

HAMPTON ROADS PLANNING DISTRICT COMMISSION



REQUEST FOR PROPOSAL for

AUDIT SERVICES

RFP NO: FIN-RFP-2011-01

December 6, 2010

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SECTION I: GENERAL INFORMATION

Purpose:

The HRPDC is looking for audit services to audit and prepare its financial statements on an annual basis, in accordance with generally accepted auditing standards as contained in GASB, and the provisions of OMB Circular A-133, and to provide professional advice and counsel as may be required throughout the year.

Number of pages allowed:

This proposal, including cover sheet, but excluding professional biographies, should be no longer than 20 pages, single spaced.

Date Proposal submission is due:

Three hard copies and a .pdf (to ncollins@hrpdcva.gov) of this proposal should be submitted no later than 3:00 PM, Monday, January 31, 2011 to:

Nancy K. Collins
Chief Financial Officer
Hampton Roads Planning District Commission
723 Woodlake Drive
Chesapeake, VA 23320

Pre-Proposal Conference:

A pre-proposal conference will be held on Wednesday, January 12, 2011 at 1:00 P.M. EST at the offices of the HRPDC. Please contact Nancy Collins at 757 420-8300, or by e-mail at: ncollins@hrpdcva.gov should you plan on attending.

Questions:

Questions will be entertained until 1:00 P.M. EST Tuesday, January 11, 2011. All questions received by 1:00 P.M. EST Tuesday, January 11, 2011 will be answered at the conference. Both questions and answers will also be posted on our website: www.hrpdcva.gov by close of business Thursday, January 13, 2011.

Proprietary information:

Proposers are advised that Title 2.2 Subtitle II Part B Chapter 43 (specifically Section 2.2-4342) of the Code of Virginia, 1950, as amended, shall govern public inspection of all records submitted by Proposer. Furthermore, any proprietary information shall be submitted with the RFP package and under separate cover. Information not submitted under separate cover and not labeled proprietary shall be Public Information in accordance with State Statutes.

Authorized Contract Users:

State Departments and Agencies, Institutions of Higher Education, Public Bodies, Community Service Boards, Cities, Counties, and other entities are authorized to use this contract in accordance with the Code of Virginia.

SECTION II: INSTRUCTIONS TO PROPOSERS

Receipt of Proposals:

Proposals may be delivered to the receptionist at the Hampton Roads Planning District Commission's (HRPDC) Regional Office Building, 723 Woodlake Drive, Chesapeake, VA 23320 until 3:00 P.M. Eastern Standard Time (EST) on Monday, January 31, 2011, in accordance with the specifications attached and the other terms and conditions set forth herein. Proposals should also be e-mailed to: ncollins@hrpdcva.gov by the same date and time established above.

Intent of Contract:

The HRPDC is looking for audit services to audit and prepare its financial statements on an annual basis, in accordance with generally accepted auditing standards as contained in GASB, and the provisions of OMB Circular A-133, and to provide professional advice and counsel as may be required throughout the year.

Proposer's Responsibility:

Proposers shall examine this RFP, shall exercise their own judgment as to the nature of the whole of the work to be done, and must assume all risk for any computations or statements made in completing the proposal.

Contract Length:

The HRPDC proposes a one-year initial contract, with right of renewal for up to four successive years, at the agreement of both parties. The initial year would be for the HRPDC's fiscal year ending June 30, 2012.

Subcontracts:

No subcontracts will be allowed.

Interpretations and Requests for Substitution:

1. Any proposer in doubt as to the true meaning of any part of this request for proposal may submit a written request to the HRPDC for an interpretation. The proposer submitting a request will be responsible for its prompt and actual delivery. Any interpretation or approval will be made by addendum duly issued. A copy of such addendum will be posted at www.hrpdcva.gov or delivered to each requesting proposer. HRPDC will not be responsible for any other explanations or interpretations of such documents which anyone presumes to make. Only questions answered by formal written addenda will be binding; oral and other interpretations or clarifications will be without legal effect.
2. Proposers must submit every request for interpretation or clarification regarding the services to be provided in writing; by e-mail to: ncollins@hrpdcva.gov; or by facsimile transmission to (757) 523-4881, to the attention of Nancy Collins. To be given consideration, such requests must be received AT LEAST 24 HOURS PRIOR to the date fixed for the pre-proposal conference. Any and all such interpretations, clarifications, and any supplemental instructions will be issued in the form of written addenda prior to the date fixed for receiving proposals. Failure to receive such addenda shall not relieve proposers from any obligation under this proposal as submitted.

3. When inquiring, replying or forwarding, please list the RFP number (i.e., FIN-RFP-2011-01) in the subject line. This is used to direct the e-mail or fax to the appropriate person so the HRPDC may provide prompt service to your request when staff are away from their desk.

Irregular Proposals:

Proposals shall be considered irregular and may be rejected for any of the following reasons unless otherwise provided by law:

- a. If there are unauthorized additions or conditional proposals, or irregularities of any kind which may tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning.
- b. If any proposer adds any provisions reserving the right to accept or reject any award, or to enter into a contract pursuant to an award.
- c. If the proposer fails to meet the proposal specifications or is unresponsive to proposal specifications, questions, and/or terms.
- d. If the proposer fails to include an authorized proposer representative's signature on company letterhead.

Withdrawal or Revision of Proposals:

1. A proposer may, without prejudice, withdraw a proposal submitted prior to the date and time specified for receipt of proposals by requesting such withdrawal in writing before the time set for receiving proposals. Telephonic communications for withdrawal shall not be accepted.
2. Any proposer may modify his/her proposal by facsimile communications at any time, provided such communication is received by HRPDC prior to the due date of proposals. The communication should not reveal the proposal price, but should provide the addition or subtraction or other modification. If written confirmation is not received within two days after the fax, no consideration will be given to the facsimile modification.

Insurance:

1. Prior to starting work, proposers will furnish the HRPDC a certificate of insurance as evidence of the existence of the following insurance coverage in amounts not less than the amounts specified below:
 - a. Comprehensive General Liability: \$1,000,000 per occurrence.
 - b. Workmen's Compensation: As required by Federal and State Worker's Compensation and occupational statutes.
 - c. Professional Liability: \$1,000,000 per claim.
2. The Certificate of Insurance will provide for thirty (30) days written notice to the HRPDC by the Insurance Company prior to cancellation or material change in policy coverage.

Proposal Evaluation:

1. The proposal will be evaluated using the following criteria:
 - a. Responsivness to Scope of Work and Proposal Requirements.
 - b. Professional competence of the firm, including qualifications and competence of key personnel and joint venture or association participants related to the specific areas for which the firm is proposing.
 - c. Experience on projects involving multiple local jurisdictions and agencies.
 - d. Experience with similar projects and submission of previous work samples.

- e. Record of the firm in accomplishing work on other projects with respect to such factors as the quality and adequacy of the work, resource allocation, ability to meet schedules, innovative approaches and cost control.
- f. Accessibility of the firm and the ability of key personnel to visit the project area.
- g. Ownership of firm by minority or participation of minority personnel on the project.
- h. Proposed fee structure.

After the initial evaluation of the proposals, the HRPDC may, if necessary, hold interviews with the top ranked proposers. Proposers selected for an interview will be contacted by February 18, 2011. Each interview will be no more than 60 minutes, with the consultant's presentation limited to not more than 20 minutes. Any area of specific concern will be identified before the interview. The HRPDC reserves the right to select a consultant based solely on written proposals and not convene oral interviews. If interviews are required, they will be held by February 25, 2011.

- 2. HRPDC reserves the right to reject any and all proposals and waive any and all informalities and the right to disregard all nonconforming or conditional proposals or counter proposals. HRPDC reserves the right to reject any proposal if investigation of such proposer fails to satisfy HRPDC that such proposer is properly qualified to carry out the obligations and to complete the work contemplated by the contract documents.

Any and all proposals will be rejected if there is reason to believe that collusion exists among the proposers. The signature on the face of the proposal certifies that the proposal is made without prior understanding, agreement, or connection with any corporation, firm, or person also submitting a proposal for the same services, and is in all respects fair and without collusion or fraud. Collusive bidding is a violation of the Virginia Governmental Frauds Act and federal law and can result in fines, prison sentences, and civil damage awards. Proposer's signatory agrees to abide by all conditions of this proposal and certifies that he/she is authorized to sign the proposal for the proposer.

SECTION III: SCOPE OF WORK

The HRPDC is looking for audit services to audit and prepare its financial statements on an annual basis, in accordance with generally accepted auditing standards as contained in GASB, and the provisions of OMB Circular A-133, and to provide professional advice and counsel as may be required throughout the year. Requirements include delivery of both draft and final copies of work products within the specified time frames, both in .pdf and printed & bound formats. These time frames should take into account that the final, bound copies should be available no later than September 30th of each year. Please review our latest audited financial statements at: www.hrpdcva.gov/Administration for a description of the types of funding received.

SECTION IV: REQUIRED SUBMITTALS

Proposal Format:

Transmittal Letter

Title Page

Overview and Summary

Detailed Work Plan

Proposed fees: for fiscal year ending June 30, 2012 and estimates for each successive fiscal year up to, and including, June 30, 2016).

Qualifications, Experience and References

Resumes

Office Location

Sample Documentation

References

License Requirements

Financial Stability

Any Additional Requirements

Affirmative Action and DBE Participation

[This section is company specific, not specific to individual employees within the company.]

Consultant shall present documentation to describe its compliance with the Federal and State nondiscrimination laws and regulations and its Disadvantaged Business Enterprise (DBE) activities and proposed DBE commitment for this project.

Please include a description of 1) Consultant's activities undertaken to comply with the provisions of the RFP concerning DBE participation, and 2) Consultant's proposed DBE Commitments.

Basis for Selection

An evaluation team may identify two or more offerors for interview, based on the evaluation criteria stated in Section II. At the conclusion of the interviews, the evaluation team will select, in order of preference, those offerors whose proposals are deemed most meritorious. Negotiations will be conducted with the offeror ranked first. If a satisfactory contract can be negotiated at a price considered fair and reasonable, the award will be made to that offeror. If a contract with the offeror ranked first cannot be negotiated, negotiations may be conducted with the offeror ranked second, and so on until a contract has been negotiated or all proposals are rejected. Final award of the contract will be made by the Executive Director of the HRPDC on or before February 28, 2011.

Statement of Compliance

Please note any deviation in compliance with the RFP, as requested by the HRPDC.

VENDOR SUBMITTAL FORM

Vendor _____ Federal ID#: _____
(please include W-9 Form)

Address _____

City, State, Zip Code _____

Email Address _____ Payment Terms _____

Typed Name, Title _____

Signature _____ Date _____

Telephone # _____ Fax # _____

Check below for applicable minority indicator:

____ Asian Indian ____ Black ____ Asian Pacific

____ Hispanic ____ Native American

____ Women Owned ____ Small Disadvantaged Business ____ Small Business

____ Service Disabled Veteran-Owned Business

SECTION V: TERMS AND CONDITIONS

Commonwealth of Virginia Public Procurement Act

This request for proposal (RFP) is subject to the provisions of the Commonwealth of Virginia Public Procurement Act, and any revisions thereto in effect at the time of this RFP.

Employment Discrimination by Contractor Prohibited

In the solicitation or awarding of contracts, the HRPDC shall not discriminate on the basis of race, religion, age, disability, color, sex (gender), or ethnicity of the bidder or offeror. Every contract in excess of ten thousand dollars (\$10,000), shall include the following provision:

All proposers shall abide by applicable state and federal laws including, but not limited to, all provisions of the Americans with Disabilities Act. Each proposer agrees to hold HRPDC harmless regarding all claims in connection with the proposer's failure to comply with applicable laws and regulations.

Purchase Order/Contract

This proposal and any resulting purchase order/contract shall be governed in all respects, whether as to validity construction, capacity, performance, or otherwise by the laws of the Commonwealth of Virginia.

Kickback

By signing the proposal, the proposer's representative certifies that he/she has not offered or received any kickback from any other proposer, supplier, manufacturer, or subcontractor in connection with the proposal. A kickback is defined as an inducement for the award of the contract, subcontract, or order through any payment, loan, subscription, advance, deposit of money, services, or anything of value in return for an agreement not to compete on a public contract.

Proposal Terms

Proposals submitted must be firm for a period of ninety days from proposal submission date, unless otherwise specified, and no proposal may be withdrawn during that period.

Additional Users

State Departments and Agencies, Institutions of Higher Education, Public Bodies, Community Service Boards, Cities, Counties, and other entities are authorized to use this contract in accordance with the Code of Virginia.

SECTION VI: HRPDC CONTRACT

**HAMPTON ROADS PLANNING DISTRICT COMMISSION
SAMPLE
CONTRACT**

This Contract is made this _____ day of _____ 201X, by and between the Hampton Roads Planning District Commission (hereinafter referred to as the "Commission") and _____ (hereinafter referred to as the "Consultant"). The parties to this Contract, in consideration of the mutual covenants and stipulations set out herein, agree as follows:

1. PROJECT. The Consultant shall carry out the project as set forth in Attachment A – RFP Number FIN-RFP-2011-01 and the Technical Proposal dated _____, known as the "Scope of Services" for the Commission, subject to and in accordance with the terms and conditions listed within this contract.
2. TIME OF PERFORMANCE. The project shall commence on _____, 201X and shall terminate no later than _____, 201X. All work will be accomplished in accordance with the schedule outlined in Attachment XXX, Section XXX of this contract.
3. RENEWAL OF CONTRACT. This contract may be renewed by the Commission upon written agreement of both parties for one year and up to four successive one year periods, under the terms of the current contract, and at a reasonable time (approximately 90 days) prior to the expiration.
4. SUBCONTRACTS. No portion of the work shall be subcontracted.
5. PAYMENT. The Commission shall pay the Consultant as services are rendered satisfactorily complete. Maximum payment by the Commission to the Consultant will not be greater than \$_____ without prior authorization by the Commission. Requests for payment must be accompanied by appropriate financial and work progress documentation to support the request for payment. Such reports and invoices shall be detailed in accordance with Attachment XX to show what tasks have been completed and to compare the time of completion with the proposed time of completion.
6. SOURCE OF FUNDS. N/A
7. FUNDING CREDIT. N/A
8. COMMONWEALTH OF VIRGINIA PUBLIC PROCUREMENT ACT. This contract is subject to the provisions of the Commonwealth of Virginia Public Procurement Act, and any revisions thereto in effect at the time of this contract.
9. PURCHASES ORDER/CONTRACT. This resulting purchase order/contract shall be governed in all respects, whether as to validity, construction, capacity, performance, or otherwise by the laws of the Commonwealth of Virginia.

10. KICKBACK. By signing this contract, the Consultant certifies that he/she has not offered or received any kickback from any other proposer, supplier, manufacturer, or subcontractor in connection with this proposal. A kickback is defined as an inducement for the award of the contract, subcontract, or order through any payment, loan, subscription, advance, deposit of money, services, or anything of value in return for an agreement not to compete on a public contract.
11. LIABILITY. The Consultant will maintain appropriate liability insurance coverage throughout the terms of this Agreement, as follows:
 - a. Name the Commission as an additional insured and provide certificates or other evidence that the required insurance is in force.
 - b. Worker's Compensation and employer's liability insurance as required by the Commonwealth of Virginia.
 - c. Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, and owned, non-owned or hired vehicles with \$1,000,000 combined single limits.
 - d. Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of the Consultant or of any of its employees, agents, or subcontractors, with \$1,000,000 per occurrence and in the aggregate.

It is the intent of the parties to this Contract that the Commission shall not be held liable for damages to the extent they are caused by the fault or negligence of the Consultant.

Consultant's liability for the Commission's damages, not otherwise covered by required insurances, will, in the aggregate, not exceed \$_____. This provision takes precedence over any conflicting Article of this Contract or any document incorporated into it referenced by it. This limitation of liability will apply whether Consultant's liability arises under breach of contract or warranty; tort, including negligence; strict liability; statutory liability; or any other cause of action, and shall include Consultant's officers, affiliated corporations, employees, and subcontractors.

12. NONDISCRIMINATION. In its performance of work activities under this Contract, the Consultant warrants that it will not discriminate against any employee, or other person, on account of race, color, sex, religious creed, ancestry, age, national origin or handicapped status. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

The Consultant shall, in all solicitations or advertisements for employees placed by or on behalf of the Commission, state that the Consultant is an equal opportunity employer, provided, however, that notices, advertisements and solicitations placed in accordance with federal law, rules, or regulations shall be deemed sufficient for the purpose of meeting the requirement of the Contract.

The Consultant shall include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000, so that such provision shall be binding upon each subcontractor of vendor.

All proposers shall abide by applicable state and federal laws including, but not limited to, all provisions of the Americans with Disabilities Act. Each proposer agrees to hold HRPDC harmless regarding all claims in connection with the proposer's failure to comply with applicable laws and regulations.

13. **CHANGES.** The Commission may direct changes within the general Scope of Work in this Contract. Any change will require prior notice to the Consultant and agreement on the price of the change. The Consultant must obtain prior written approval from the Commission for any changes to the project, including, but not limited to, changes of substance in program activities, designs, or plans set forth in Attachment XX, which are proposed by the Consultant. If such changes affect the Consultant's cost or time required for performance of the services, and equitable adjustment will be made through an amendment to the Contract.
14. **TERMINATION FOR CAUSE.** The Commission reserves the right to terminate the Contract, in whole or in part, at any time before the date of completion, upon written notice to the Consultant that it has failed to comply with the conditions of the Contract. The Consultant shall not incur new obligations for the terminated portion of the project after the date of the termination notice, and shall cancel as many outstanding obligations as possible. In the case of a termination for cause, the Commission shall pay for contracted services successfully completed by the Consultant throughout the effective date of the termination. The Commission will not be liable for damages or costs of any kind following termination and final payment to the Consultant, specifically including claims for anticipated profit. Any damages of the Commission associated with a termination for cause shall be compensated for or recovered by the Commission through separate agreement.
15. **TERMINATION FOR CONVENIENCE.** The Commission may terminate the Contract, in whole or in part, if the Commission determines that the continuation of the Contract-supported activities will not produce beneficial results commensurate with further expenditure of funds. The Consultant shall not incur new obligations for the terminated portion after termination notice and shall cancel as many outstanding obligations as possible. In the case of a termination for convenience, the Commission shall pay for contracted services, rendered by the Consultant through the effective date of the termination. The Commission will not be liable for damages or costs of any kind following termination and final payment to the Consultant, specifically including claims for anticipated profit.
16. **MAINTENANCE OF RECORDS.** The Consultant shall maintain all required records and provide the Commission an audit in accordance with applicable state and federal laws and Generally Accepted Accounting Procedures. That audit will be reviewed by the Commission for compliance with state and federal laws and regulations. The Consultant will ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with state and federal laws and regulations.

The Consultant agrees to retain all books, records and other documents relative to this Contract for three (3) years after final payment, or until the Project is audited by the Commission, whichever is later. The Commission, its authorized agents and/or auditors shall have full access to and right to examine any of said materials during said period.

17. COLLATERAL CONTRACTS. Where there exists any inconsistency between this Contract and other provisions of collateral contractual agreements which are made a part of this Contract by reference or otherwise, the provisions of this Contract shall control.
18. PRIME CONSULTANT RESPONSIBILITIES. The Consultant shall be responsible for completely supervising and directing the work under this contract. The Consultant agrees that he/she is fully responsible for the acts and omission of his/her employees.
19. INTEGRATION AND MODIFICATION. This Contract constitutes the entire Contract between the Commission and the Consultant. No alteration, amendment, or modification in the provisions of the Contract shall be effective unless it is reduced to writing, signed by the parties and attached hereto.
20. SEVERABILITY. Each paragraph and provision of this Contract is severable from the entire Contract; and, if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect, at the option of the Commission.
21. INDEMNIFICATION. Consultant agrees to indemnify, defend and hold harmless the Commission and the Commonwealth of Virginia, 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 the use of any materials, goods, or equipment of any kind or nature furnished by the Consultant, provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the Consultant on the materials, goods or equipment delivered.
22. INVENTIONS AND COPYRIGHTS. As, and only as, requested by the Commission, the Consultant shall apply, or promptly and willingly assist (including without limitation by executing and delivering documents) the Commission in applying for patent, copyright, and/or other intellectual-property protection of any inventions, discoveries, documents, designs, drawings, papers, notes, forms, interim reports, final reports, graphics, images, computer programs and data, other works of authorship, and other information and/or materials, whether in electronic, magnetic/optical-media, or printed form, (collectively, "Materials") prepared by the Consultant in the performance of its obligations under this Contract. The provisions of this paragraph are further subject to the provisions of Paragraphs 23 and 24 of this Contract.
23. OWNERSHIP OF MATERIALS. The Consultant acknowledges and agrees that the Commission has and shall have ownership of any and all Materials prepared by the Consultant in the performance of its obligations under this Contract. The Consultant shall promptly disclose to the Commission any and all Materials and, at the Commission's request, shall provide the Commission with one or, if so requested by the Commission, more electronic, magnetic/optical-media, and/or printed copies of each of the Materials. The Consultant may retain electronic, magnetic/optical-media, and/or printed copies of the Materials and with the Commission's prior written consent on a case-by-case basis, use such copies, but only in the course of the Consultant's business and provided that the Consultant includes on any and all such Materials, regardless of form, any and all appropriate notices of the Commission's rights, including without limitation its intellectual property rights, in and to the Materials. The provisions of the paragraph are further subject to the provisions of Paragraph 22 of this Contract.

24. CREATION OF INTELLECTUAL PROPERTY. The Consultant acknowledges and agrees that the Commission owns and shall own any and all patent rights, copyrights, other intellectual property rights, and any and all other proprietary rights in and to the Materials prepared by the Consultant in the performance of its obligations under this Contract. The Consultant agrees to assign, and hereby does assign, to the Commission any and all rights, including without limitation copyrights and any other rights arising under Title 17 of the United States Code, that the Consultant would, except for such assignment, have in and to the Materials. With the Commission's prior written consent, the Consultant may create and use, but only in the course of the Consultant's business, derivative works based on the Materials. The preceding does not apply to any background materials which Consultant supplies to complete [the task] which is subject to preexisting copyright protections.
25. CONFIDENTIALITY. The Consultant expressly acknowledges and agrees that all reports, documents and communications of every kind, whether written or oral, concerning specific contractual matters, planning or assumptions received in the performance of the work from the HRPDC, its staff, Board, legal counsel, or other agents or advisors (collectively "Confidential Information") shall be held in strictest confidence and maintained as strictly confidential. Confidential Information shall include information that, when taking into consideration the circumstances surrounding disclosure of the same, a reasonable person would consider being confidential or proprietary. This provision shall not apply to information which (1) has been published and is in the public domain, (2) has been provided to Consultant by third parties who have the legal right to possess and disclose the information, (3) was in the possession of Consultant prior to the disclosure of such information to Consultant by HRPDC, (4) is required by law or any governmental agency to be disclosed, or (5) would require disclosure to comply with the ethical obligations of Consultant to protect the public.

No Confidential Information shall be disclosed to other clients of the Consultant, other consultants, private companies, public entities, the media, the general public, or any other third party unless directed to do so by the Commission's Executive Director. However, such Confidential Information may be documented in briefing materials provided to the Commission and its staff, provided such briefing materials are clearly annotated as Confidential Working Papers.

The Consultant shall take all appropriate and necessary steps to protect Confidential Information and to limit access to Confidential Information in its possession to those of its employees, agents and subcontractors required to have access to the Confidential Information in the performance of this work and who are bound in writing to keep the information confidential pursuant to confidentiality agreements with terms no less restrictive than those contained in this Agreement. The Consultant shall include these confidentiality provisions in any agreement between the Consultant and a subcontractor or agent related to the performance of the work so that these provisions will be binding upon them with equal and like effect. The Consultant shall be responsible for communicating to each party identified in this paragraph who received or is given access to Confidential Information the terms of these provisions and the obligations of that party to abide by the requirements hereof.

Upon completion of performance of the work, the Consultant, its agents and any subcontractors, agree to deliver to the Commission all Confidential Information obtained during

performance of the work, in any medium, and, if requested by the Commission, to provide written confirmation that all such Confidential Information has been delivered to the Commission, provided, however, Consultant may retain a record copy of its work product.

The Consultant shall immediately notify the Commission if the Consultant learns of any unauthorized use or disclosure of Confidential Information and will cooperate in good faith to remedy such occurrence immediately to the extent reasonably possible.

In the event that Consultant becomes legally compelled to disclose any such Confidential Information, Consultant will provide the Commission with prompt notice so that the Commission may seek a protective order or other appropriate remedy; in the event that such protective order or other remedy is not obtained, Consultant will furnish only that portion of the Confidential Information which Consultant is advised by opinion of counsel is legally required and will cooperate with the Commission in seeking reliable assurance that confidential treatment will be accorded the Confidential Information.

The Consultant acknowledges and agrees that a violation of the provisions of this confidentiality requirement may cause irreparable damage to the Commission or member cities and counties (together "Affected Parties"), and these confidentiality provisions are made for the express benefit of and shall be enforceable by any of the Affected Parties. Consultant agrees that these provisions may be specifically enforced in any court of law having jurisdiction. In addition to and not in limitation of any other rights or remedies the Affected Party may have for a breach of the provisions of this confidentiality requirement, the Affected Party may recover money damages, subject to the limitations in Section 14; and in addition to money damages, the Affected Party shall be entitled to obtain equitable relief for any such breach (without requirement of bond or corporate surety) so that Consultant shall be required to cease and desist immediately from breaching such provision (it being agreed that damages alone would be inadequate to compensate the Affected Parties and would be an inadequate remedy for such breach).

These provisions shall expressly apply to and bind the Consultant, its agents, officers, employees, subcontractors and any permitted assigns.

26. **CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION.** The Consultant assures that information and data obtained as to personal facts and circumstances related to clients will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the Commission's written consent and only in accordance with federal law or the Code of Virginia. Consultants who utilize, access or store personally identifiable information as part of the performance of a contract are required to safeguard this information and immediately notify the Commission of any breach or suspected breach in the security of such information. Consultants shall allow the Commission to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Consultants and their employees working on this project may be required to sign a confidentiality statement.
27. **CONTINGENT FEE WARRANTY.** The Consultant warrants that it has not employed or retained any person or persons for the purpose of soliciting or securing this Contract. The Consultant further warrants that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon the

award or making of this Contract. For breach of one or both of the foregoing warranties, the Commission shall have the right to terminate this Contract without liability, or in its discretion, to deduct from the agreed fee, amount of said prohibited fee, commission, percentage, brokerage fee, gift, or contingent fee.

- 28. CONFLICT OF INTEREST. The Consultant warrants that it has fully complied with the State and Local Government Conflict of Interests Act.
- 29. DISCLAIMER. Nothing in this Contract shall be construed as authority for either party to make commitments, which will bind the other party beyond the project contained herein.
- 30. USE OF FUNDS. Funds, paid by the Commission shall only be used for the purposes and activities covered in Attachment A.
- 31. FISCAL CONTROL. The Consultant shall establish fiscal control and fund accounting procedures which assure proper disbursement of, and accounting for, project funds, including any required matching funds.
- 32. STANDARD OF CARE. The standard of care applicable to the Consultant's services will be the degree of skill and diligence normally employed by professional consultants performing the same or similar services at the time said services are performed. The Consultant will re-perform, without additional compensation, any services not meeting this standard.
- 33. FORCE MAJEURE. If performance of the Services is affected by causes beyond the Consultant's reasonable control, project schedule and compensation shall be equitably adjusted.
- 34. DISPUTE RESOLUTION. The parties will use their best efforts to resolve amicably any dispute, including use of alternative dispute resolution options.
- 35. NOTICE TO PROCEED. Execution of the contract by both parties will constitute a Notice to Proceed. A separate Notice to Proceed will be required prior to beginning any additional services as may be directed by the Commission.

**HAMPTON ROADS PLANNING
DISTRICT COMMISSION**

FIRM NAME

Dwight L. Farmer
Executive Director/Secretary

print name
title

Date

Date