any claim or dispute pertaining to this Contract. Upon receiving notice of a claim, the Project Manager or designated representative will attempt to resolve the dispute. If the Offeror is not satisfied by the Project Manager's decision, the Offeror shall within ten (10) days after receipt of the Project Manager's proposed resolution, submit a written claim to the Director of the Department of Capital Projects. The Director of the Department of Capital Projects shall issue a written decision within ten (10) days after receipt of a claim. If the Offeror is not satisfied with the resolution proposed by the Director of the Department of Capital Projects, the Offeror shall within (10) days after receipt of the Director of the Department of Capital Projects' proposed resolution, submit a written claim the Chief Contracting Officer (CCO). The CCO shall issue a written decision within ten (10) days after receipt of a claim. The decision of the CCO shall be final, unless the Offeror appeals by filing a written notice of appeal in the Office of the Town Manager no later than ten (10) days after issuance of the decision.
3. In the event of an appeal, the Town Manager or his/her designee shall provide for a hearing and the opportunity for both parties to present pertinent information. The Town Manager shall issue a final decision containing findings of fact within ten (10) days after receipt of a timely notice of appeal, or within ten (10) days after the hearing, if one is held. The findings of fact shall be final and conclusive and shall not be set aside unless fraudulent or arbitrary or capricious or so grossly erroneous as to imply bad faith. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner. Any party to the administrative procedure, including the Town, shall be entitled to institute judicial review if such action is brought within thirty (30) days after receipt of the written decision of the Town Manager. The Offeror shall not stop work on the project pending final resolution of any claim arising under or relating to the Contract. The Offeror shall proceed diligently with performance of the Contract, and shall comply with any decision of the CCO, or in the event of appeal, the Town Manager.

4. The parties recognize that this paragraph sets forth the exclusive means for resolving disputes that arise under or relate to the Contract, and the Offeror waives all rights to any claim that is not pursued in accordance with the administrative procedures established in this paragraph.
- Y. **Subject to Appropriations** – The Offeror agrees that any resulting contract shall be subject to annual appropriations of the Leesburg Town Council and that non-appropriation of sufficient funding to continue the contract will result in its automatic termination once existing funding is exhausted.

VIII. SUBMITTAL INSTRUCTIONS

- A. One (1) original and five (5) copies of the proposal must be received by Ms. Renée LaFollette, P.E., Acting Director, at the address specified below, not later than the advertised bid date.

Proposal submissions shall be addressed to:

Town of Leesburg
ATTN: Renée LaFollette, P.E., Acting Director
Department of Capital Projects
25 West Market Street
Leesburg, VA 20176

Proposals must be placed in a sealed envelope bearing the name of the offeror, the offerors address and the title and due date of the proposal. The proposal shall be signed in the name of the offeror and bear the signature of the person duly authorized to bind the firm in a contract. The name, address, and phone number of the point of contact shall be identified.

- B. **LATE PROPOSALS** - It is the responsibility of the offeror to insure that the proposal arrives on time and at the proper location. Late proposals will not be considered.

IX. RFP SUBMISSION FORM

BID FORM – RFP SUBMISSION FORM

SECTION I – COMPANY IDENTIFICATION AND OWNERSHIP DISCLOSURE

Company _____
Address _____
Contact Person _____ Title _____
Telephone No. _____ Fax No. _____ Email _____
Organized under the laws of the State of _____
Principal place of business at _____
Federal Id Number _____ Registered Agent _____
State Corp. Commission Registration No. _____ (attach Certificate of Good Standing)

List the names and addresses of all persons having ownership of 3% or more in the company:

Name	Address
_____	_____
_____	_____
_____	_____

The Town of Leesburg requests, as a matter of policy, that any consultant or firm receiving a contract of award resulting from a formal solicitation issued by the Town shall make certification as specified below. Receipt of such certification, shall be a prerequisite to the award of contract and payment thereof.

SECTION II – EMPLOYEES NOT TO BENEFIT - I (we) hereby certify that if the contract is awarded to our firm, partnership, or corporation, that no employee of the Town of Leesburg, or members of his/her immediate family, including spouse, parents or children has received or been promised, directly or indirectly, any financial benefit, by way of fee, commission, finder’s fee, political contribution or any similar form of remuneration on account of the act of awarding and/or executing this contract.

SECTION III – CONFLICTS OF INTEREST - This solicitation is subject to the provisions of VA Code Ann. Section 2.1-639.2 et seq., the State and Local Government Conflict of Interests Act. The Offeror [] is [] is not aware of any information bearing on the existence of any potential organizational conflict of interest.

SECTION IV – COLLUSION - I certify that this offer is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting an offer for the same services, materials, supplies, or equipment and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of the State and federal law and can result in fines, prison sentences, and civil damage awards. I hereby certify that the responses to the above representations, certifications, and other statements are accurate and complete. I agree to abide by all conditions of this RFP and certify that I am authorized to sign for my company.

Signature _____ Date _____
Name (Printed) _____ Title _____

BIDDER MUST RETURN THIS FORM WITH BID

X.

CONTRACT NO. _____

**CONSTRUCTION MANAGEMENT SERVICES FOR THE
LEESBURG CONSTRUCTION PROJECTS**

This **Contract** (the “**Contract**”) is made this ____ day of _____, 2012, by and between the **Town of Leesburg, Virginia** (the “**Town**”), a municipal corporation, and _____ (the “**Construction Manager**”), a corporation having a usual place of business at _____.

WHEREAS, the Town has issued or will issue an Invitation to Bid or Request for Proposals for the Fort Evans Road Improvements Project (“**Project**”); and

WHEREAS, the Town has entered or will enter a construction contract (“**Construction Contract**”) for the Project with a construction contractor (“**Construction Contractor**”); and

WHEREAS, the Town wishes to engage Construction Manager to perform on the Town’s behalf certain construction management and inspection services on the Project.

NOW THEREFORE, the Construction Manager and the Town, in consideration of the mutual covenants, promises, and agreements herein contained, agree as follows:

1. Provision of Services. The Construction Manager hereby agrees to provide the services enumerated herein and shall do so by providing sufficient organization, personnel and management to carry out the requirements of this Contract in an expeditious and economical manner consistent with the interests of the Town. The Construction Manager will work in full cooperation with the Town and its designees including the Director of the Department of Capital Projects Management. The overall scope of work includes full participation as a member of the project team while providing coordination for Value Engineering sessions, when feasible, and construction management services. The Town of Leesburg reserves the right to expand or delete services as necessary. Any change in services after contract award will be facilitated through a change order process.

A cost proposal for the tasks involved for the project will be prepared along with the technical proposal and project schedule.

This Contract requires comprehensive and professional construction management services through construction and acceptance for public use. The following comprises the Town of Leesburg’s scope of work for the construction management services:

A. **Design Review and Recommendations**

1. Familiarize themselves thoroughly with the current plans and specifications and follow the remaining development of design through construction drawings.
2. Perform a review and provide a written report covering suggestions, recommendations and cost saving alternatives dependent upon project schedule.
3. Identify long lead-time procurement items and conditions characteristic to construction and paving projects, which may impede construction, and make appropriate recommendations dependent upon project schedule.
4. Perform a constructability review and make recommendations on contract packaging, construction sequencing, construction cost, access to work, safety, construction methods, materials and minimization of construction interference as well as design detail improvements dependent upon projects schedule.

B. **Bidding and Evaluation**

1. Review bid documents and make recommendations as appropriate dependent upon project status.
2. Prepare a recommended bidder's list dependent upon project status.
3. Attend and participate in pre-bid meetings.
4. Review all bids received and make recommendations on award of construction contract.

C. **Construction**

Construction Manager agrees to perform the following services during the construction phase of the Project:

1. Organize, facilitate and document pre-construction meetings.
2. Ensure that the Project is completed in accordance with the plans, specifications and requirements of the Town. The Construction Manager will be responsible to the Capital Projects Director or designee for all aspects of the Project. The Construction Manager shall recommend courses of action to the Town when requirements of the Construction Contract are not being fulfilled.
3. Provide and be fully responsible for full-time on-site representation for construction inspection services. Full-time is defined as a minimum of eight (8) hours per workday, on-site.
4. Implement and/or oversee a quality control/quality assurance program as set forth in the Construction Contract.
5. Utilizing the Construction Schedules provided by the Construction Contractor, the Construction Manager shall review the update of the Project construction schedule provided by the Contractor incorporating the

activities of the Contractors and Subcontractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery of products requiring long lead time and procurement. The Project construction schedule shall include the Town's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall review the Contractor's update of the Project construction schedule as required to show current conditions. If an update indicates that the previously approved Project construction schedule may not be met, the Construction Manager shall recommend corrective action to the Town.

6. Ensure all work is performed in accordance with the Construction Contract and immediately notify the Town if the Contractor is not in compliance with the Contract.
7. Schedule and conduct meetings to discuss such matters as procedures, progress and scheduling; prepare and promptly distribute minutes to the Town, Construction Contractor and other interested parties.
8. Resolve conflicts with schedule, budget, construction and site considerations. Resolve conflicts between the design and actual on-site conditions.
9. Coordinate activities with Construction Managers, contractors and project managers of other projects at the site.
10. Establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals. The Construction Manager shall review all Shop Drawings, Product Data, Samples and other submittals from the Construction Contractor. The Construction Manager shall coordinate submittals with information contained in related documents and transmit to the Town those which have been approved by the Construction Manager. The Construction Manager's actions shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Town or Construction Contractor.
11. Review requests for changes, assist in negotiating Contractors' proposals, submit recommendations to the Town, and, if they are accepted, upon the request of the Town, prepare Change Orders and Construction Change Directives which incorporate the modifications to the Documents.
12. Maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records.
13. Determine in general that the Work of the Construction Contractor is being performed in accordance with the requirements of the Construction Contract Documents, endeavoring to guard the Town against defects and deficiencies in the Work. As appropriate, the Construction Manager shall have authority, upon written authorization from the Town, to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is

fabricated, installed or completed. The Construction Manager, in consultation with the Town, may reject Work which does not conform to the requirements of the Construction Contract.

14. Assist the Town in the review, evaluation and documentation of Claims.
15. Receive certificates of insurance from the Construction Contractor and forward them to the Town.
16. Record the progress of the Project. The Construction Manager shall submit written progress reports to the Town including information on the Construction Contractor, his Work, and the entire Project, showing percentages of completion. The Construction Manager shall keep a daily log containing a record of weather, Construction Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the Town may require.
17. Maintain at the Project site for the Town one record copy of all Contracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition, approved Shop Drawings, Product Data, Samples and similar required submittals. As appropriate, Construction Manager shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. The Construction Manager shall make all such records available to the Town and upon completion of the Project shall deliver them to the Town.
18. Shall, when the Construction Manager considers Construction Contractor's Work or a designated portion thereof substantially complete, Construction Manager shall, jointly with the Construction Contractor, prepare for the Town a list of incomplete or unsatisfactory items and a schedule for their completion. Construction Manager shall assist the Town in conducting inspections to determine whether the Work or designated portion thereof is substantially complete.
19. Construction Manager shall coordinate the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager shall evaluate the completion of the Work of the Contractors and make recommendations to the Architect when Work is ready for final inspection. The Construction Manager shall assist the Architect in conducting final inspections.
20. Shall secure and transmit to the Town warranties and similar submittals required by the Contract Documents for delivery to the Town and deliver all keys, manuals, record drawings and maintenance stocks to the Town. Construction Manager shall forward to the Town a final Project Application for Payment upon compliance with the requirements of the Contract Documents.

21. Duties, responsibilities and limitations of authority of the Construction Manager as set forth in the Contract Documents shall not be restricted, modified or extended without the written consent of the Owner. Consent shall not be unreasonably withheld.
22. Prepare project closeout documents.

D. **Project Management Information**

Project management work tasks are:

1. Review and coordinate the safety programs developed by the Construction Contractor for compliance with all state, federal and other regulations and laws regarding occupational safety. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Construction Contractor, its subcontractors, agents or employees of the Construction Contractor or its subcontractors, or any other persons performing work on the Project not directly employed by the Construction Manager.
2. Design, implement and utilize a Project Management Information System (PMIS) to facilitate the rapid and accurate exchange and monitoring of information between all parties. The PMIS shall include as a minimum the following:
 - Narrative reporting on a monthly basis
 - Schedule control on a monthly basis
 - Cost control and estimating on a monthly basis
 - Project accounting
 - Action reports
 - Complaint log
 - Daily quality control/inspection reports
 - Change order log
 - On-site document control system to ensure that current drawings are available to the contractors performing the work
 - Submittal log with required submission and return dates to avoid schedule delays
3. Provide accurate reports, documents, and data monthly on assessment of project status and of the work remaining to be accomplished. The information provided shall provide a sound basis for identifying variances and problems, and shall include recommendations for making management decisions.
4. Develop and implement procedures for the review and processing of applications by Contractors for progress and final payments. Based on the Construction Manager's observations and evaluations of each Construction Contractor's Application for Payment, the Construction Manager shall review and certify the amounts due the Construction Contractor. The

Construction Manager shall prepare a Project Application for Payment based on the Contractors' Certificates for Payment. The Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Construction Manager's determinations at the site and on the data comprising the Construction Contractors' Applications for Payment, that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Construction Manager. The issuance of a Certificate for Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified.

2. **Contract Documents.** The Contract Documents consist of this Contract, RFP No. _____, the Town Purchase Order, Offerors Rate Schedule, and _____ proposal, dated _____, attached hereto and expressly made a part hereof. Where the terms of this Contract and the Construction Manager's proposal are at variance, the higher or more stringent provision shall prevail. Capitalized words and terms not defined herein shall have the meaning ascribed to them in the Construction Contract.
3. **Contract Term.** The initial contract period shall be one (1) year. This contract may be renewed for up to four (4) additional one-year terms upon mutual agreement of both parties.
4. **Provisions for Multiple Tasks.** Each individual task shall not exceed \$100,000 according to section 2.2-4301.03 of the Virginia Public Procurement Act and the annual aggregate sum of tasks shall not exceed \$500,000.

In the event that these limits are modified in the VPPA during the initial or renewal terms of this contract, the Town reserves the right to amend the limits of this contract to coincide with the change(s).

5. **Contract Amount.** In return for the services identified above, the Town certifies that sufficient funds are budgeted and appropriated and shall compensate the Construction Manager within thirty (30) days after receipt of a proper invoice for the amount of payment due or thirty (30) days after receipt of services, whichever is later, and in accordance with paragraph numbered 6 of this Contract.
6. **Method of Payment.** Invoices with all supporting documentation shall be submitted monthly by the Construction Manager to the Town in the Construction Manager's standard invoice format detailing the hours worked and services performed. Invoices must reference the Town of Leesburg Purchase Order number on their first page. Invoices

shall be mailed to: Ms. Renee LaFollette, P.E., Town of Leesburg, Department of Capital Projects Management, 25 West Market Street, Leesburg, Virginia 20176.

7. **Applicable Law and Courts.** This Contract resulting from this solicitation 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 Circuit Court of Loudoun County, Virginia. The Construction Manager shall comply with applicable federal, state and local laws and regulations in its work on this Project.
8. **Assignment of Contract.** This Contract shall not be assignable by the Construction Manager in whole or in part without the prior written consent of the Town, which the Town may withhold in its sole discretion.
9. **Audit.** The Construction Manager shall retain all books, records, and other documents relative to this Contract for five (5) years after final payment, or until audited by the Town, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
10. **Indemnification.** To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by insurance purchased by Construction Manager in accordance with this Contract, the Construction Manager shall indemnify and hold harmless the Town and the Town's consultants, agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Construction Manager's services, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work under the Construction Contract), but only to the extent caused by the negligent acts or omissions of the Construction Manager, anyone directly or indirectly employed by Construction Manager or anyone for whose acts Construction Manager may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this article.
11. **Notice.** The following persons shall be contact persons for the parties, and notice given them, by certified return receipt requested mail to the addresses shown, shall constitute valid notice under the requirements of this agreement:
 1. **For Town:**
Renée LaFollette, P.E., Acting Director
Department of Capital Projects
Town of Leesburg
25 West Market Street
Leesburg, VA 20176

And

Jeanette A. Irby, Esq.
Town Attorney
Town of Leesburg
25 West Market Street
Leesburg, VA 20176

2. For Construction Manager:

The parties may amend such addresses by written notice to the opposite party at the given address.

12. **Termination.**

- A. By Town without Cause. The Town may terminate this Contract for any reason upon ten (10) days notice, and upon payment of any and all sums already earned under the terms of Paragraphs numbered 4 and 5 of this Contract and reasonable expenses incurred in reliance upon the Contract.

Notwithstanding the foregoing, Construction Manager agrees that any resulting contract shall be subject to annual appropriations of the Leesburg Town Council and that non-appropriation of sufficient funding to continue the contract will result in its automatic termination once existing funding is exhausted.

- B. By Town for Cause. The Town may terminate this Contract for cause if the Construction Manager is in material breach of this Contract and fails to adequately remedy such a breach after written notice from the Town, and a 14-day period to cure the breach. If this Contract is terminated by the Town for cause, the Town may withhold any further payments to the Construction Manager until it determines its damages and may sue the Construction Manager for any damages caused by the breach.
- C. If this Contract is terminated by the Town, the Construction Manager shall, within seven (7) days thereafter, deliver to the Town all Contract Deliverables, as specified in paragraph 14.D, regardless of the current state of completion. In such case, the Construction Manager grants an irrevocable right to the Town to use the Contract Deliverables without additional compensation to the Construction Manager, but the Construction Manager will not be liable for any change or alterations to the Contract Deliverables, or for their use in an incomplete state.
- D. If the Town terminates this Contract for cause and it is later determined that such termination was not justified, then the termination shall be converted into one for without cause under paragraph 11.A., and any liability of the Town shall be limited solely to the liability provided by that paragraph for a termination without cause.

13. **Integration Clause.** This Contract shall constitute the whole agreement between the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Contract shall supersede all previous communications, representations or agreements, written or verbal, between the parties hereto related to the subject of this Contract.
14. **Miscellaneous**
- A. Licenses and Permits - The Construction Manager shall pay all Town, County, State and Federal taxes required by law resulting from the Construction Manager's work or traceable thereto, under whatever name levied.
 - B. Liability – The Construction Manager will not be liable for any damages for failure to perform the duties and responsibilities imposed by the Contract due to legal strikes, fires, civil disobedience, riots, rebellions, acts of God and similar occurrences beyond the control of the Construction Manager that make performance impossible or illegal, unless otherwise specified in the agreement.
 - C. Relation to Town – It is the intent of the parties hereto that the Construction Manager be considered as an independent consultant and that neither it nor its employees shall, under any circumstances, be considered servants or agents of the Town, and that the Town shall be at no time legally responsible for any negligence on the part of the Construction Manager, its servants or agents, resulting in either bodily or personal injury or property damage to any individual, firm, or corporation.
 - D. Ownership of Documents - The Construction Manager agrees that all information, finished or unfinished documents, data, studies, surveys, drawings, maps, specifications, models, photographs, records, reports, and other material gathered and/or prepared by or for it under the terms of the Contract (the "Contract Deliverables") shall be delivered to, become, and remain the property of the Town. The Town shall have the right to use and reproduce the Contract Deliverables without additional compensation to the Construction Manager. Construction Manager will not be liable for any unauthorized reuse, change, or alterations to the documents identified above by the Town.
 - E. Ethics in Public Contracting – This Contract incorporates the provisions of law contained in the Virginia Conflict of Interest Act, the Virginia Governmental Frauds Act, Articles 2 and 3 of Chapter 10 of Title 18.2, and the Virginia Public Procurement Act, Article 6, of Chapter 43 of Title 2.2 of the Code of Virginia.
 - D. Insurance Requirements – Construction Manager shall secure at its own expense general liability insurance in an amount not less than \$2,000,000 solely contained in a Commercial General Liability Policy, or in combination with an Umbrella or Excess Policy. Included shall be coverage for Bodily Injury and Property

Damage resulting from the operations, products, and completed operations of the Construction Manager.

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

Construction Manager shall also carry Workers Compensation Insurance that meets the statutory requirements of the Commonwealth of Virginia.

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

In addition, Construction Manager shall also carry other insurance coverage deemed by the Town to be appropriate to this agreement.

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

A Certificate of Insurance identifying coverage and naming the Town of Leesburg as additional insured with respect to the General and Automobile Liability Policies shall be furnished to the Town.

Liability coverage shall contain wording prohibiting cancellation of coverage, failure to renew, or reduction in limit without the insurer first giving thirty (30) days prior written notice of such action to the Town.

G. Business, Professional, and Occupational License (BPOL) – All firms doing business for the Town of Leesburg are required to be licensed in accordance with the Town's "Business, Professional, and Occupational Licensing (BPOL) Tax" Ordinance. Wholesale and retail merchants without a business location in Leesburg, Virginia are exempt from this requirement.

H. Employment Discrimination by Construction Manager Prohibited:

1. During the performance of a contract, the Construction Manager shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, age, disability, or any other basis prohibited by federal or state law relating to discrimination in employment in the solicitation and award of public contracts except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Construction Manager; that it will post in conspicuous places, available to employees and applicants for employment, notices setting forth nondiscrimination practices, and that it will state, in all

solicitations or advertisements for employees placed by or on behalf of the Construction Manager, that it is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient to meet this requirement.

2. The Construction Manager will include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

I. Drug-Free Workplace – Pursuant to Section 2.2-4312 of the VPPA – § 2.2-4312. Drug-free workplace to be maintained by Construction Manager; required contract provisions. – All public bodies shall include in every contract over \$10,000 the following provisions:

During the performance of this contract, the Construction Manager agrees to (i) provide a drug-free workplace for the Construction Manager '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 Construction Manager '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 Construction Manager that the Construction Manager 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 the Construction Manager in accordance with this paragraph, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

J. Faith-Based Organizations – Pursuant to Section 2.2-4343.1 of the VPPA – The Town of Leesburg does not discriminate against faith-based organizations.

K. Payment Clauses – Pursuant to Section 2.2-4354 of the VPPA

1. Within seven (7) days after receipt of amounts paid to the Construction Manager by the Town for work performed by the subcontractor under the resulting contract the Construction Manager will:

a. Pay the subcontractor for the proportionate share of the total payment received from the agency attributable to the work performed by the subcontractor under that contract; or

- b. Notify the agency and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
2. Construction Manager must provide their Federal Employer Identification Number.
3. The Construction Manager will pay interest to the subcontractor on all amounts owed by the Construction Manager that remain unpaid after seven (7) days following receipt by the Construction Manager of payment from the Town for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 1.
4. Interest on any sums due under this Contract shall accrue at the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled The Wall Street Journal.

The Construction Manager will include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

The Construction Manager's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the Town. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

L. Dispute Resolution.

1. The parties shall first endeavor to resolve any disputes, claims or other matters in question between them through direct negotiations, and if such direct negotiations fail, by non-binding mediation, with the site of the mediation being the Town of Leesburg, Virginia, which is agreed to be the sole and exclusive venue.
2. If the procedures of subparagraph L. 1 have been followed, but more than ninety (90) days have passed since a party has requested mediation, and the dispute, claim or matter in question remains unresolved, then either party may institute a lawsuit in the Circuit Court of Loudoun County, Virginia, and may pursue all available appeals in Virginia state courts, to the extent they have jurisdiction.

- 3. Nothing in subparagraphs 1 or 2 shall prevent a party from seeking temporary injunctive or other temporary equitable relief in the Loudoun County Circuit Court if circumstances so warrant.
 - 4. In the event of any dispute, claim, or other matter in question arising, the Construction Manager shall continue its performance diligently during its pendency as if no dispute, claim or other matter in question had arisen. During the pendency of any dispute in connection with the payment of moneys, the Construction Manager shall be entitled to receive payments for non-disputed items.
- M. **Waivers of Subrogation.** The Town and Construction Manager waive all rights against each other and against the Construction Contractors, consultants, agents and employees of any of them, for damages, but only to the extent covered by property insurance during construction, except such rights as they may have to the proceeds of such insurance as set forth in this Contract or the Construction Contract. The Town and Construction Manager each shall require similar waivers from their Contractors, consultants, agents, and persons or entities awarded separate contracts administered under the Town's own forces.
- N. **No Third Party Beneficiary.** Town and Construction Manager Parties hereby acknowledge and agree that no person receives any rights or benefits hereunder, either expressly or by implication from this Contract.
- O. **Unauthorized Aliens** – In accordance with Section 2.2 – 4311.1 of the Code of Virginia, the Construction Manager agrees that it does not, and shall not during the performance of the contract, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1980.
15. **Severability.** The provisions of this Contract are intended to be severable, and if any provision, including, without limitation, any portion of any subparagraph, is found to be invalid, then full effect shall still be given to the remaining provisions not found to be invalid.

In witness whereof, the parties below, execute this contract as the date first above written,

Town of Leesburg

[FIRM]

**Authorized
Signature**

**Authorized
Signature**

Name

Name

Title

Title

Date

Date

APPROVED AS TO FORM:

TOWN ATTORNEY