

REQUEST FOR PROPOSALS

RFP No. 20-2816-2031
Issue Date: March 5, 2020



City of Newport News
OFFICE OF PURCHASING
2400 Washington Avenue, 4th Floor
Newport News, VA 23607
Phone: (757) 926-8721
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www.nnva.gov/purchasing

Title:	Stoney Run Master Plan Update
Proposals Due:	5:00 p.m., March 24, 2020
Project Overview:	The Stoney Run Park Master Plan Update and Phase I Implementation Project will include planning, design, site surveying, engineering and associated tasks for Stoney Run Park, located at 15194 Warwick Blvd., Newport News, VA 23608. The Project will include expansion of the park into adjacent landfill areas that are closed, enhancements to the current park property, and potential expansion into adjacent areas. Work products shall include both graphic and illustrative design plans and written report narratives.

The City of Newport News (the “City”) is seeking proposals from qualified firms (the “Offeror” or “Consultant”) to furnish the goods and/or services described herein and proposals will be received at the Office of Purchasing, 4th Floor, City Hall, 2400 Washington Avenue, Newport News, Virginia, 23607, through the due date and hour shown above (local prevailing time).

Pre-Proposal Conference: A Pre-Proposal Conference is NOT scheduled for this solicitation.

Questions: Questions or comments related to this solicitation shall be directed to the Contract Officer and the Assistant Buyer not later than 1:00 p.m. on March 16, 2020. All questions shall be submitted in writing (email is preferred). Telephone inquiries will not be accepted.

Contract Officer:	Shari Colvin, CPPO, CPPB, Purchasing Manager, scolvin@nnva.gov
Assistant Buyer:	Vernest Rice, Assistant Buyer, ricevo@nnva.gov

This solicitation is posted on eVA, Virginia’s eProcurement Portal (www.eva.virginia.gov) and is available for free download. A direct link to all City of Newport News solicitations on eVA is located at www.nnva.gov/691 or from the Office of Purchasing webpage (www.nnva.gov/purchasing) by selecting Solicitations from the left side bar. Offerors and potential subcontractors may communicate and collaborate using the B2B Connect through the B2B Connect tab on the eVA solicitation webpage.

Note: The City of Newport News utilizes eVA to post solicitations. Purchase Orders will be issued directly from the City’s electronic procurement system.

Table of Contents

Terms Conditions and Specifications

- Section A - Standard Terms and Conditions
- Section B - Contract Specific Terms and Conditions
- Section C - Submission Requirements and Evaluation
- Section D –Scope of Work

Attachments

- Attachment A – Proposal Form
- Attachment B – Small, Women-Owned, Minority and Service Disabled Veteran-Owned Business Requirements
- Attachment C – References
- Attachment D – Proprietary Information

Exhibits

- Exhibit I - Insurance Requirements
- Exhibit II – Sample Agreement/Contract

SECTION A
STANDARD TERMS AND CONDITIONS

Rev: 8/1/2019

1. PRE-PROPOSAL AND PROPOSAL SUBMISSION REQUIREMENTS

- a. Direct contact with anyone other than the City of Newport News Office of Purchasing, including other City departments or the City's consultants, regarding this Request for Proposals (also referred to "solicitation" herein) is expressly forbidden. Violation of this directive may result in a determination that the Offeror is ineligible for award.
- b. All proposals shall be submitted sealed with the proposal number, date and time clearly marked on the outside of the envelope or package. Electronic transmittals (i.e. fax, email, etc.) will not be considered. Proposals received in the Office of Purchasing after the due date and time will not be accepted. Failure to return required documents and information specified herein may result in a determination that the proposal will not be considered for award.
- c. All costs associated with preparing a proposal, including any mailing costs, are the Offer's responsibility.
- d. All proposals must be signed by an officer or employee having the authority to sign on behalf of the firm.
- e. Prices shall be stated in units of quantity specified. No additional charges shall be passed on to the City, including sales tax, delivery charges or other surcharges. Prices quoted shall be the final cost to the City. All deliveries shall be F.O.B. Destination.
- f. If City Hall is closed for business on the due date and time for proposals, regardless of reason, proposals will be accepted on the next business day of the City, at the originally scheduled time.
- g. The Terms, Conditions and Specifications in this Request for Proposals will be incorporated by reference and be part of the contract following award.
- h. Failure to submit a proposal on the official City form(s), as provided herein, and failure to provide an authorized signature on the forms may be cause for rejection of the proposal.
- i. Submission of a proposal is not to be construed as an award or an order to ship.
- j. A proposal by the Offeror certifies that they are not currently debarred or suspended by a local, state or federal government entity from doing business with that entity. If a debarment or suspension exists, supporting information shall be provided with the submittal. Suspension or debarment may disqualify the Offeror from award of a contract.

2. **ADDENDA:** Changes or supplemental instructions to this Request for Proposals will be posted online with this solicitation. It is the Offeror's responsibility to check for addenda prior to the proposal due date and time to ensure that all addenda are received.

The City posts all solicitations and related addenda on eVA, Virginia's eProcurement Portal (www.eva.virginia.gov). A direct link to City of Newport News solicitations is located at www.nnva.gov/691 or from the Office of Purchasing webpage (www.nnva.gov/purchasing) by selecting *Solicitations* from the left side bar.

3. AWARD

- a. A notice of award will be posted with the original solicitation on eVA, Virginia's eProcurement Portal (www.eva.virginia.gov). A direct link to City of Newport News solicitations and related awards on eVA is located at www.nnva.gov/691 or from the Office of Purchasing webpage (www.nnva.gov/purchasing) by selecting *Solicitations* from the left side bar.
- b. Award shall be made to the responsible Offeror whose proposal is determined in writing to be the most advantageous to the City, taking into consideration price and the evaluation factors set forth in this Request for Proposals. No other factors or criteria shall be used in the evaluation. When the terms and conditions for multiple awards are provided in the Request for Proposals, awards may be made to more than one (1) Offeror.
- c. The City may request additional information and make reasonable investigations as deemed proper and necessary to determine the ability of the Offeror to perform the services/furnish the goods and the Offeror shall provide the City information and data for this purpose.
- d. An Offeror may protest the award or decision to award by submitting such protest in writing to the Purchasing Agent no later than ten (10) days after the award or the announcement of the decision to award as indicated in the Code of the City of Newport News Section 2-576.3. No protest shall lie for a claim that the selected Offeror is not a responsible Offeror. The written protest shall include the basis for the protest and the relief sought. The Purchasing Agent shall issue a decision in writing within ten (10) business days stating the reasons for the action taken. This decision shall be final unless the Offeror appeals within ten (10) days of the written decision by invoking the administrative procedures established by the Purchasing Agent.
- e. The Administrative Appeals Procedure is posted on the Office of Purchasing website <https://www.nnva.gov/707/Vendor-Resources>. This procedure shall be used for hearing protests of a decision to award or an award, appeals from refusal to allow withdrawal of bids, appeals from disqualification, appeals for debarment or suspension, or determinations of non-responsibility and appeals from decision or disputes arising during the performance of a contract.

4. **NOTICES AND COMMUNICATIONS:** Notices and communications related to the contract resulting from this Request for Proposals shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means (email). All notices related to contract award, modifications, renewals, and terminations will be handled through the Office of Purchasing. The Office of Purchasing primarily utilizes email for notices and communications including but not limited to delivery of Purchase Orders, contract renewals and contract amendments. The City may also use a web-based service to obtain signatures electronically.

5. **AVAILABILITY OF FUNDS:** A contract shall be deemed in force only to the extent of appropriations available to each department for the purchase of such goods and/or services. The City's extended obligations on contracts that include funding through successive fiscal periods shall be contingent upon actual appropriations for the successive periods (additional years).

6. AUTHORIZATION TO TRANSACT BUSINESS IN VIRGINIA

All Offerors organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50, as amended, shall provide the identification number issued to it by the State Corporation Commission. Any Offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50, as amended, or as otherwise

required by law shall include in the proposal a statement describing why the Offeror is not required to be so authorized.

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. Visit <https://www.scc.virginia.gov/> for more information.

7. **SMALL, WOMEN-OWNED MINORITY AND SERVICE DISABLED VETERAN-OWNED BUSINESS REQUIREMENTS:** The City of Newport News desires to facilitate the establishment, preservation, and strengthening of small businesses and businesses owned by women, minority individuals and service disabled veterans and to encourage their participation in the City's procurement activities. The City of Newport News encourages these firms to compete and encourages non-minority firms to provide for the participation of small businesses and businesses owned by women and minority individuals and service disabled veterans through partnerships, joint ventures, subcontracts, and other contractual opportunities. Offerors are requested to complete and provide the Small, Women-Owned, Minority-Owned and Service Disabled Veteran-Owned Business Requirements Form.
8. **FAITH BASED ORGANIZATIONS:** The City of Newport News does not discriminate against faith based organizations.
9. **NON-DISCRIMINATION:** During the performance of a contract with the City, the Contractor agrees as follows:
 - a. 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 reasonably necessary to the normal operations of the Contractor. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
 - b. The Contractor will be and state that he is an equal opportunity employer in all solicitations or advertisements for employees.
 - c. 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.
 - d. The Contractor will include the provisions of the foregoing paragraphs (a), (b) and (c) in every subcontract or Purchase Order of over ten thousand dollars (\$10,000) so that the provisions will be binding upon each subcontractor or vendor.
10. **DRUG FREE WORKPLACE:** During the performance of a contract with the City, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this subsection, “A drug-free workplace” means a site for the performance of work done in connection with a specific contract awarded to a contractor 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.

11. PAYMENT TERMS

- a. Payment terms shall be “Net 30 Days” unless otherwise stated by the Offeror on the Proposal Form. Alternate terms may be offered for prompt payment of bills.
 - b. The payment terms stated herein must appear on the Contractor’s invoice. Failure to comply with this requirement may result in the invoice being returned to the Contractor for correction.
 - c. Late payment charges shall not exceed one percent (1%) per month as indicated in the Code of Virginia Section 2.2-4352, Prompt Payment of Bills by Localities.
 - d. If offered by the Offeror, a payment discount period shall be computed from the date of proper receipt of a valid invoice, or from the date of acceptable receipt of the goods and/or services, whichever is latest.
 - e. The date of postmark shall be deemed as the date of payment in all cases where payment is made by mail.
 - f. The City does not make advance payments for goods or services by practice.
12. **TAXES:** Sales to the City of Newport News are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request.
13. **HOLD HARMLESS AND INDEMNIFICATION:** The Contractor shall indemnify, defend and hold harmless the City, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by lack of performance, unlawful acts or omissions, or the negligent or willful acts or omissions of contractor or its subcontractors or sub-consultants. Further, if the Contractor subcontracts any work, it will require in its subcontracts that each contractor indemnify defend and hold harmless the City as stated above.
14. **INTERPRETATION OF SPECIFICATIONS:** The apparent silence in the specifications and any supplemental specifications as to any detail or the omission from the specifications shall be regarded as meaning that only the best commercial practices are to prevail and correct type, size and design are to be used. All interpretations of these specifications shall be made on the basis of this statement.
15. **LAWS AND REGULATIONS:** The Contractor shall keep fully informed of all federal, state and local laws, ordinances and regulations that in any manner affect the conduct of the work. The Contractor shall at all times observe and comply with all such laws, ordinances and regulations.
16. **GOVERNING LAW AND VENUE:** This solicitation and any resulting contract 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 the United States District Court for the Eastern District of Virginia, Newport News Division.

17. **RIGHTS UNDER ANTITRUST LAWS:** The Offeror assigns to the City 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 the proposal. This provision is remedial in nature and is to be liberally construed by any court in favor of the City.
18. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** The Offeror certifies that he/she does not and shall not during the performance of the contract for goods and services in the Commonwealth of Virginia, knowingly employ unauthorized aliens as defined in the Federal Immigration Reform and Control Act of 1986, as amended.
19. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Contractor in whole or in part without the written consent of the City.
20. **DEFAULT:** In event of default by the Contractor, the City reserves the right to procure the services from other sources, and hold the Contractor liable for any excess cost occasioned thereby.
21. **TERMINATION FOR CONVENIENCE:**

The City may terminate a contract when funds are not appropriated for the specified goods or services or when it is determined to be in the City's best interest without providing specific cause.

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 obligations through the date of termination.

Written notice of termination shall be given to the other party a minimum of thirty (30) days prior to its effective date.

22. **TERMINATION FOR CAUSE:**

In the event that the Contractor 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 Contractor 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 Contractor an opportunity to cure the default, if curable, prior to termination. Unless a different duration is provided in the notice of default, or agreed upon by the parties in writing, the Contractor shall have fourteen (14) calendar days to cure the default from the date such notice is mailed to the Contractor unless notification is by facsimile or personal delivery, in which case the opportunity to cure shall commence upon delivery of the notice. Upon failure of the Contractor 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 terminates the contract, the Contractor shall remain liable for performance of all terms, conditions, and obligations 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.

In addition, failure of the Contractor to perform the obligations of the contract may result in debarment of the Contractor for a period of up to three years. Termination and/or debarment of the Contractor shall not constitute a waiver by the City of any other rights or remedies available to the City by law or contract.

23. **RIGHTS AND REMEDIES NOT WAIVED:** In no event shall a payment by the City to the Contractor or the waiver by the City of any provision under the contract, including any obligation of the Contractor, 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 Contractor, 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.
24. **SEVERABILITY:** If any provision of the Contract resulting from this solicitation 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, and each provision of this contract shall be valid and enforced to the full extent permitted by law.
25. **INDEPENDENT CONTRACTOR:** The Contractor 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.
26. **CONFLICT:** In the event of a conflict between the contract documents, including these terms and conditions and the terms of a Purchase Order or related document issued by the Office of Purchasing, the contract documents shall control.
27. **NON-EXCLUSIVE CONTRACT:** Nothing herein is intended nor shall be construed as creating any exclusive arrangement with the Contractor. The contract shall not restrict the City from acquiring similar, equal or like goods and/or services from other sources.
28. **RECORDS AND INSPECTION:** The Contractor 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 Contractor'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 the Contractor 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 Contractor 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 Contractor's facilities and all necessary records and be provided adequate and appropriate work space in order to conduct audits.
29. **ENTIRE AGREEMENT:** The contract resulting from this solicitation 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.

SECTION B CONTRACT SPECIFIC TERMS AND CONDITIONS

1. **QUESTIONS:** Questions regarding this Request for Proposals (RFP) must be received prior to the date and time posted on the cover page.
2. **PRE-PROPOSAL CONFERENCE:** none
3. **CONSULTANT QUALIFICATIONS:** Firms shall have the capability in all respects to fully perform the services or provide the goods specified and have the experience necessary to assure good faith performance of the contract. Specifically, the consultant team shall have considerable collective experience in the planning, design, and engineering of public park improvements including but not limited to: 1) facilitating public input processes utilizing interactive workshops, internet-based promotional tools, and 2-D and 3-D digital or perspective sketch visualization; 2) conceptual and detailed site design of park improvements; 3) site surveying; 4) geotechnical and civil engineering for park-related improvements; 5) environmental assessment and permitting including: threatened and endangered flora and fauna species evaluation; wetland delineation; stormwater quality and quantity mitigation and treatment utilizing green infrastructure; 6) preparation of construction documents and specifications and cost estimates; 7) construction administration; 8) operations management and costs assessment; and 9) engineering and permitting associated with adaptive re-use of closed landfill sites.
4. **METHOD OF AWARD:** The City will make a single award to the responsible Offeror(s) who has made the best proposal and determined to be most advantageous to the City.
5. **CONTRACT/AGREEMENT:** Following award, a contract will be executed between the Contractor and the City. A sample contract is included in this Request for Proposals. Do not return the sample contract with the proposal; it is provided for informational purposes only.
6. **CONTRACT MODIFICATIONS:** Any modifications made to the contract must be approved by the Office of Purchasing in advance. The City and the Contractor must mutually agree to modify the terms, conditions, scope or prices/costs contained in the contract before modifications are implemented.
7. **CONTRACT PERIOD/ RENEWAL:** The initial contract period will be from the date of award through the completion of the project.
8. **METHOD OF ORDERING:** Receipt of a Purchase Order constitutes the authorization to provide the services specified on the order.
NOTE: The City utilizes eVA to post solicitations. Purchase Orders will be issued directly from the City's electronic procurement system.
9. **INVOICING:** The purchase order number shall be included on each invoice. Failure to include this information will delay payment. Invoices shall be submitted to the Department of Engineering through the Project and Contract Management System (PCMS).
10. **PAYMENT:** Payment will be authorized following receipt of a valid invoice through the Project and Contract Management System and delivery of goods or completion of services according to specifications and subject to inspections.
11. **INSURANCE:** The Contractor shall maintain adequate liability insurance, which shall protect and save harmless the City of Newport News, Virginia, and its officials from all suits and actions of every

kind and description arising from injury or damage to persons and property in the prosecution of said work or in failure to properly safeguard same, and from all claims arising under the workmen's compensation laws. Following award of the contract, the Contractor shall furnish proof of said insurance prior to commencement of services.

Prior to submitting a proposal, ensure that your firm fully understands the City's insurance requirements, your carrier is properly rated and that your carrier can provide the required insurance and endorsements.

Contractor shall have seven (7) days from the date of the City's request to provide insurance certificates and endorsements. Failure to provide the certificates and endorsements within this timeframe may be cause for the City to rescind award of a contract and hold the original Bidder/Offeror liable for excess costs.

Insurance requirements are specified herein as Exhibit I.

12. CONFIDENTIALITY

- a. Each party to the contract resulting from this solicitation shall (i) hold in strict confidence any or all Confidential Information of any other Party, (ii) use the Confidential Information solely to perform or to exercise its rights under a contract, and (iii) not transfer, display, convey or otherwise disclose or make available all or any part of such Confidential Information to any third-party. Each party shall take the same measures to protect against the disclosure or use of the Confidential Information as it takes to protect its own proprietary or confidential information (but in no event shall such measures be less than reasonable care).
- b. Exclusions: The term "Confidential Information" shall not include information that is:
 - i. in the public domain through no fault of the receiving party or of any other person or entity that is similarly contractually or otherwise obligated;
 - ii. obtained independently from a third-party without an obligation of confidentiality to the disclosing party and without breach of this Contract;
 - iii. developed independently by the receiving Party without reference to the Confidential Information of the other Party; or
 - iv. required to be disclosed under The Virginia Freedom of Information Act (§§2.2-3700 et seq. of the Code of Virginia) or similar laws or pursuant to a court order.
- c. Return or Destruction: Upon the termination or expiration of a contract, the Contractor shall at its own expense, (a) promptly return to the City all tangible Confidential Information (and all copies thereof except the record required by law) or (b) upon written request, destroy such Confidential Information and provide written certification of such destruction, and (ii) cease all further use of the Authorized User's Confidential Information, whether in tangible or intangible form. The City shall retain and dispose of Contractor's Confidential Information in accordance with records retention policies and as required by law.

SECTION C SUBMISSION REQUIREMENTS AND EVALUATION

1. PROPOSAL SUBMISSION

Submit *one* original paper version (conspicuously marked as “ORIGINAL”) and *six* (6) complete paper copies and *one* (1) electronic version on USB “Thumb Drive” of the proposal by the due date and time specified on the cover page. Proposals shall be delivered to the City of Newport News, Office of Purchasing, 2400 Washington Avenue, Newport News, VA 23607.

All proposals must be sealed and labeled with the *Proposal Name* and *Proposal Number* and include the Offeror’s name and address on the outside of the package.

All proposals (including all documents, schedules, reports, plans and other attachments) will not be returned. Electronic versions shall be exact duplicates of the paper version and be provided as a single PDF file. In case of a conflict between the original paper version and the electronic version, the original paper version shall govern.

2. TECHNICAL PROPOSAL FORMAT

To facilitate the analysis of proposals, Offerors are encouraged to prepare the proposal according to the instructions and in the order presented in this section. Proposals should be prepared as simply as possible with straightforward, concise descriptions to demonstrate an understanding of the project and services required by the City. Proposals that provide innovative alternatives and creative approaches are encouraged. Any other information thought to be relevant, but not applicable to the categories below, may be provided as an appendix to the proposal.

The proposal should be organized with tabs in the following order and minimally contain the following information:

- 1) **(Tab A.)** Attachment A - Proposal Form. The Proposal Form should act as the cover pages of the proposal.
- 2) **(Tab B.)** An executive summary that provides a narrative summarizing the proposal, briefly describing the lead consultant’s and sub-consultants’ company philosophies as they relate to the Project, and the overall understanding of the work to be performed.
- 3) **(Tab C.)** Proposal Narrative to include the following:
 - a) The approach to be used, in detail, to meet the requirements identified in the Scope of Work, including key tasks and timeline.
 - b) Key personnel, including experience history, who will be assigned to work on the project, their role, and approximate percentage of the work (in terms of overall hours) they will perform.
 - c) Key personnel from all sub-consultants described as in b) above.
 - d) Description of projects of similar size and scope completed on time and within budget by each entity (individual / company / firm) within the past five years in the mid-Atlantic or southeastern region of the United States. Include overall project budget and specific portion(s) of work completed by team members included in this proposal.
- 4) **(Tab D.)** Attachment B – Small, Women-Owned, Minority and Service Disabled Veteran-Owned Business Requirements
- 5) **(Tab E.)** Attachment C – References for public park or other projects with similar scope.
- 6) **(Tab F.)** Attachment D – Proprietary Information

- 7) **(Tab G.)** Attachment E – Profile(s) for each entity (individual/company/firm) comprising the consultant team, to include:
- a) brief company/firm history;
 - b) regional office location(s) and staff;
 - c) ownership and services offered;
 - d) relevant project portfolio (similar size and scope as the Project);
 - e) financial statement;
 - f) description and status of any pending liability-based litigation or legal complaints filed against any entity within the past five years; and
 - g) a list of specialty service areas relevant to the Project for each entity.

3. EVALUATION CRITERIA: Each proposal will be evaluated according to the following criteria. The criteria are listed in order of importance:

1. Relevant experience and demonstrated knowledge of key personnel.
2. Relevant experience and capabilities of the entity in providing comparable services.
3. Demonstrated understanding of the required work and proposed approach to providing the services identified in this Request for Proposals (task definition).
4. Availability and degree of participation of key personnel.
5. Timeline for completion of the scope of work.
6. Completeness of Proposal.

4. EVALUATION OF PROPOSALS:

Proposals will be evaluated according to the established evaluation criteria. The City will initiate individual discussions with all Offerors deemed fully qualified, responsible and suitable on the basis of their proposals with emphasis on professional competence to provide the required services. Repetitive informal interviews shall be permissible. Offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project or services as well as alternative concepts where applicable. Interviews/discussions may encompass nonbinding estimates of total project costs, including where appropriate, design, construction and life cycle costs. Methods to be utilized in arriving at price for services may also be discussed.

At the conclusion of discussions on the basis of evaluation criteria and all information developed in the selection process, the City will select in the order of preference two (2) or more Offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the Offeror ranked first. If a contract satisfactory and advantageous to the City can be negotiated at a price considered fair and reasonable, the award shall be made to that Offeror. Otherwise, negotiations with the Offeror ranked first shall be formally terminated and negotiations conducted with the Offeror ranked second, and so on until such a contract (or contracts in the case of multiple awards) can be negotiated at a fair and reasonable price.

Only proposals from responsible Offerors that are seen as reasonably susceptible of being selected for award, based on information contained in the proposal, will be evaluated by the City.

Should the City determine that only one Offeror is fully qualified or that one Offeror is clearly more highly qualified than others, a contract may be negotiated and subsequently awarded to that Offeror if the City finds that such a selection is in the best interest of the City.

SECTION D SCOPE OF WORK

1. **PURPOSE:** The purpose of this Request for Proposals (RFP) is to solicit proposals from qualified consultants to provide professional services for the Stoney Run Park Master Plan Update. The work will include: planning, design, site surveying, public outreach, development of a phasing plan based on known capital funding allocations, cost estimation, operations analysis, operations cost estimation (personnel, materials, supplies, and equipment), and environmental assessment and permitting for Stoney Run Park. The Project will involve expansion of the park into adjacent landfill areas that are closed, enhancements to the current park property, and potential expansion into adjacent areas.

The City anticipates the duration of the project to be completed in three diverse phases over a number of years. The City will start with the first phase initially and progress in chronological order. Proceeding with the next phase(s) may be determined by the successful completion of the prior phase, appropriation of funding and/or various other factors at the time.

- **Phase I (Redesign of the Masterplan):** The consultant shall review the 1998 Stoney Run Park Master Plan and formulate an update of the plan through an iterative public input and staff review process. The City Planning Department will facilitate the planning and public input process along with the consultant, which shall include several public and stakeholder meetings as well as internet-based data gathering and social media informational tools. Work products shall include both written and graphic materials to be prepared and presented to staff and at public meetings.
- **Phase II (Construction Design and Drawings):** This phase of the Project will include but not be limited to design and engineering, cost estimating, preparation of construction contract documents, and bidding assistance for the assigned schedule of work items (site improvements). The Consultant shall prepare the bid documents, with assistance from the City.
- **Phase III (Construction & Construction Administration):** In this phase, the City will seek competitive bids for the construction scope of work. This phase of the Project will involve assisting the City's project team with the construction administration. Responsibilities will include but not be limited to, respond to contractor requests for information, submittal reviews, construction inspections, and attend project meetings.

Note: A complete Scope of Work for Phases II and III will be prepared by the City upon completion of Phase I.

2. **BACKGROUND:** Stoney Run Park is a 228-acre facility owned and operated by the City of Newport News. Over half of the park's acreage is comprised of a closed landfill, which ceased operations in 1997 and completed methane harvesting in 2018. The city's recycling operations are currently active on approximately 60 acres north of the park area, which is not part of the park expansion. The site is bounded by CSX railroad to the northeast, Courthouse Green Apartments to the southeast, Patriot's Crossing Apartments to the southwest, and Mary Passage Middle School, Paul's Mobile Home Estates and vacant wooded areas to the west, with the City's recycling operations to the north. The Denbigh Warwick Area Plan, which included a rigorous public input process, was completed in 2019 and contains valuable information about surrounding areas and

resident preferences for public improvements and development in the region. Additional background about the park may be found in the 1998 Stoney Run Park Master Plan.

3. **SCOPE OF WORK:** The consultant shall be responsible for all graphic and written documentation associated with the Project. The updated master development plan shall include (at a minimum) all of the following:
 - 1) An existing conditions plan (minimum 50-scale drawing), to include the site survey (topography, vegetative cover, utilities, natural and man-made site features, and all other elements needed to prepare the plan) to be performed by a land surveyor licensed in the Commonwealth of Virginia;
 - 2) Rendered conceptual alternative plans (2 minimum), and a preferred master development plan including other visuals as needed to convey plan components;
 - 3) A narrative covering topics and in a format similar to the previous master plan;
 - 4) A strategic phasing plan and scope of work illustrated graphically as well as in table format within the plan narrative; and
 - 5) An order-of-magnitude cost estimate to include all site development phases as well as an overall annual programming, operations and maintenance cost summary.



ATTACHMENT A PROPOSAL FORM

(Completed Form shall be submitted as Proposal Cover Pages)

RFP Number:	20-2816-2031
Proposal Name:	Professional Services, Stone Run Park Master Plan Update
Due Date and Time:	5:00 p.m., March 24, 2020

OFFEROR INFORMATION	
Firm/Company Name (Legal Name)	
Mailing Address	
Payment Address (if different from Mailing Address)	
Firm Telephone Number	() -
Employer Identification Number (EIN)	-
Social Security Number (only if a EIN is NOT provided)	- -
Representative Name/Title	
Representative Telephone Number	
Representative Email Address	

1. AUTHORIZATION TO TRANSACT BUSINESS IN VIRGINIA

SCC Identification Number: _____

or

Firm/Company is not required to have/maintain registration

because: _____

2. **PAYMENT TERMS:** Following successful negotiation of a contract, indicate the payment terms that you intend to offer to the City.

- “Net 30”
- Other, Specify** _____

If payment terms are not specified above, then the terms shall be “Net 30 Days”.

3. **ADDENDA:** Offeror hereby acknowledges receipt of and incorporation of all requirements of any addenda issued for this Request For Proposals:

Addendum No. _____ Dated _____

Addendum No. _____ Dated _____

Addendum No. _____ Dated _____

Addendum No. _____ Dated _____

4. **PROPOSER’S CHECKLIST:**

This checklist is provided to assist Offerors in submitting proposals. The proposal should include the following information in the quantities specified in the *Proposal Submission* section.

- Attachment A- Completed and Signed Proposal Form (This form should act as the cover for the proposal)
- Attachment B – Completed SWAM form
- Completed W-9 (All proposals should include a W-9)
- Technical Proposal
- Attachment C - References
- Attachment D - Proprietary Information Form
- Attachment E – Company Profile(s)

5. **ANTI-COLLUSION CERTIFICATION**

The undersigned certifies that this proposal is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a proposal for the same product 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. The Offeror understands collusive bidding is a violation of Federal law and that any false statement hereunder constitutes a felony and can result in fines, imprisonment, as well as civil damages.

6. **AUTHORIZATION**

In accordance with the terms, conditions and specifications of this Request for Proposals, the undersigned agrees to furnish the items and/or services requested. The undersigned acknowledges that the proposal is valid **for a period of 180 days** from the due date and certifies he/she has read, understands, and agrees to all terms, conditions, and requirements of this Request for Proposals and is authorized to contract on behalf of firm named below.

Firm Name: _____

Print Name: _____ Title: _____

Signature: _____ Date: _____

(This form must be signed. All signatures must be original and not photocopies.)

ATTACHMENT B
SMALL, WOMEN-OWNED, MINORITY-OWNED AND SERVICE DISABLED
VETERAN-OWNED BUSINESS REQUIREMENTS

Rev: 8/1/2019

(The Completed Form may be submitted with the proposal or be submitted prior to award)

BIDDER/OFFEROR NAME: _____

It is an important business objective of the City to promote the economic enhancement of small businesses, women-owned businesses, minority-owned businesses and service disabled veteran-owned small business (SDV), collectively known as SWAM. The success of the City to track the amount of business provided by SWAM firms (whether as a prime contractor or a subcontractor) is dependent upon City Contractors partnering with us in this important endeavor.

BIDDER/OFFEROR'S RESPONSIBILITIES:

A. Affirmative Steps: Bidders/Offerors shall take affirmative steps prior to submission of bids/proposals to facilitate participation in contracts by SWAM firms by providing subcontractor or sub-consultant opportunities or by partnering with a SWAM firm. Such efforts may include:

(1) Establish and maintain a current list of small, women-owned, minority-owned and service disabled veteran sources available to provide goods/services.

(2) When feasible, segment total work requirements to permit maximum SWAM participation through subcontracts or partnerships.

(3) Assure that SWAM firms are solicited whenever they are potential sources of goods or services. This step may include:

- a. Sending letters or making other personal contact with SWAM firms and SWAM related associations. SWAM firms should be contacted when other potential subcontractors are contacted, within reasonable time prior to bid/proposal submission. Those letters or other contacts should communicate the following:
 - (i) Specific description of the work to be contracted;
 - (ii) How and where to obtain a copy of plans, specifications or other detailed information needed to prepare a detailed price quotation;
 - (iii) Date the information is due to the Bidder/Offeror;
 - (iv) Name, address, and phone number of the person in the Bidder/Offeror's firm whom the prospective SWAM subcontractor should contact for additional information.
- b. Using the services and assistance of the Small Business Administration (SBA) and the Department of Small Business and Supplier Diversity of the Commonwealth of Virginia (SBSD) or other resources to obtain certification or identify subcontractor or sub-consultants.

B. Bidders/Offerors are required to respond to 1-3 below to be deemed responsive. This information may be submitted with their bid/proposal or prior to award.

1. If you are a SWAM firm please indicate type(s) below:

Small Business **Woman-Owned** **Minority-Owned**

Service Disabled Veteran (SDV)

Disadvantaged Business Enterprise (DBE) Federal Designation

Certification by (SBSD, Other U.S. State Entity, Local Government, etc.):
attach certificate if available _____

Certification #: _____

2. In the spaces below, state 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 SWAM business enterprise, put zeros in the spaces below).

<u>Total dollars to be sub-contracted:</u>	<u>Company Name:</u>
Total Small Business \$ _____	_____
Total Woman-Owned \$ _____	_____
Total Minority-Owned \$ _____	_____
Total SDV Dollars \$ _____	_____
Total DBE Dollars \$ _____	_____

3. If you do not plan to utilize such firms in this contract, state your reasons:

RESOURCES

For your reference a link to the Virginia Department of Supplier Diversity (SBSD) SWAM Directory is provided here: <https://www.sbsd.virginia.gov/directory/>

Other Resources

National Minority Supplier Development Council	www.nmsdc.org
Carolina-Virginia Minority Supplier Diversity	www.cvmsdc.org
Small Business Administration	www.sba.gov

Offerors and potential subcontractors are encouraged to communicate and collaborate using the B2B Connect through the B2B Connect tab on the solicitation webpage on eVA. This a tool to aid in establishing prime and subcontractor relationships.

**ATTACHMENT C
REFERENCE PAGE**

MUST BE FOR EQUIVALENT SERVICES
(Completed form shall be submitted with the Proposal)
Do Not Include the City of Newport News as a Reference

OFFEROR NAME _____

Reference 1

Name of Business, City, County or Agency	Street Address	City & State	Contract Dates
Contact	Title	Telephone	Email Address
Description of Work Performed:		Contract Amount: \$	

Reference 2

Name of Business, City, County or Agency	Street Address	City & State	Contract Dates
Contact	Title	Telephone	Email Address
Description of Work Performed:		Contract Amount: \$	

Reference 3

Name of Business, City, County or Agency	Street Address	City & State	Contract Dates
Contact	Title	Telephone	Email Address
Description of Work Performed:		Contract Amount: \$	

ATTACHMENT D
PROPRIETARY INFORMATION
(Completed Form shall be submitted with the Proposal)

OFFEROR NAME _____

Trade Secrets or Proprietary information submitted by an Offeror or Consultant in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the Offeror or Consultant 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 proposal does not contain any trade secrets and/or proprietary information.

Yes, the proposal 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 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. Offerors are encouraged to provide a single redacted electronic copy of the proposal (i.e. CD or Thumb Drive) with the Original paper proposal if proprietary information is contained in the proposal.**

EXHIBIT I
INSURANCE REQUIREMENTS

Rev. 8/1/19

1. General Insurance Requirements:

- a. The Contractor shall procure and maintain, at its own expense, and with a company or companies acceptable to the City, the minimum insurance coverages set forth below. The Contractor shall place their insurance program with an insurance company rated “A” or above by A. M. Best and authorized to do business in Virginia. Contractor shall maintain all insurance until the completion of the contract/agreement period. Prior to performance under this agreement, the Contractor shall provide certificates of insurance to the Office of Purchasing. Failure by the Contractor to provide these certificates before commencing performance may constitute grounds for termination for default. Such certificates of insurance shall evidence that the below listed insurance is in effect, and that not less than thirty (30) days’ (10 days for non-payment of premium) prior written notice will be given to the City in the event of modification, cancellation, or non-renewal of any such insurance coverage.
- b. The Contractor shall be responsible for reviewing and ensuring any and all Subcontractors comply with all of the insurance provisions contained herein and that said insurance is maintained as specified. The Contractor shall provide copies of any and all Subcontractor insurance policies and / or Certificates of Insurance and required endorsements upon request by the City.
- c. The Contractor shall purchase and maintain during the life of this contract/agreement such Commercial General Liability Insurance including product and completed operations liability insurance as will provide protection from Contractor’s performance of the Work and Contractor’s other obligations under the contract/agreement, whether such performance is by Contractor, or by Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and shall otherwise bear responsibility therefore. Insurance coverage for bodily injury and property damage, including insurance on vehicles and equipment shall be with the same company. Contractor also agrees that their insurance is primary.

The City of Newport News shall be an Additional Insured in all such policies.

2. Insurance Requirements

The Contractor shall carry the required amounts of insurance specified below throughout the contract period and submit a Certificate of Insurance certifying coverages and such endorsements as required:

Such certificates shall provide that the Insurance will not be canceled or reduced without prior notice to the City of Newport News.

a. Commercial General Liability

The minimum Limit of Liability shall be:

Bodily Injury per person / occurrence (BI)	\$1,000,000
Property Damage per occurrence (PD)	\$1,000,000
or	
Combined Single Limit (CSL)	\$2,000,000

If Policy has Aggregate Provisions –

Minimum Annual Aggregate Limit \$2,000,000

b. Professional Liability

The contractor shall obtain and maintain professional liability insurance for errors and omissions (E & O) in the amount of two million (\$2,000,000.00) for the duration of this contract. An original certificate of insurance and all required endorsements shall be submitted to the Office of Purchasing for approval.

c. Automobile Liability

For Owned, Non-Owned and Hired Automobile, the minimum Limit of Liability shall be:

Combined Single Limit (CSL) per occurrence \$1,000,000.

d. Workers Compensation

Shall comply with all federal and state statutory regulations pertaining to Workers' Compensation requirements for insured or self-insured programs, and waive subrogation rights. The minimum Limit of Liability for Employers Liability shall be \$1,000,000 for each accident, disease/employee, and disease/policy.

In addition, the City requires an Alternate Employer Endorsement naming the City as an alternate employer, if applicable.

e. **Additional Insured Provisions**

The Contractor and any Subcontractor shall name the following as Additional Insured:

“The City of Newport News, including its elected and appointed officials, employees, and agents, shall be named as an additional insured in either the policy itself or an endorsement thereto and the required insurance coverage shall be primary coverage and provide contractual liability coverage. The insurer shall provide 30 days' notice (10 days for non-payment of premium) of cancellation or non-renewal of insurance to the City of Newport News in writing upon being notified of said cancellation or non-renewal by the insured.”

f. **Required Endorsements**

The Additional Insured Endorsement on ISO Form CG 20 26 or similar and for Products/Completed Operations CG 20 37 must be attached to the Certificate of Insurance and must properly reference the above language, if not covered within the policy language.

EXHIBIT II
SAMPLE AGREEMENT

(The following AGREEMENT is provided as a sample only do not return with submittal.)

THIS AGREEMENT, made this ____ day of _____, 2020 by and between the **CITY OF NEWPORT NEWS, VIRGINIA (CITY)** located at 2400 Washington Avenue, Newport News, Virginia 23607 and _____, a professional services consultant (**CONSULTANT**), located at _____.

WHEREAS, CITY desires to contract with CONSULTANT for the performance of professional services for, _____.

WHEREAS, CONSULTANT desires to perform the specialized professional engineering services for the _____ per _____. Services to include _____ for the City.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements hereinafter set forth, to be kept and performed by them, it is hereby agreed:

1. CONSULTANT'S SERVICES AND RESPONSIBILITIES

1.1 GENERAL

- 1.1.1** CONSULTANT shall perform all professional services for the completion of the above described project to the satisfaction of CITY's Director of Parks, Recreation, and Tourism (Director) in conformance with sound professional practice and in the best interest of CITY.
- 1.1.2** Term – This Agreement shall continue in full force and effect until successful completion of the Scope of Work as negotiated between the CONSULTANT and the CITY unless sooner terminated by either party. 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.
- 1.1.3** Non-Exclusivity – No work is assured under this Agreement. Notwithstanding anything in this Agreement to the contrary, the services to be performed by CONSULTANT are “nonexclusive”; that is, CITY is free to engage other firms to perform such services at CITY's option.
- 1.1.4** Work Orders – 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. Provided that a purchase order has been issued to CONSULTANT by the Office of Purchasing, execution of a work order shall serve as authorization to perform the specific services covered by the work order. Each work order will be based on the attached rate schedules in Appendix A and may be either scheduled rates plus expenses up to a maximum limit, lump sum or otherwise as identified in the work order. No individual work order may exceed \$2,000,000 and the total work under this Agreement may not exceed \$5,000,000 for each one-year term.
- 1.1.5** Work Order Authorization – Provided that a purchase order has been issued to CONSULTANT, the CITY's Parks, Recreation, and Tourism Director or the Purchasing Agent or their designee, may execute work orders and amendments thereto which authorize services for projects at a cost not exceeding the amount set forth in the purchase order and the previously appropriated amounts pertaining to the work orders. An authorized

representative of CONSULTANT shall also execute each work order and amendment thereto.

- 1.1.6** Property Damage – When on private property, CONSULTANT 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. Notwithstanding the above, CONSULTANT shall be responsible for damage caused by the negligence, misconduct, or willful acts of its employees, sub-consultants, and representatives.
- 1.1.7** Typical project services will consist of the services described in Article 1.2 below, as modified by the work orders.

1.2 BASIC SERVICES The Consultant shall provide the services identified in the Scope of Work of the Request for Proposals and as detailed below.

1.2.1 PUBLIC INPUT PROCESS and MASTER DEVELOPMENT PLAN

- 1.2.1.1** Project Initiation Meeting – Conduct project initiation meeting with CITY staff to define project components and schedule, to include an agenda and meeting discussion summary to be distributed to meeting attendees.
- 1.2.1.2** Public Input Process – In cooperation with CITY staff, develop a project public and stakeholder input process to obtain appropriate level of review and commentary from all interested and affected parties. Attend, and prepare exhibits and handout materials for, all public information and staff work sessions.
- 1.2.1.2** Surveys – 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 and shall be performed by a Land Surveyor licensed in Virginia.
- 1.2.1.3** Site Geotechnical Surveys – Complete geotechnical surveys of the site. Investigations performed 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; and (f) preparation of geotechnical design criteria for proposed facilities.
- 1.2.1.4** Master Development Plan Concept Alternatives and Preliminary Report – Develop a minimum of two (2) alternative conceptual master development plans at 50-scale minimum, including phasing and preliminary cost schedules for each phase, and a draft master plan narrative report for presentation to and review by CITY staff, stakeholders and the public. Provide additional visuals and documentation as needed to successfully convey components of the design and report.
- 1.2.1.5** Preferred Alternative Master Development Plan (MDP) – Based upon CITY, stakeholder, and public input and comments, prepare a Preferred Alternative

Master Development Plan and final master plan narrative report for review and presentation to CITY staff, elected officials and the public. Provide additional visuals and documentation as needed to successfully convey components of the design and report.

- 1.2.1.6** Development Plan Review – Coordinate review of the MDP as required with the CITY Planning Department - Development Services division. This shall include preparation and submittal of all plans, calculations, reports, and supporting documentation as required to obtain approval of the MDP, including but not limited to: overall site stormwater calculations, wetland delineation, critical natural features identification and assessment, traffic impact analysis, mitigation measures, etc.
- 1.2.1.7** Permits and Approvals – Submit documents for permitting and approvals to appropriate federal, state and local agencies.

1.3 ADDITIONAL SERVICES

- 1.3.1** At the option of CITY and if authorized in writing, CONSULTANT shall furnish or obtain from others, Additional Services of the following types of work which are not considered normal or customary Basic Services:
 - 1.3.1.1** Easements, plats, or topographical surveying required beyond that described herein.
 - 1.3.1.2** Additional geotechnical investigations and laboratory testing beyond that which is included herein.
 - 1.3.1.3** Additional studies and design services that may be required by CITY that are not identified herein.
- 1.3.2** The scope of work for the Additional Services described in the above Article 1.3.1 shall be negotiated and approved by CITY prior to proceeding with the work. CITY is under no obligation to award any of the services to CONSULTANT.
- 1.3.3** Services resulting from significant changes in the general scope of the project or its design including, but not limited to, changes in size, complexity, or character of construction; and, revising previously accepted studies, reports, design documents, or contract documents when such revisions are due to causes beyond CONSULTANT's control shall be considered Additional Services.
- 1.3.4** Investigation of reasonable and limited alternative solutions not addressed by CONSULTANT shall not be considered as Additional Services and shall be covered by the Basic Services.

1.3 TIME

- 1.4.1** CONSULTANT agrees to begin work on the project promptly upon the receipt of a written notice to proceed and shall perform as expeditiously as is consistent with professional skills. If the project schedule is not identified in the work order, CONSULTANT shall submit a proposed schedule for CITY's review. The schedule, when approved by CITY, shall not be exceeded by CONSULTANT except for reasonable cause shown, and agreed upon in writing by CITY.

2. CITY'S RESPONSIBILITIES

- 2.1** CITY shall assist CONSULTANT by placing at its disposal all available information pertinent to the project including previous reports and any other data relative to the scope of the project and by rendering approvals and decisions as expeditiously as necessary for the orderly progress for CONSULTANT's services and the work.
- 2.2** CITY shall furnish to CONSULTANT, as required by it for performance of its Basic Services, data prepared by, or the services of others, such as core borings, probings and subsurface explorations, laboratory tests, and inspection of samples, all of which CONSULTANT may rely upon in performing its services.
- 2.3** CITY shall assist CONSULTANT, when CONSULTANT encounters objections from specific property owners, in obtaining permission to enter upon public and private property as required for CONSULTANT to perform its services.
- 2.4** CITY shall designate in writing a person to act as CITY's representative with respect to the work to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret, and define CITY's policies and decisions with respect to materials, equipment, elements, and systems pertinent to CONSULTANT's services. Such person shall have the authority to reject any work which does not conform to the documents produced under the terms of this Agreement.
- 2.5** CITY shall bear all costs incident to compliance with the requirements of this Article 2.
- 2.6** If CITY observes or otherwise becomes aware of any fault or defect in the project or nonconformance with the documents produced by CONSULTANT, CITY shall give prompt written notice thereof to CONSULTANT.

3. COMPENSATION AND METHOD OF PAYMENT

- 1.1** **PAYMENTS ON ACCOUNT OF BASIC SERVICES.** CITY shall pay CONSULTANT for Basic Services under Article 1.2 in accordance with the schedule of services and fees, which is incorporated herein by reference.
 - 3.1.1** Lump Sum – For services provided on a lump-sum fee basis, CONSULTANT 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.
 - 3.1.2** Cost plus not-to-exceed – For services provided on a cost plus not-to-exceed basis, CONSULTANT shall be paid on an hourly basis per position. In addition, CITY shall pay CONSULTANT the actual cost of all reimbursable expenses.
 - 3.1.3** Hourly cost – Hourly cost is defined as the actual hours of employees engaged in the performance of the service times the rates set forth in Appendix A to this Agreement. These rates cover 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.
 - 3.1.4** Reimbursable expenses – Reimbursable expenses are those incurred directly in the performance of this Agreement and do not include those incidental to the normal conduct of business. Reimbursable expenses include, but are not necessarily limited to, authorized

travel, subsistence, reproduction costs, computer charges, laboratory fees, equipment rental charges, special supplies, and subcontract costs.

- 3.2 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES.** CITY shall pay CONSULTANT for Additional Services rendered under Article 1.3 based on a negotiated fee in accordance with the rates, which is incorporated herein by reference.
- 3.3 METHOD OF COMPENSATION.** CONSULTANT shall submit monthly invoices for Basic and Additional Services rendered. The monthly invoice shall be in the form of an itemized invoice setting forth services which have been performed, and the charges therefore, in accordance with Article 3.1 and Article 3.2. The invoice shall also state current project completion, any anticipated project Additional Services with estimated costs, and anticipated changes in the project construction estimate. CITY shall make monthly payments within 30 days of CITY's receipt of CONSULTANT's monthly invoices, unless CITY objects in writing to the invoice within the same 30-day period.
- 3.4 COST LIMITATIONS.** A cost limitation may be shown for any specific project or work order in the discretion of the CITY. Where shown, the cost limitation is derived from a specific appropriation of funds or purchase order for the project or work order. Accordingly, it shall be a condition of this Agreement that CONSULTANT shall prepare its plans and specifications so that the project or work order cost (including construction estimate or bid, contingencies of 5% and design cost) shall not exceed the stated cost limitation. If at any time during the project design development, or following the receipt of bids, the cost limitation is exceeded, CITY may require that CONSULTANT, at no cost to CITY, revise the design and construction documents as may be necessary to bring the project or work order cost within the cost limitation. Any cost limitations for a project shall be as shown on the specific work order(s).
- 3.5 ACCOUNTING RECORDS OF CONSULTANT.** Records of CONSULTANT's personnel, consultants, Additional Services, and reimbursable expenses pertaining to the project, and records of accounts between CITY and its contractors, shall be kept on a generally recognized accounting basis, and all such records shall be available to CITY's representative at mutually convenient times. CONSULTANT agrees to retain all books, records and other documents relative to this Agreement for five (5) years after final payment, or until audited by CITY, whichever comes first. The authorized agents and auditors of CITY shall have full access to, and the right to examine, any of said materials during this period, upon providing reasonable notice to CONSULTANT.

2. GENERAL CONSIDERATIONS

2.1 PROJECT TERMINATION, ABANDONMENT OR SUSPENSION

- 4.1.1** This Agreement may be terminated by either party upon thirty (30) days written notice.
- 4.1.2** In the event CITY or CONSULTANT shall terminate or abandon all or part of the services to be rendered by CONSULTANT, CITY or CONSULTANT, respectively, shall be notified in writing. Immediately upon receiving such notice, CONSULTANT 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 CONSULTANT's services, CONSULTANT shall deliver to CITY all drawings, specifications, reports, and studies theretofore completed or partially completed. CONSULTANT shall be compensated for all work performed prior to the effective date of termination, subject to any claims and setoffs of CITY. Such payment shall constitute total payment for all services.

4.1.4 Scheduling and Delays. The parties acknowledge that all or part of the work to be performed hereunder may be delayed and extended at the option of CITY. Such delays may be caused by delays, denials and modifications of the various state or federal permits, or for other reasons. CITY shall not be required to pay any of CONSULTANT'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 CITY or any other governmental agency or court. If CITY or any other governmental agency or court delays the project for any reason for a continuous period of ninety (90) days or more, CITY and CONSULTANT will negotiate a mutually agreeable adjustment to CONSULTANT'S fee.

2.2 NONEXCLUSIVE LICENSE – OWNERSHIP AND USE OF DOCUMENTS

- 2.2.1** CONSULTANT 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 CONSULTANT and by its sub-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 CONSULTANT or its sub-consultants, or both, from the work, whether such termination or disengagement is involuntary or otherwise. All such documents and intellectual property prepared by CONSULTANT and by its sub-consultants are to be delivered to Director before final payment is made to CONSULTANT. However, if CONSULTANT wishes, it may retain the original drawings and supply CITY with electronic copies of the original drawings sealed by a professional engineer or architect. CONSULTANT shall affix its professional seal to all completed drawings, specifications, and professional data furnished by it. CONSULTANT and its sub-consultants shall, at CITY's request, reasonably assist in protecting 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 agreements entered into between CONSULTANT and its sub-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 CITY's use, reproduction, distribution, and display of all documents and intellectual property created by CONSULTANT and by its sub-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. CONSULTANT shall, upon CITY's request, submit to CITY all agreements that CONSULTANT enters into with its sub-consultants in furtherance of this work, or such other documents that demonstrate to CITY's satisfaction, the sub-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 CONSULTANT or its sub-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 CONSULTANT, or a sub-consultant of CONSULTANT, 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, misuse of

licenses or for the alleged violation of any common law or statutory rights with respect to such property including, without limitation, any derivative works thereof, CONSULTANT shall 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. CONSULTANT 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.

- 4.2.5** CITY shall make no claim against CONSULTANT for damages related to any use by CITY of licensed documents and intellectual property prepared by CONSULTANT under this Agreement if used by CITY for other purposes not involving the project(s).

4.3 INSURANCE, CLAIMS, AND LIABILITIES

- 4.3.1** Any insurance company providing coverage under this Agreement shall be licensed to do business in the Commonwealth of Virginia. All insurers providing coverage hereunder shall give CITY thirty (30) days advance notice in the event of any non-renewal or cancellation of such insurance (10 days' notice for non-payment of premium). See the Request for Proposal for further details.
- 4.3.2** Professional Liability Insurance. CONSULTANT shall obtain and maintain during the course of this Agreement with CITY and during the longest applicable statute of limitations, at the sole expense of CONSULTANT, professional liability insurance as shall protect CONSULTANT from all claims for bodily injury, death or property damage which might arise from the negligent acts or omissions of CONSULTANT, its sub-consultants and employees, in their performance under this Agreement. CONSULTANT must provide proof of professional liability insurance in the amount acceptable to CITY's Office of Self Insurance. Minimum coverage shall be \$2,000,000 per claim/occurrence.
- 4.3.3** General Liability and Workers' Compensation Insurance. CONSULTANT shall obtain and maintain during the course of this Agreement general liability insurance and workers' compensation insurance. CITY shall be named as an additional insured on the CONSULTANT's general liability insurance policy and as alternative employer on the CONSULTANT'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 originals or copies of the required endorsements shall be filed with Director and approved by CITY prior to commencement of work hereunder. Renewals of such insurance during the term of this Agreement shall be filed with, and approved, by CITY. The amounts of insurance coverage required herein shall be determined by CITY's Office of Self Insurance. General liability minimum coverage shall be \$1,000,000 per occurrence; workers' compensation coverage shall meet statutory limits.
- 4.3.4** Hold Harmless and Indemnification. The CONSULTANT shall defend, indemnify and hold the CITY, and CITY'S officers, employees, agents, and volunteers, and the Engineer, and Engineer's officers, employees, and agents, harmless from and against any and all damage claim, liability, cost, or expense (including, without limitation, reasonable 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 CONSULTANT, its employees, agents, and volunteers, or incurred

by or claimed against the CITY, CITY'S officers, employees, agents, and volunteers, and/or the Engineer, Engineer's officers, employees, and agents, arising out of, or in connection with, the performance of all services hereunder by the CONSULTANT. This indemnification and hold harmless includes, but is not limited to, any financial or other loss, any adverse regulatory, agency or administrative sanctions or civil penalties incurred by the CITY and/or the Engineer due to the negligent, fraudulent or criminal acts of the CONSULTANT or any of the CONSULTANT'S officers, shareholders, employees, agents, contractors, subcontractors, or any other person or entity acting on behalf of the CONSULTANT. Unless otherwise provided by law, the CONSULTANT 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 CONSULTANT 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.

Nothing herein shall be construed as creating any personal liability on the part of the CITY or any officers, employees, agents and volunteers of the CITY. The parties further acknowledge and agree that the engineer and any employees, agents, or other persons or entities acting on behalf of the engineer shall act in an independent capacity and not as officers, employees, or agents of the CITY; further the CITY makes no guarantee, offers no assurance whatsoever, and assumes no responsibility for defending or indemnifying said engineer or any employees or agents of said engineer for any acts and/or omission or any reason whatsoever.

- 4.3.5** CITY and CONSULTANT each binds themselves and their partners, successors, executors, administrators, and assigns in respect to all covenants of this Agreement. Neither CITY nor CONSULTANT shall assign or transfer their 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 CONSULTANT.

4.4 EXTENT OF AGREEMENT

- 4.4.1** This Agreement shall be in full force and effect only when it has been executed by CITY through its duly authorized officers.

5. SPECIAL PROVISIONS

- 5.1** During the performance of this Agreement, CONSULTANT agrees as follows:

5.1.1 CONSULTANT 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 CONSULTANT. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

5.1.2 CONSULTANT, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, will state that such CONSULTANT is an equal opportunity employer.

- 5.1.3** 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.
- 5.2** CONSULTANT shall include the provisions of the foregoing Articles 5.1.1, 5.1.2, and 5.1.3 in every subcontract or purchase order of over ten thousand dollars (\$10,000.00) so that the provisions will be binding upon each sub-consultant, subcontractor or vendor.
- 5.3** During the performance of this Agreement, CONSULTANT agrees to (i) provide a drug-free workplace for CONSULTANT'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 CONSULTANT'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 CONSULTANT that CONSULTANT maintains a drug-free workplace, and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each sub-consultant, subcontractor or vendor.
- 5.4** For the purposes of the above Article, "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 sub-consultant, subcontractor or vendor in accordance with the above Article, 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.
- 5.5** 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 the project, shall have any interest, direct or indirect, in any agreement or subcontract, or the proceeds thereof, for work to be performed in connection with the project which is the subject of this Agreement during his tenure with CITY or for one year thereafter.
- 5.6** 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 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.
- 5.7** The titles and 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.
- 5.8** This Agreement and the Appendices and work orders and memorandum of understanding, if any, and purchase order, constitute the entire Agreement and understanding between CITY and CONSULTANT and they may not be modified or altered, changed or amended in any respect unless in writing and signed by both parties hereto. The Purchasing Agent, or her designee, may execute amendments to this Agreement on behalf of CITY, subject to prior review and approval by the City Attorney's Office.
- 5.9** Governing Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia, the Newport News City Code and the federal laws. The parties hereby irrevocably submit themselves to the original jurisdiction and venue of the state courts located within the City of Newport News, Virginia and the United States District Court for the Eastern District of Virginia Newport News Division, with regard to any controversy

arising out of, relating to, or in any way concerning the execution or performance of this Agreement.

5.10 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.

5.11 Illegal Aliens. CONSULTANT does not, and shall not during the performance of the Agreement, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986, as amended.

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.

COMPANY NAME

Print Name: _____

Title: _____

By: _____

Signature of Authorized Owner, Partner or Officer

CITY OF NEWPORT NEWS, VIRGINIA

By: _____

Cynthia D. Rohlf, City Manager

ATTEST:

By: _____

City Clerk

City Attorney Use Only APPROVED AS TO FORM	

_____	_____
Assistant City Attorney	Date

**APPENDIX A
SCHEDULE OF RATES AND SERVICES**

**EXHIBIT A
PAYMENT**

Page 2

**EXHIBIT B
NEGOTIATED TERMS AND CONDITIONS**

As a result of negotiations, the following revisions to the Scope of Work, Terms or Conditions are incorporated into the Contract:

Page 3