



# REQUEST FOR PROPOSALS

## Engineering Services: Dam Inspections and Related Services

2011-3670-1524

January 4, 2011

City of Newport News

OFFICE OF THE PURCHASING DIRECTOR

2400 Washington Avenue

Newport News, VA 23607

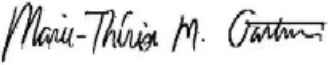
Phone: (757) 926-8041/Fax: (757) 926-8038

[www.nngov.com/purchasing](http://www.nngov.com/purchasing)

Sealed proposals, subject to the conditions and instructions contained herein, will be received at the above office of the Purchasing Director, 4th Floor, City Hall, 2400 Washington Avenue, Newport News, Virginia, 23607, until the time and date shown below (local prevailing time), for furnishing the items or services described in the proposal.

**Scope of Work:** To provide engineering services for the inspection and maintenance of impoundment structures on an open-end basis.

**Proposal Due:** January 27, 2011 @ Close of Business (COB)

**Contract Officer:**   
Marie-Therese (Mimi) M. Gartner, CPPB, Senior Buyer, ([mgartner@nngov.com](mailto:mgartner@nngov.com)) and Vickie Gwynn, Assistant Buyer, ([vgwynn@nngov.com](mailto:vgwynn@nngov.com))

**AN ORIGINAL AND EIGHT (8) COPIES OF YOUR SUBMITTAL ARE REQUESTED**

In compliance with this Request for Proposals, and subject to all the conditions thereof, the undersigned offers to furnish the items or services requested and certify he has read, understands, and agrees to all terms, conditions, and requirements of this proposal and is authorized to contract on behalf of the firm named below.

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ FAX No.: \_\_\_\_\_

E-mail: \_\_\_\_\_

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

*(This Form Must Be Signed. Signature must be original, not photocopied)*

## Conditions and Instructions

Rev. 10-08-2010

1. All proposals shall be submitted on and in accordance with this form. If more space is required to furnish a description of the commodities and/or services offered or delivery terms, the offeror may attach a letter hereto that will be made a part of the proposal. In case of conflict, the proposal may be deemed non-responsive. The City's published specifications shall supersede any additional writings submitted with the offer. Such writings should be clearly marked and noted on the exception page.
2. It will be the responsibility of the offeror to see that its proposal is in this office by the specified time and date. Date of postmark will not be considered. Telephone, electronic, fax, and verbal offers will not be accepted.
3. Prices, if requested, should be stated in units of quantity specified, less federal, state, and local taxes.
4. The offeror certifies by signing this proposal that this proposal is made without prior understanding, agreement or accord with any other person or firm submitting a proposal for the same product or service and that this proposal is in all respects bona fide, fair, and not the result of any act of fraud or collusion with another person or firm engaged in the same line of business or commerce. Any false statement hereunder may constitute a felony and can result in a fine and imprisonment as well as civil damages.
5. In event of breach by the offeror, the City reserves the right to procure the commodities and/or services from other sources, and hold the offeror liable for any excess cost occasioned thereby. If, however, public necessity requires use of materials or supplies not conforming to the specifications, they may be accepted and payment therefore shall be made at a proper reduction in price.
6. Availability of Funds: A contract shall be deemed executory only to the extent of appropriations available to each Department for the purchase of such articles or services. The City's extended obligations on those contracts that envision extended funding through successive fiscal periods shall be contingent upon actual appropriations for the following years.
7. **Hold Harmless and Indemnification:** The offeror shall defend, indemnify and hold the City, and City's employees, agents, and volunteers, harmless, from and against any and all damage claim, liability, cost, or expense (including, without limitation, attorney's fees and court costs) of every kind and nature (including, without limitation, those arising from any injury or damage to any person, property or business) incurred by or claimed against the offeror, its employees, agents, and volunteers, or incurred by or claimed against the City, City's employees, agents, and volunteers, arising out of, or in connection with, the performance of all services hereunder by the offeror. This indemnification and hold harmless includes, but is not limited to, any financial or other loss including, but not limited to, any adverse regulatory, agency or administrative sanctions or civil penalties, incurred by the City due to the negligent, fraudulent or criminal acts of the offeror or any of the offeror's officers, shareholders, employees, agents, contractors, subcontractors, or any other person or entity acting on behalf of the offeror. Unless otherwise provided by law, the offeror indemnification obligations hereunder shall not be limited in any way by the amount or type of damages, compensation, or benefits payable by or for the offeror under worker's compensation acts, disability benefit acts, other employee benefit acts, or benefits payable under any insurance policy. This paragraph shall survive the termination of the contract including any renewal or extension thereof.
8. The offeror agrees to defend and save the City, its agents, officials, employees, and volunteers, harmless from liability of any nature or kind, for use of any copyright, composition, secret process, patented or unpatented invention, articles or appliances furnished or used in the performance of the contract, or which the offeror is not the patentee, assignee, or licensee, to the same extent as provided in the above paragraph.
9. All proposals must be signed with the firm name and by an authorized officer or employee. The offeror agrees that it will perform all services and provide all goods in strict conformance with the contract documents.
10. By signing this proposal, the offeror assigns to the City of Newport News any and all rights that it may have under the antitrust laws of the United States and the Commonwealth of Virginia in any way arising from or pertaining to this offer. This provision is remedial in nature and is to be liberally construed by any court in favor of the City of Newport News.

11. **Appeals Procedure:** Upon request, administrative appeals information will be provided which shall be used for hearing protests of a decision to award or an award, appeals from refusals to allow withdrawal of proposals, appeals from disqualifications and determinations of non-responsibility and appeals from decisions or disputes arising during the performance of a contract. To be timely, all appeals shall be made within the time periods set forth in the City Code.
12. **Non-Discrimination:** During the performance of this contract, the successful offeror agrees as follows:
- It will not discriminate against any employees or applicants for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by federal or state law relating to discrimination in employment, except where one or more of these are a bona fide occupational qualification reasonable necessary to the normal operations of the offeror. The offeror agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
  - The offeror will be and state that it is an equal opportunity employer in all solicitations or advertisements for employees.
  - Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

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

During the performance of this contract, the offeror agrees to (i) provide a drug-free workplace for the offeror'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 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 subsection, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to an offeror in accordance with this subsection, 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.

13. **This public body does not discriminate against faith-based organizations**
14. **Direct contact with City Departments, other than Purchasing, on the subject of this proposal is expressly forbidden except with the foreknowledge and permission of the contracting officer.**
15. **Assignment of Contract:** A contract shall not be assignable by the offeror in whole or in part without the written consent of the City of Newport News.
16. If authorized by the offeror, the resultant contract(s) may be extended to any jurisdiction within the Commonwealth of Virginia to purchase at contract prices in accordance with contract terms. Any jurisdiction using such contracts shall place its own order(s) directly with the successful offeror(s). The City of Newport News acts only as the Contracting Agent and is not responsible for placement of orders, payment or discrepancies of the participating jurisdictions. It is the offeror's responsibility to notify the jurisdictions of the availability of contract(s). Offerors not desiring to sell to other jurisdictions under this clause shall so indicate in their response.
17. **Governing Law and Venue:** This solicitation and any resulting contract is subject to the laws of the Commonwealth of Virginia and the Newport News City Code. Any litigation with respect thereto shall be brought in the courts of the City of Newport News, Virginia, or the United States District Court for the Eastern District of Virginia, Newport News Division.

- 18. These Conditions and Instructions shall be applicable to the extent that they do not contradict the terms and/or instructions on the following pages.
- 19. **The offeror certifies that it does not and shall not during the performance of the contract for goods or services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986, as amended.**
- 20. All bidders or offerors organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50, as amended, shall include the identification number issued to it by the State Corporation Commission. Any bidder or 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, as amended, or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.

Number or Statement: \_\_\_\_\_

Any business entity that enters into a contract with a public body pursuant to this chapter 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, as amended, to be revoked or cancelled at any time during the term of the contract. The City may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

- 21. If City Hall is closed for business at the time scheduled for the proposal opening, the sealed proposal will be accepted and opened on the next business day of the City, at the originally scheduled hour.
- 22. If you have obtained this solicitation from our web page or from a source other than directly from the City of Newport News, it is the offeror's responsibility to check with our office prior to submitting your offer to ensure that you have a complete, up-to-date package. The Purchasing Department takes no responsibility to ensure any interested offeror has obtained any outstanding addenda.

The original copy maintained at our offices, in the bid/proposal file folder, shall be considered the official copy. In the case of any inconsistency between bid/proposal documents submitted to the City, but not clearly listed on the exception page of the document as an exception by the offeror, the language of the official copy shall prevail. Furthermore, any exception or changes to the specifications made by the offeror may be cause to disqualify your bid/proposal.

- 23. **Contractor's License:** If any of the services promulgated under this solicitation consist of construction work, it is required under Title 54.1, Chapter 11, Code of Virginia for a contractor who performs or manages construction, removal, repair, or improvements when the total value referred to in a single contract or project is:

Seventy thousand dollars (\$70,000) or more, or the total value of all such construction, removal, repair or improvements undertaken by such person within any twelve-month period is five hundred thousand dollars (\$500,000) or more shall show evidence of being licensed as a **Class A Contractor**.

Seventy-five hundred dollars (\$7,500) or more, but less than seventy thousand dollars (\$70,000) or the total value of all such construction, removal, repair or improvements undertaken by such person within any twelve-month period is one hundred and fifty thousand dollars (\$150,000) or more, but less than five hundred thousand dollars (\$500,000) shall show evidence of being licensed as a **Class B Contractor**.

Over one thousand dollars (\$1,000) but no more than seventy-five hundred dollars (\$7,500) or the total value of all such construction, removal, repair, or improvements undertaken by such person within any twelve-month period is no more than one hundred and fifty thousand dollars (\$150,000) shall show evidence of being licensed as a **Class C Contractor**.

The City shall require master certification as a condition of licensure or certification of electrical, plumbing and heating, ventilation and air conditioning contractors.

A valid business license from the City may be required. The offeror shall complete whichever of the following

notations as appropriate:

"Licensed Class A Virginia Contractor No. \_\_\_\_\_."

"Licensed Class B Virginia Contractor No. \_\_\_\_\_."

"Licensed Class C Virginia Contractor No. \_\_\_\_\_."

24. Payment Terms:

- a) Payment terms shall be "2%-20, Net 30 days" unless otherwise stated by the offeror on this submittal form. Alternate terms may be offered by offeror for prompt payment of bills.
- b) Payment terms shall be considered in determining the low bidder/offeror.
- c) Discount period shall be computed from the date of proper receipt of the vendor's correct invoice, or from the date of acceptable receipt of the goods/services, whichever is latest.
- d) The payment terms stated herein shall appear on the vendor's invoice. Failure to comply with this requirement shall result in the invoice being returned to the vendor for correction.
- e) Late payment charges shall not exceed the allowable rate specified by the Commonwealth of Virginia Prompt Payment Act. (1% per month)

25. Termination by the City or the Offeror, or both, for convenience:

A. For all contracts other than professional service agreements:

The parties may terminate the contract at any time by mutual written agreement.

In addition, if the contract is an extended term contract, after completion of the first contract period, either party may terminate the contract without penalty or financial obligation, except that the parties remain liable for performance of all terms, conditions, and obligation through the date of termination. Written notice of termination shall be given to the other party a minimum of thirty (30) days prior to is effective date.

B. For professional service agreements:

Refer to the provisions contained in the professional services agreement regarding termination.

26. Termination of Cause (Applicable to contracts other than professional services agreements):

In the event that the offeror shall for any reason or through any cause be in default of the terms, conditions, or obligations of the contract documents, the City may give the offeror written notice of such default and terminate the contract. All terms, conditions, and obligations of the contract documents are considered material.

The City may, in its discretion, provide the offeror an opportunity to cure the default, if curable, prior to termination. Unless a different duration is provided in the notice of default, the offeror shall have fourteen (14) calendar days to cure the default from the date such notice is mailed to the offeror, unless notification is by facsimile or personal delivery, in which case the opportunity to cure shall commence upon dlivery of the notice. Upon failure of the offeror to cure the default the City may immediately terminate the contract effective as of the mailing or delivery of the default notice. If the City terminate the contract, the offeror shall remain liable for performance of all terms, conditions, and obligation through the date of termination. Termination by the City shall not constitute a waiver by the City of any other rights or remedies available to the City by law or contract.

27. These Conditions and Instructions are intended to apply to the resulting contract and shall supersede any conflicting terms offered. Any additional conditions, which an offeror requests or intends to be considered, must be submitted

with the proposal for consideration and negotiation into a final contract document prior to an award. Contractual documents submitted by the successful firm after an award will not be accepted.

28. Failure of the offeror to perform the contract by reason of our non-acceptance of additional conditions submitted after the award, shall result in termination of the contract by the City, and may result in debarment of the offeror for a period of up to three years. Such actions taken by the City shall not release the offeror from additional remedies available to the City, which are allowed by law.
29. **Records and Inspection:** The offeror shall maintain full and accurate records with respect to all matters covered under this contract, including, without limitation, accounting records, written policies and procedures, time records, telephone records, and any other supporting evidence used to memorialize, reflect, and substantiate charges or fees related to this contract. The offeror's records shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by the City and its employees, agents or authorized representatives after giving at least three (3) days notice to offeror by the City. The City shall have access to such records from the effective date of this contract, for the duration of the contract, and for five (5) years after the date of final payment by the City to the offeror pursuant to this contract or any renewal or extension of this contract. The City's employees, agents or authorized representatives shall have access to the offeror's facilities, shall have access to all necessary records, and shall be provided adequate and appropriate work space, in order to conduct audits.
30. **Severability:** If any provision of this contract or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this contract, or the application of such provision to persons or circumstances other than those which it is invalid or unenforceable, shall not be affected hereby, and each provision of this contract shall be valid and enforced to the full extent permitted by law.
31. **Rights and Remedies Not Waived:** In no event shall the making by the City of any payment to the offeror, or the waiver by the City of any provision under this contract including any obligation of the offeror, constitute or be construed as a waiver by the City of any other provision, obligation, breach of covenant, or any default which may exist under this contract on the part of the offeror, and the making of any such payment by the City while any such breach or default exists shall not impair or prejudice any rights or remedies available to the City.
32. **Independent Contractor:** The offeror and any employees, agents, or other persons or entities acting on behalf of the contractor shall act in an independent capacity and not as officers, employees, or agents of the City.
33. **Entire Agreement:** This contract and any additional or supplementary documents incorporated herein by reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this contract or any part thereof shall have any validity or bind any of the parties hereto. This contract shall not be modified, altered, changed or amended unless in writing and signed by the parties hereto.
34. **Conflict:** In the event of a conflict between the contract documents including these Conditions and Instructions, and the terms of a purchase order or related document issued by the Department of Purchasing, the contract documents shall control.

A final contract including a professional services agreement incorporates, and is subject to, the terms and conditions contained in the underlying request for proposals, and any addenda and attachments thereto. In the event of a conflict between the contract or professional services agreement and the request for proposals, addenda, and attachments thereto, the contract or professional services agreement shall control.

35. **Scheduling and Delays:** The parties to any contract resultant of this solicitation acknowledge that all or part of the work to be performed hereunder may be delayed and extended at the option of the City. Such delays may be caused by delays, denials and modifications of the various state or federal permits, or for other reasons. The City shall not be required to pay any of the Contractor's direct or indirect costs, or claims for compensation, extended overhead, or other damage or consequential damages arising out of or related to any delays or interruptions required or ordered by the City. If the City delays the project for any reason for a continuous period of six (6) months or more, the City and Contractor will negotiate a mutually agreeable adjustment to the Contractor's award amount. **Notwithstanding the above, in construction contracts, to the extent that an unreasonable delay is caused by the acts or omissions of the City due to causes within the City's control, the above waiver or release shall not apply.**

**SMALL, MINORITY, WOMEN-OWNED  
BUSINESS OBJECTIVES**

It is an important business objective of the City to promote the economic enhancement of small businesses (SBE), minority businesses (MBE), and women-owned businesses (WBE). The success of the City to track the amount of business received by SBE, MBE and WBE FIRMS (whether as a prime contractor or a subcontractor) is dependent upon the business community partnering with us in this important endeavor.

If you anticipate **sub-contracting** to any of these businesses in the performance of this contract, you are requested to individually report the total dollars for each business classification. Failure to report the dollars in the categories below may result in the application of stronger requirements being placed on bidders to assure that SBE, MBE and WBE firms receive benefits from City contracts.

**Complete the following information and return the form with your package.**

1) If you are a SBE, MBE or WBE, please check one of the following boxes:

**SBE**                **MBE**                **WBE**   

2) In the spaces below, report the anticipated dollars that you intend to subcontract to each business type if a contract is awarded to your firm. (If you do not intend to sub-contract any work to others, even if you are a S/M/WBE, put zeros in the spaces below).

Total **SBE** Dollars to be Sub-contracted \$ \_\_\_\_\_

Total **MBE** Dollars to be Sub-contracted \$ \_\_\_\_\_

Total **WBE** Dollars to be Sub-contracted \$ \_\_\_\_\_

3) If you are not a SBE, MBE, or WBE and you do not plan to utilize such firms in this contract, please state your reasons:

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## **GENERAL**

The City of Newport News (“City”) is seeking proposals from professional engineering firms to provide engineering services for the inspection and maintenance of impoundment structures on an open-end basis. Negotiations shall be conducted for each work order requested.

The City of Newport News, Department of Public Utilities (Waterworks) supplies drinking water on a retail basis to approximately 410,000 people on the lower Virginia Peninsula, including the cities of Newport News, Hampton, Poquoson and parts of York County and James City County. The raw water used in the production of treated water is pumped from the Chickahominy River and a number of supply reservoirs.

The Waterworks has 7 dams creating the raw water supply reservoirs which are all regulated by the State. The dams are mostly earthen structures with the spillways and other appurtenances consisting of concrete and steel. The exception is Walkers Dam on the Chickahominy which is a run-of-the-river dam consisting of a sheet pile/concrete cut-off wall, a boat lock, and a migratory fish ladder. The other 6 dams are Little Creek, Diascund Creek, Skiffes Creek, Harwood’s Mill, Lee Hall Upper, and Lee Hall Lower.

## **SCOPE OF SERVICES**

Described below is a general outline of the type of work to be performed by the engineering firm and the minimum acceptable standards of performance. This outline for offerors is intended as a guide to describe the nature of the services sought and the qualifications required. A more detailed description of the Scope of Services is included in the Proposed Contract and Agreement in Appendix A. The Agreement is provided so interested firms may review the terms by which the Contract will be administered. Any exceptions or concerns with the proposed terms of the Agreement shall be submitted with the proposal (See also *Conditions and Instructions*, paragraph 27).

1. Provide annual inspections of regulated dams and completion of the necessary forms required by the Virginia Department of Conservation & Recreation (DCR) Division of Dam Safety. At a minimum these shall include the Annual Inspection Report for Virginia Regulated Impounding Structures, Operation and Maintenance Certificate Application for Virginia Regulated Impounding Structures, and an Emergency Preparedness Plan or Emergency Action Plan as required.
2. Inspect all dams after an event or at any time to evaluate conditions and required maintenance. Evaluate areas and propose methods for erosion control.
3. Prepare pro-active plans for the recovery phase of all dams following an event.
4. Prepare Hydrology, Hydraulic, Dam Failure, Inundation, Structural, and other analyses as may be requested.
5. Design necessary repairs and improvements to the dams.
6. Prepare contract documents and technical specifications, and prepare Alteration Permit(s) and Design Reports required by DCR for any modifications to any of the dams as may be required to maintain state certifications or integrity of structure.

7. Participate in bid evaluations on contracted work and provide recommendation of award to the Waterworks.
8. Provide engineering and inspection services during construction, and prepare as-built drawings of work after completion.
9. Prepare security and safety risk assessment reports for all dam structures and provide recommendations for how to improve these parameters around individual structures.

### **QUALIFICATIONS**

Minimum qualifications for the firm and key personnel/team members assigned to the work effort shall include the following:

1. Be registered to practice Engineering in the Commonwealth of Virginia.
2. Have thorough and extensive knowledge concerning the design and construction of earthen dams similar to existing Waterworks structures.
3. Have thorough technical knowledge of dams. Experience in dealing with potential failures and causes for such failures to include recommending solutions and implementing the solutions.
4. Have broad experience in inspection of existing impoundment structures and modification to such structures.
5. Have adequate staff to respond quickly to work orders and attend to needs for on-site personnel in a timely manner.
6. Have thorough knowledge of the current dam safety regulations and working experience in dealing with the dam certification process in the Commonwealth of Virginia.
7. Have the capability to perform dam hazard classification analyses including storm routing, dam failure analyses, determination of required spillway design flood, mapping of inundation areas, etc.

### **CONTRACT TERM**

The initial term of the agreement to provide these open-ended engineering services shall be for one (1) year. At the City's sole discretion, the agreement may be renewed for up to four (4) successive one (1) year periods (contract potential five years maximum).

### **SUBMITTALS**

Submit *one* original (conspicuously marked "ORIGINAL") and *eight* (8) complete copies of your proposal. Proposals shall be typed and bound in a single volume. Information described in the paragraphs that follow shall be organized in separately labeled sections or tabs, clearly identified in a table of contents. Proposals should consist of no more than fifteen (15) pages of text for Sections 2

through 4 below (not including figures, resumes, appendices, or preprinted project descriptions). Pages in the submittal shall be consecutively numbered. To be considered substantive, the proposal must respond to all requirements of the RFP. Proposals should focus on the qualifications and capabilities of the proposed project team and resources of the firm. Any other information thought to be relevant, but not applicable to the enumerated categories, should be provided as an appendix to the proposal. The following information/documents shall be included in the proposal package to be considered *responsive* to the Request for Proposals:

1. The Request for Proposal document with any addenda acknowledgements filled out and signed as required. The person that signs the RFP shall have the authority to negotiate the full scope of services on behalf of the organization and shall be authorized to bind the contract to the terms and conditions of this RFP.
2. Project Understanding: Provide a brief description of your firm's understanding of the project; identify key issues involved, and examples of how solutions to issues will be resolved.
3. Project Organization: Provide an organizational chart indicating key personnel assignments and the overall organization of the work effort. Indicate the geographic location of key individuals and project management proposed to work on the project. For each individual, overall length of experience and tenure with their current firm should be presented. Only personnel available to work on the project should be proposed.
4. Firm's Capabilities and Experience: Briefly provide specific information regarding your firm's experience and capabilities in providing engineering services for the maintenance of impoundment structures. If more than one firm is included on the project team, information should be provided as to the purpose of the proposed teaming effort and previous joint efforts.
5. References: Provide at least three (3) client references for projects that are similar or which best demonstrate your firm's ability to complete the work successfully. Include a brief description of the project, client, and of the proposed teaming effort and previous joint efforts.
6. A transmittal letter that includes the:
  - Full name and address of the organization, (If your organization is a subsidiary of another organization, or an affiliate of another organization, state the name and address of each parent or affiliate organization).
  - Legal form of your organization (i.e., corporation, partnership, proprietorship, joint venture, etc.) and the legal domicile of such organization.
  - Number of years you have been in business under your present firm or trade name.
  - Name, telephone number and address of the contact person for the submittal.

All proposals must be sealed and labeled to show the following:

- Proposal for Engineering Services: Dam Inspections and Related Services
- Name of Offeror
- Address of Offeror
- RFP Number (see cover)
- Receipt and Closing Date (see cover)

All proposals shall be addressed and delivered by the date and time specified to:

Mimi Gartner, Senior Buyer  
City of Newport News Purchasing Department  
2400 Washington Avenue (4<sup>th</sup> Floor)  
Newport News, VA 23607-4301

From the time the proposal is first advertised to the time a contract is signed, all offerors or contents of any proposal must be kept confidential. All proposals submitted under this RFP (including all documents, schedules, reports, plans and other attachments) shall become the property of the City of Newport News and will not be returned (see *Trade Secrets/Proprietary Information* page 13).

### **EVALUATION CRITERIA**

Each proposal will be evaluated for full compliance with the RFP instructions to the offeror and the terms and conditions set forth within the RFP document. The objective of the evaluation will be to recommend the firm who is most fully qualified based upon the herein described needs of the City. The proposal will be evaluated on the following criteria (*Listed in order of relative importance*):

1. Project understanding, project approach and demonstrated solutions to achieving cost-effective projects meeting all project requirements.
2. General capabilities, experience, and resources of the firm or team in areas of contract documents and technical specification; Qualifications of project team members and overall team organization.
3. Past performance – In terms of engineering service for the inspection and maintenance of water impoundment structures.
4. References – As they relate to the firm’s ability to maintain and control costs, and schedule and performance of previous work.

While these are not seen as criteria, per se, only submittals that are seen as responsive, from offerors deemed responsible will be evaluated against the criteria and be eligible for an award. Once negotiations are complete the City may again make determination as to whether the offeror is responsible.

Responsive – An offeror that has fully responded to the purpose and scope of the specifications.

Responsibility – The offeror who has the capability, in all respects, to fully perform the contract requirements, and the moral and business integrity and reliability that will assure good faith performance as described by these specifications.

### **METHOD OF SELECTION**

Proposals will be evaluated and interviews scheduled with selected firms in accordance with “Contracting for professional services” method of selection outlined in the Code of Newport News, Virginia Section 2-570.1 which can be accessed at:

<http://www.nngov.com/purchasing/resources/purchasingcode>

### **AWARD**

Award will be made in accordance with Code of Newport News, Virginia Section 2-570, Award. Award shall be made to the responsible offeror(s) whose proposal is determined in writing to be the more advantageous to the city, taking into consideration price and the evaluation factors set forth in the request for proposals. The contract file shall contain the basis on which the award is made. The award of a contract shall be the sole discretion of the City. The award shall be based on the evaluation of all information as the City may request. The City reserves the right to accept or reject any or all proposals in whole or in part and to waive any informalities in the RFP. Further, the City reserves the right to enter into a contract deemed to be in its best interest.

Upon making an award, or giving notice of intent to award, the City will place appropriate notice on the public bulletin board located outside of the Purchasing Department at City Hall. Notice of Award may also appear on the purchasing website: [www.nngov.com/purchasing](http://www.nngov.com/purchasing).

### **QUESTIONS**

Questions regarding this RFP should be directed to the Department of Purchasing, Marie-Therese (Mimi) M. Gartner by email: [mgartner@nngov.com](mailto:mgartner@nngov.com) and copy Vickie Gwynn, Assistant Buyer, [vgwynn@nngov.com](mailto:vgwynn@nngov.com) or facsimile (757) 926-8038, *not less than four (4) business days* prior to the proposal due date. All questions must be submitted *in writing*; telephonic inquiries will not be considered.

### **DIRECT CONTACT**

**Direct contact with any City employee, including the Department of Public Utilities (Waterworks) without the expressed permission of the Director of Purchasing or his designated representative, on the subject of this proposal, is strictly forbidden. Violation of this paragraph may result in disqualification of your proposal.**

### **DEBRIEFING**

The City Code requires that in the RFP process all information as to persons or firms making offers or the contents of any offers is kept confidential. This information can only be given out after an award or decision to award has been made.

After an award is made, or the decision to make an award is made, the file is available in the purchasing department for public review. Request a review time during normal business hours, 8 – 5, Mon-Fri.

**TRADE SECRETS/PROPRIETARY INFORMATION**

Trade Secrets or Proprietary information submitted by an offeror, or contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the offeror or contractor must invoke the protections of this section prior to or upon submission of data or other materials to be protected and state the reasons why protection is necessary. *Price quotations in proposals submitted to the City are not “proprietary” or “confidential”.* They are considered public information. Information leading to the decision to award, including prices and other factors, shall be made public (section 2-557.2 of City Code).

Please mark one:

**No**, the submittal I have turned in does not contain any trade secrets and/or proprietary information.

**Yes**, the submittal I have turned in does contain trade secrets and/or proprietary information.

If **YES**, please list the *page numbers* **and** the *reasons* why the information is considered a trade secret and/or proprietary information. These pages shall be conspicuously labeled “PROPRIETARY INFORMATION” in **red** ink at the top and bottom center of each page. **Do Not Mark the Whole Proposal Proprietary.**

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**APPENDIX A**  
**(AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES)**

## AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

THIS AGREEMENT, made this \_\_\_ day of \_\_\_\_\_, **2011**, by and between the CITY OF NEWPORT NEWS, VIRGINIA, a municipal corporation of the Commonwealth of Virginia, (CITY), and (ENGINEER).

### WITNESSETH:

WHEREAS, CITY owns, operates and maintains a public water supply system which contains dam structures that require specialized engineering services; and

WHEREAS, CITY desires to employ ENGINEER to perform professional engineering services for the dam structures (outlined in RFP # 2011-3670-1524); and

WHEREAS, ENGINEER responded to RFP # 2011-3670-1524 and desires to perform the following professional services.

NOW, THEREFORE, in consideration of the mutual covenants, promises and undertaking of the parties hereinafter set forth, it is mutually agreed as follows:

### ARTICLE I – ENGINEER’S SERVICES AND RESPONSIBILITIES

- 1.1 Scope of Services – ENGINEER shall perform the necessary engineering services as defined in each Work Order to the satisfaction of the Director of Public Utilities in conformance with sound engineering practices and in the best interest of CITY. A separate written Work Order or notice to proceed shall be issued by CITY for each project that is agreed upon. ENGINEER may be required to perform all or individual phases of a particular project as determined by CITY in its sole discretion as stated in the agreed upon Work Order and in accordance with Article 4, General Consideration. The details of possible services to be rendered by ENGINEER are set forth herein. Notwithstanding anything in this Agreement to the contrary, the types of services to be performed by ENGINEER are “nonexclusive”; CITY is free to engage other firms to perform such services at CITY’s option.
- 1.2 Work Order – For services ordered by CITY, the parties agree to mutually identify, approve and document the scope of work, estimated cost, fee basis, and schedule for individual projects by written Work Orders to this Agreement. Work Order cost estimates prepared by ENGINEER shall include a description of work activities to be performed at the sub task level, projected number of hours to be expended and bare labor costs for each labor category, reimbursable expenses, and total project fee. Execution of a Work Order shall serve as authorization to perform the specific services covered by the Work Order.
- 1.3 Work Order Authorization – CITY’s Director of Public Utilities, or his authorized representative, is hereby authorized to execute Work Orders which authorize

services for projects at a combined cost not exceeding the total of the annual appropriated amount(s) pertaining to this Agreement. An authorized representative of ENGINEER shall also execute each Work Order.

- 1.4 Property Damage – When on private property, ENGINEER shall take reasonable precautions to minimize property damage during the performance of services. The correction of such damage shall be included in the costs of services where foreseeable and shall be performed at CITY’s expense. ENGINEER shall be responsible for damage caused by the negligence, misconduct, or willful acts of its employees, subcontractors, and representatives.
- 1.5 Term of Agreement – This Agreement shall continue in full force and effect for one (1) year from the date of this Agreement unless sooner terminated by either party as hereinafter provided. This Agreement shall be automatically renewed on a year-by-year basis for up to four (4) additional years, unless either party notifies the other prior to the next renewal date that a renewal is not desired. Notwithstanding the above, this Agreement is subject to annual appropriation by the local governing body of CITY and Section 2-570.1 (c) of the Newport News City Code.
- 1.6 GENERAL DAM INSPECTION SERVICES - After written authorization by CITY to proceed with a Dam Inspection Work Order, ENGINEER shall perform any or all of the following services:
  - 1.6.1 Provide annual inspections of regulated dams and complete all necessary forms required by the Virginia Department of Conservation and Recreation - Dam Safety Division (DCR) in order to maintain dam certifications. This includes reinspection reports, operation and maintenance certificate applications, alteration permit applications, and emergency action plans. Reports shall include photographs, surveys, geotechnical test results, mapping, engineering analyses, etc, as required to provide detailed reports of the dam’s current condition. ENGINEER shall sign and seal as a registered Professional Engineer in the Commonwealth of Virginia all certifications on standard DCR forms and other documents as required.
  - 1.6.2 Obtain necessary permits and coordinate all inspection work with Federal, State, and local authorities, and CSX Railroad as required.
  - 1.6.3 Provide inspections of all dams to evaluate safety conditions and required maintenance. Provide maintenance and repair recommendations to CITY as required to ensure the safety and integrity of the dam structure.
  - 1.6.4 Prepare hydrologic, hydraulic, dam failure, inundation, structural, and other analyses as may be requested.

- 1.6.5 For maintenance and repairs that will not be implemented by CITY, assist CITY in the preparation of contract and bid documents, and in the selection of a contractor for such work.
- 1.6.6 For major dam rehabilitation/improvement projects as required to maintain a dam certification, ensure dam safety and integrity, or otherwise recommended by ENGINEER, provide design and construction administration services as discussed in Sections 1.7 and 1.8.
- 1.6.7 Prepare proactive plans for the recovery phase following a crisis for all dams.
- 1.6.8 Attend public information and City Council meetings to address public concerns with design or construction projects, dam safety, risk assessment, emergency action plans, etc, if requested by CITY.
- 1.6.9 Prepare security risk assessment reports for all dam structures and recommendations for how to improve security around individual structures.
- 1.6.10 Provide other engineering services as may be required for the dam inspection work.
- 1.7 DESIGN SERVICES - After written authorization by CITY to proceed with a Design Work Order, ENGINEER shall perform any or all of the following services:
  - 1.7.1 Hold a design kick-off meeting with CITY to discuss the scope of work and to develop preliminary design concepts.
  - 1.7.2 Perform or have performed topographic and planimetric surveys, using standard surveying practices, to determine ground configuration and obtain mapping details required for preliminary and final designs. Surveys shall be limited to those required to supplement surveys previously performed.
  - 1.7.3 Geotechnical investigations to obtain geotechnical information required for preliminary and final design shall include:
    - a. Review of available geotechnical data;
    - b. Preparation of plans and specifications for a subsurface exploration program, including borings, sampling and testing of materials;
    - c. Contracting with a competent subcontractor (driller, excavator, etc.) to perform applicable portions of the subsurface exploration

- program;
  - d. Field evaluations of the subsurface exploration program; and
  - e. Compilation and analyzing results of the subsurface exploration program.
- 1.7.4 Provide a detailed written report including pictures, drawings, surveys, engineering analyses results, etc. outlining ENGINEER'S design recommendations for the dam structure improvements.
- 1.7.5 Using its experience and judgment, ENGINEER shall assist CITY in identifying and securing all necessary project permits from Federal, State, and local authorities, and CSX Railroad as required. This task may include initiating and/or answering inquiries, gathering information, conducting studies, preparing reports, and preparing and submitting applications.
- 1.7.6 Upon approval of a design concept by CITY, ENGINEER shall prepare contract drawings and specifications designed in accordance with all applicable building codes and design standards and which abide by the provisions of the Virginia Department of Conservation and Recreation - Dam Safety Division. Final contract drawings and specifications shall be signed and sealed by a professional engineer licensed in the Commonwealth of Virginia.
- 1.7.7 Using its experience and judgment, ENGINEER shall prepare cost estimates of the proposed work for CITY information, based on quantities taken from construction drawings and specifications and upon price data obtained from past construction work and other information sources.
- 1.7.8 Submit to CITY for approval contract drawings and specifications and ENGINEER's opinion of total construction cost at 30%, 60%, 90%, and 100% design phases. If requested, ENGINEER shall meet with CITY to discuss CITY's comments prior to proceeding with the next design phase submittal.
- 1.7.9 ENGINEER shall assist CITY with the following bidding services:
- a. Preparation of bidding documents;
  - b. Prepare and coordinate with all prospective bidders all addenda to the bidding documents;
  - c. Attend a pre-bid meeting to answer questions that the potential bidders may have;

- d. Prepare meeting notes with written answers to all questions asked and send that information to all attendees at the meeting; and
  - e. Attend the bid opening, review the bids, tabulate the bids, and make a recommendation to CITY for award of the bid.
- 1.8 CONSTRUCTION ADMINISTRATION SERVICES - After written authorization by CITY to proceed with a Construction Administration Work Order, ENGINEER shall perform the following services:
  - 1.8.1 Attend a pre-construction meeting to assist CITY and to answer any questions the contractor may have.
  - 1.8.2 Review the contractor's submittals and shop drawings for proper general design concept, building code compliance, and compliance with the contract documents. ENGINEER shall keep track of submittal status, process submittal comments, and provide copies of reviewed submittals with comments to CITY and the contractor.
  - 1.8.3 ENGINEER shall be available for in-house contract administration as requested by CITY. Such administration may include phone or on-site consultation, assisting CITY with its responsibilities, delivering presentations at community acceptance meetings, change order preparation, pay estimate review, review construction schedules, mediation of contractor's disputes, and any other matter related to the project as requested in writing by CITY and on terms mutually agreeable to ENGINEER and CITY.
  - 1.8.4 Assist the CITY in interpreting the intent of the contract drawings and specifications to protect CITY against defects and deficiencies in workmanship and materials on the part of the contractor.
  - 1.8.5 Provide on-site construction inspection of the work in progress to assist CITY in determining if the work is proceeding in accordance with the contract documents and on schedule, and furnish CITY's representative a written report of the findings of each inspection.
  - 1.8.6 The ENGINEER shall:
    - a. Cooperate and work closely with representatives of CITY and all other parties involved;
    - b. Report to CITY whenever ENGINEER believes that any work is unsatisfactory or defective, does not conform to the contract documents, has been damaged, or does not meet the requirements

of any inspection, test or approval required to be made; and advise CITY of work that ENGINEER believes should be corrected, rejected, uncovered for inspection or requires special inspection, testing or approval;

- c. Accompany visiting inspectors and observers representing public or other agencies having jurisdiction over the project; record the results of these visits and report them to CITY; and
- d. Report to CITY when clarifications and interpretations of the contract documents are needed and transmit to contractor clarifications and interpretations as issued by CITY.

1.8.7 ENGINEER shall make a final inspection and evaluation of all construction and shall prepare a list of items to be completed or corrected, determine whether all items on the list have been completed or corrected and make a recommendation to CITY concerning acceptance. If such work is found acceptable to the CITY and satisfies all of the requirements of the contract documents, ENGINEER shall make a recommendation to CITY for final payment to the contractor.

1.8.8 Revise the contract drawings to show record conditions based on contractor supplied markups and provide an original copy to the CITY.

1.8.9 The limitations of authority of ENGINEER shall include:

- a. Not authorizing any deviation from the contract documents or substitution of materials or equipment, unless directed by CITY;
- b. Not undertaking any of the responsibilities of the contractor and their subcontractors;
- c. Not advising on, issuing directions relative to, or assuming control over any aspect of the means, methods, techniques, sequences or procedures of construction; and
- d. Not advising on, issuing directions regarding or assuming control over safety, or environmental precautions and programs in connection with the work.

## ARTICLE 2 - CITY'S RESPONSIBILITIES

2.1 Coordination – CITY shall be responsible for coordinating the work of other consultants or work forces it hires with the services performed by ENGINEER.

- 2.2 Information – CITY shall furnish to ENGINEER all available in-house information relevant to assigned project, including previous reports, analyses, drawings, specifications, operating records, and other materials impacting the projects. CITY shall furnish requested information in a timely manner and shall render approvals and decisions consistent with the orderly progress of the services. ENGINEER shall be entitled to rely on the accuracy and completeness of work performed by third parties, when their work products are provided by CITY or secured from public records. ENGINEER shall verify such work only when specifically required in the Scope of Services.
- 2.3 Access – CITY shall make provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform its services.

### ARTICLE 3 - COMPENSATION AND METHOD OF PAYMENT

- 3.1 General – CITY agrees to compensate ENGINEER for the services provided hereunder on the fee basis mutually agreed to by the parties for each Work Order. Each Work Order will have a not-to-exceed amount when it is authorized. An additional Work Order will be required to change the original not-to-exceed amount. CITY is under no obligation to agree to an additional Work Order hereunder for fees in excess of the originally agreed cost.
- 3.2 Definitions – For the purposes of this Agreement, the following words and phrases shall have the meaning respectively ascribed to them, except where the context clearly indicates a different meaning.
  - 3.2.1 Lump Sum – For services provided on a lump-sum fee basis, ENGINEER shall furnish the identified Scope of Services for a fixed total cost with the payment(s) to be made on a schedule mutually agreed to by the parties.
  - 3.2.2 Payroll cost times multiplier with not-to-exceed fee – For services provided on a payroll cost times multiplier basis, ENGINEER shall be paid for direct-hourly labor payroll costs times a multiplier of X.XX. This multiplier shall include all overhead, profit, and labor burden which includes but is not limited to the costs of items such as Workers' Compensation, federal and state unemployment taxes, group life and medical insurance, retirement, social security, sick leave, vacation and similar fixed employee benefits.
  - 3.2.3 Out-of-Pocket Expenses: For services provided on any fee basis other than lump sum, ENGINEER's and subcontractors' out-of-pocket expense costs shall be reimbursed by CITY on the basis of actual costs. Out-of-pocket expenses are all costs other than salary costs that are incurred

during the progress of the work. The out-of-pocket expense costs include: air fare, automobile rental, automobile mileage charges, parking, tolls, taxi, meals, lodging, long distance telephone calls, printing and reproduction costs, shipping costs, postage, procurement of special equipment and supplies, laboratory analysis charges, and other miscellaneous costs incurred specifically for this Project. All out-of-pocket expenses are subject to review and approval by CITY for accuracy and reasonableness.

- 3.2.4 Subcontractors: For services provided on any fee basis other than lump sum, work done by ENGINEER'S subcontractors or consultants shall be compensated at the actual cost to ENGINEER of such services, with no increase or mark-up by ENGINEER.
- 3.2.5 The cost limitations contained in Section 2-570.1(c) of the Newport News City Code shall apply.
- 3.3 Frequency – Invoices for services shall be submitted on a monthly basis as the work progresses, unless otherwise agreed upon in the Work Order, and shall be based on work performed during the invoiced period. Questions regarding invoiced items or amounts shall be addressed to ENGINEER within thirty (30) days of the date of the invoice, otherwise the invoices shall be considered correct. CITY will pay undisputed portions of each invoice within 30 days of its receipt of the invoice.
- 3.4 Past Due – If an undisputed invoice remains unpaid by CITY at ninety (90) days, or more, after its receipt, ENGINEER shall have the right to cease work after giving seven (7) days advance written notice to CITY without affecting CITY's payment obligations hereunder.
- 3.5 Accounting Records of ENGINEER – Records of ENGINEER's personnel, consultants, additional services, and out-of-pocket expenses pertaining to the projects, and records of accounts between CITY and the contractors, shall be kept on a generally recognized accounting basis, and all such records shall be available to CITY's representatives for inspection and copying at mutually convenient times.
- 3.6 Records Retention – ENGINEER agrees to retain all books, records and other documents relative to this Agreement for five (5) years after final payment made by CITY for each contract year hereunder, or until audited by CITY. The authorized agents and auditors of CITY shall have full access to and the right to examine any of said materials during this period.

## ARTICLE 4 – GENERAL CONSIDERATIONS

### 4.1 PROJECT TERMINATION OR ABANDONMENT

- 4.1.1 This Agreement may be terminated by either party upon seven (7) days written notice.
- 4.1.2 In the event CITY or ENGINEER shall terminate or abandon all or part of the services to be rendered by ENGINEER, the other party shall be notified in writing. Immediately upon receiving such notice, ENGINEER shall discontinue the work terminated or abandoned under this Agreement and shall proceed to close and terminate its services to CITY pursuant to this Agreement.
- 4.1.3 Upon termination or abandonment by either party of ENGINEER's services, ENGINEER shall deliver to CITY all drawings, specifications, reports, and studies theretofore completed or partially completed.
- 4.1.4 If this Agreement is terminated by CITY upon the completion of any phase or project, progress payments due ENGINEER for services rendered through such phase or project shall constitute total payment for such services. If this Agreement is terminated by CITY during any phase or project, ENGINEER will be paid for services rendered during that phase or project by principals and employees assigned to the project during that phase, plus reimbursable expenses (if applicable), to date of termination.

### 4.2 NONEXCLUSIVE LICENSE – OWNERSHIP AND USE OF DOCUMENTS

- 4.2.1 ENGINEER permanently and irrevocably assigns to CITY a royalty-free, nonexclusive, non-transferable license for all documents and intellectual property, as well as all derivative works thereof, including but not limited to plans, specifications, designs, tracings, drawings, estimates, field notes, investigations, design analysis, reports, studies, and derivative works thereof, in any media now known or hereinafter discovered, which are prepared in the performance of this Agreement by ENGINEER and by its consultants; such may be used, reproduced, distributed, and displayed by CITY, at its discretion, consistent with the license granted above. The license and all rights which inure to CITY shall survive the termination or disengagement of either ENGINEER or its consultants, or both, from the work, whether such termination or disengagement is involuntary or otherwise. All such documents and intellectual property prepared by ENGINEER and by its consultants are to be delivered to the Director of Public Utilities before final payment is made to ENGINEER. However, if ENGINEER wishes, it may retain the original drawings and supply CITY with reproductions on mylar and may keep copies of the above-mentioned documents. ENGINEER shall affix its professional seal to all completed

drawings, specifications, and engineering data furnished by it. ENGINEER and its consultants shall, at CITY's request, reasonably assist in protecting the CITY's rights in any intellectual property assigned hereunder, including signing such further documents as may be reasonably requested by CITY.

- 4.2.2 All contracts entered into between ENGINEER and its consultants in furtherance of the work shall incorporate the provisions of this Article by reference or contain a provision which permanently and irrevocably assigns to CITY a royalty-free, nonexclusive, non-transferable license for the CITY's use, reproduction, distribution, and display of all documents and intellectual property created by ENGINEER and by its consultants for this work as well as all derivative works thereof including, but not limited to plans, specifications, designs, tracings, drawings, estimates, field notes, investigations, design analysis, reports and studies and any derivative works thereof, in any media now known or hereinafter discovered. ENGINEER shall, upon CITY's request, submit to CITY all contracts that ENGINEER enters into with its consultants in furtherance of this work, or such other documents that demonstrate to CITY's satisfaction, the consultant's assignment to CITY of the above license in accordance with this Article.
- 4.2.3 The license and all rights which inure to CITY under this Article shall survive the termination or disengagement of either ENGINEER or its consultants, or both, from the work, whether such termination or disengagement is involuntary or otherwise.
- 4.2.4 In the event that a claim is made by any person, firm, or entity, including ENGINEER, or a consultant of ENGINEER, against CITY, or CITY's officers, agents, or employees for an alleged copyright infringement, or unauthorized use, reproduction, distribution, modification or display of such intellectual property or any derivative work thereof, or for the alleged violation of any common law or statutory rights with respect to such property including, without limitation, any derivative works thereof, ENGINEER shall defend, indemnify and save harmless CITY, and CITY's officers, agents and employees from any and all claims and/or causes of action against them for damages or injury to any person or property arising out of or in connection with CITY's use, reproduction, distribution, modification or display of such intellectual property or any derivative works thereof, including, but not limited to, reasonable attorney, consultant and expert witness fees and expenses. ENGINEER also shall be affirmatively required to secure such rights or to indemnify CITY for all costs of obtaining such rights or comparable rights in such intellectual property or comparable intellectual property.

### 4.3 INSURANCE CLAIMS AND LIABILITIES

- 4.3.1 ENGINEER shall obtain and maintain during the course of this Agreement with CITY, at the sole expense of ENGINEER, professional liability insurance as shall protect CITY from all claims and/or causes of action against them for damages, injury or death to any person or property damage which might arise from the errors, omissions, negligent acts of ENGINEER, its subcontractors, agents and employees, in their performance under this Agreement.

In addition, ENGINEER shall obtain and maintain during the course of this Agreement general liability insurance and workers' compensation insurance. CITY shall be included as an additional insured on ENGINEER's general liability insurance policy and as an alternate employer on ENGINEER's workers' compensation insurance policy, and such shall be evidenced by separate endorsements to the respective policies. Original certificates evidencing policies of insurance affording such coverage and copies of the required endorsements shall be filed with and approved by CITY prior to commencement of work hereunder. Renewals of all such insurance during the term of this Agreement shall be filed with and approved by CITY. The amounts of insurance required herein shall be determined by CITY's administrator of self-insurance programs. Any insurance company providing coverage under this Agreement shall be licensed to do business in the Commonwealth of Virginia.

All insurers providing the above coverage shall give CITY thirty (30) days advance written notice in the event of any non-renewal or cancellation of such insurance (10 days for nonpayment of premium). As confirmation thereof, the City must be furnished either a policy endorsement specifically providing for such notice, or a copy of the policy language that gives the City such assurance, or a statement on the insurance agent's, broker's, or insurer's letterhead that the City shall be given such notice.

- 4.3.2 The ENGINEER shall defend, indemnify and hold the City, and City's employees, agents, and volunteers, harmless, from and against any and all damage claim, liability, cost, or expense (including, without limitation, attorney's fees and court costs) of every kind and nature (including, without limitation, those arising from any injury or damage to any person, property or business) incurred by or claimed against the ENGINEER, its employees, agents, and volunteers, or incurred by or claimed against the City, City's employees, agents, and volunteers, arising out of, or in connection with, the performance of all services hereunder by the ENGINEER. This indemnification and hold harmless includes, but is not limited to, any financial or other loss including, but not limited to, any adverse regulatory, agency or administrative sanctions or civil penalties,

incurred by the City due to the negligent, fraudulent or criminal acts of the ENGINEER or any of the ENGINEER's officers, shareholders, employees, agents, contractors, subcontractors, or any other person or entity acting on behalf of the ENGINEER. Unless otherwise provided by law, the ENGINEER indemnification obligations hereunder shall not be limited in any way by the amount or type of damages, compensation, or benefits payable by or for the ENGINEER under workers' compensation acts, disability benefit acts, other employee benefit acts, or benefits payable under any insurance policy. This paragraph shall survive the termination of the contract including any renewal or extension thereof.

- 4.3.3 CITY and ENGINEER each binds itself and their partners, successors, executors, and administrators, and assigns in respect to all covenants of this Agreement. Neither CITY nor ENGINEER shall assign or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of CITY, nor shall it be construed as giving any rights or benefits hereunder to anyone other than CITY and ENGINEER.

#### ARTICLE 5 – SPECIAL PROVISIONS

- 5.1 ENGINEER shall 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 ENGINEER. ENGINEER agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- 5.2 ENGINEER, in all solicitations or advertisements for employees placed by or on behalf of ENGINEER, will state that such ENGINEER is an equal opportunity employer.
- 5.3 Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Article.
- 5.4 ENGINEER shall include the provisions of the foregoing Article 5.1 through 5.3 in every subcontract or purchase order of over ten thousand dollars (\$10,000.00) so that the provisions will be binding upon each consultant, subcontractor or vendor.
- 5.5 No member of the governing body of CITY, and no other officer or employee of CITY who exercises any functions or responsibilities with respect to any project shall have any interest, direct or indirect, in any contract or subcontract, or the

proceeds thereof, for work to be performed in connection with any project which is the subject of this Agreement during his tenure with CITY or for one year thereafter.

- 5.6 The titles and section headings are inserted only for convenience and in no way are to be construed as a limitation on the scope of the provisions to which they refer.
- 5.7 This Agreement constitutes the entire agreement and understanding between CITY and ENGINEER and it may not be modified or altered, changed or amended in any respect unless in writing and signed by both parties hereto. The City Manager, or Director of Purchasing or her designee, is authorized to sign amendments to this Agreement on behalf of CITY, subject to prior review by the City Attorney's Office.
- 5.8 In the event of any conflict between the terms of this Agreement, and the terms of a purchase order or related document issued by the Department of Purchasing of CITY or the Department of Public Utilities of CITY, this Agreement shall control.
- 5.9 This Agreement incorporates, and is subject to, the terms and conditions contained in the underlying Request for Proposals, and any addenda and attachments thereto, including the City's Administrative Appeals Procedure. In the event of a conflict between this Agreement and the Request for Proposals, addenda, and attachments thereto, this Agreement shall control.
- 5.10 During the performance of this Agreement, ENGINEER agrees to (i) provide a drug-free workplace for ENGINEER's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in ENGINEER's workplace and specifying the actions that shall be taken against employees for violations of prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of ENGINEER that ENGINEER maintains a drug-free workplace, and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over ten thousand dollars (\$10,000.00) so that the provisions will be binding upon each subcontractor, consultant or vendor.
- 5.11 For the purpose of Article 5.10, "drug-free workplace" means a site for the performance of work done in connection with this Agreement, or a subcontract or purchase order awarded to a subcontractor, consultant or vendor in accordance with the above Article 5.10, 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 under the subcontract or this Agreement.

- 5.12 Governing Law and Venue. The solicitation and this Agreement are subject to the laws of the Commonwealth of Virginia and the Newport News City Code. Any litigation with respect thereto shall be brought in the courts of the City of Newport News, Virginia, or in the United States District Court for the Eastern District of Virginia, Newport News Division, if independent federal jurisdiction exists.
- 5.13 Severability. If any provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected hereby, and each provision of this Agreement shall be valid and be enforced to the full extent permitted by law.
- 5.14 Illegal Aliens. ENGINEER certifies that it does not and shall not during the performance of the Agreement for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986, as amended.
- 5.15 Authority. Unless otherwise provided by the Agreement, or unless the context in which a decision, notice, or other act is made or taken requires action by the City Council or the Purchasing Director of CITY, the decisions, notices, and other actions made or taken by CITY in the implementation of the Agreement may be made or taken by the Director of Public Utilities or his designee.
- 5.16 Notices. Any notice, demand, or work order (collectively referred to as "notice") provided for or given under this Agreement shall be in writing and served on the parties at the following addresses: if to ENGINEER: INSERT ADDRESS; if to CITY: 437 Waterworks Way, Newport News, Virginia, 23608. Any notice shall be deemed given when (i) personally delivered to the above address; or (ii) when sent by telecommunication (facsimile) during normal business hours; or (iii) when deposited in the United States certified, registered, or first class mail, postage prepaid. Either party may, by like notice, designate a new address to which subsequent notices shall be addressed.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officials, as of the date and year first above written.

By: \_\_\_\_\_

CITY OF NEWPORT NEWS, VIRGINIA

By: \_\_\_\_\_  
Sheri L. Chapman, CPPB  
Director of Purchasing