**SAMPLE CONTRACT - PROVIDED FOR REFERENCE PURPOSES ONLY. THE TOWN MAY REQUIRE ADDITIONAL PROVISIONS IN ANY FINAL CONTRACT.**

**CONTRACT NO.**

**CONTRACT FOR UTILITY MASTER PLANNING SERVICES**

This **CONTRACT** (the "Contract") is made this (date), by and between the **Town of Appomattox, Virginia** (the "Town"), a municipal corporation, and\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ having a usual place of business at (the "Contractor"), collectively referred to herein as "Parties".

The Contractor and the Town, in consideration of the mutual covenants, promises, and agreements herein contained, agree as follows:

1. **Provision of Services.** The Contractor hereby agrees to provide master planning services for water and wastewater utilities as described in the Request for Proposal (RFP) No. .
2. **Contract Documents.** The Contract Documents consist of this Contract, RFP No.\_\_\_\_\_(incorporated herein by reference), the Contractor's Proposal dated (attached hereto as "Exhibit A"), and any subsequent addenda issued

by the Town. Where the terms of this Contract and the Contractor's Proposal are at variance, the provisions of this Contract shall prevail. The Parties agree that any ambiguity, conflict or inconsistency in the foregoing documents that together constitute the Contract, will be resolved in the following order of precedence: (1) this Contract; (2) RFP No.\_\_and all addenda thereto; (3) the Contractor's Proposal dated \_\_\_.

1. **Contract Term. The term of this Contract shall commence** on \_\_\_\_\_\_\_\_ ("Effective Date") and shall continue in force until \_\_\_\_\_.
2. **Contract Amount.** In return for the services identified above, the Town shall compensate the Contractor as outlined below:

It is understood and agreed between the Parties herein that the Town shall be bound hereunder only to the extent of the funds available or which may hereafter become available.

1. **Method of Payment.** The Contractor shall submit invoices to the Town with all supporting documentation and shall be reimbursed within forty-five (45) days after receipt of invoice or completion of services, whichever occurs later.

Invoice must detail the hours worked and services performed, must reference the contract number, and be mailed to the address specified below:

Town of , Appomattox Virginia
Attn: Treasurer
210 Linden Street
Appomattox, VA 24522

1. **Applicable Law and Courts.** This Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in a court within Appomattox County. The Contractor shall comply with applicable federal, state and local laws and regulations.
2. **Assignment of Contract.** This Contract shall not be assignable by the Contractor in whole or in part without the prior written consent of the Town.
3. **Ownership of Documents.** Contractor agrees that all information, finished or unfinished documents, data, studies, surveys, specifications, records, reports and other material gathered and/or prepared by or for it under the terms of the Contract shall, at the Town’s option, be delivered to, become, and remain the property of the Town. The Town shall also have the right to use and reproduce the data and reports submitted hereunder, without additional compensation to the Contractor.
4. **Notice.** The following persons shall be contact persons for the Parties, and notice given them, by certified return receipt requested mail to the addresses shown, shall constitute valid notice under the requirements of this agreement:

For the Town: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For the Contractor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

1. **Termination.**
2. Termination without Cause. The Town may terminate this Contract for any reason upon thirty (30) days' notice and upon payment of any and all sums already earned under this Contract and reasonable expenses incurred in reliance upon the Contract.
3. By Town with Cause. The Town may terminate this contract if the Contractor is in material breach with this Contract and fails to adequately remedy such breach after written notice from the Town and a 14-day period to cure the breach. If this Contract is terminated by the Town for cause, the Town may withhold any further payments to the Contractor until it determines its damages and may sue the Contractor for any damages caused by the breach. If the Town terminates this Contract for cause and it is later determined that such termination was not justified, then the termination shall be converted into one without cause under Paragraph A. and any liability of the Town shall be limited solely to the liability provided by that paragraph for a termination without cause.
4. If this Contract is terminated by the Town, the Contractor shall within seven days thereafter deliver to the Town all Contract Deliverables regardless of the current state of completion. In such case, the Contractor grants an irrevocable right to the Town to use the Contract Deliverables without additional compensation to the Contractor, but the Contractor will not be liable for any change or alterations to the Contract Deliverables or for their use in an incomplete state.
5. Notwithstanding the foregoing, the Contractor agrees that any resulting contract is subject to annual appropriations of the Appomattox Town Council and that non-appropriation of sufficient funding to continue the contract will result in its automatic termination once existing funding is exhausted.

**11. Notice of Required Disability Legislation Compliance.** The Town is required to comply with state and federal disability legislation.

**12. Faith Based Organizations.** The Town does not discriminate against faith-based organizations.

**13. Immigration Reform and Control Act of 1986.** By entering this Contract, the Contractor certifies that it does not and will not during the performance of this Contract violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

**14. Payment to Subcontractors.** Within seven (7) days after receipt of amounts paid by the Town for work performed by a subcontractor under this Agreement, the Contractor shall either: a) pay the subcontractor for the proportionate share of the total payment received from the Town attributable to the work performed by the subcontractor under this Agreement; or b) notify the Town and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment and the reason for non-payment. The Contractor shall pay interest to the subcontractor on all amounts owed that remain unpaid beyond the seven (7) day period except for amounts withheld as allowed in item b. Unless otherwise provided under the terms of this Agreement, interest shall accrue at the rate of one percent (1%) per month. The Contractor shall include in each of its subcontract a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements as set forth above with respect to each lower-tier subcontractor. The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this provision may not be construed to be an obligation of the Town.

**15. Authority to Transact Business in Virginia.** A Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law.

**16. Counterparts.** This Contract and any amendments or renewals hereto may be executed in a number of counterparts, and each counterpart signature, when taken with the other counterpart signatures, is treated as if executed upon one original of this Contract or any amendment or renewal. A signature by any party to this Contract provided by facsimile or electronic mail is binding upon that party as if it were the original.

**17. Ethics in Public Contracting.** The provisions contained in Sections 2.2 4367 through 2.2 4377 of the Virginia Public Procurement Act as set forth in the 1950 Code of Virginia, as amended, shall be applicable to all Contracts solicited or entered into by the Town. A copy of these provisions may be obtained from the Town upon request.

The above-stated provisions supplement, but do not supersede, other provisions of law including, but not limited to, the Virginia State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§ 18.2 498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2. The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the Virginia State and Local Government Conflict of Interests Act.

**18. Exemption from Taxes.** The Town is exempt from Virginia State Sales or Use Taxes and Federal Excise Tax.

**19. Employment Discrimination by Contractors Prohibited.**

A. During the performance of thisContract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, shall state that such Contractor is an equal opportunity employer.
3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient to meet this requirement.

B. The Contractor will include the provisions of the foregoing paragraphs, 1, 2, and 3 in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

**21. Drug-Free Workplace.**

During the performance of this Contract, 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 such 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 purpose of this section, "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 chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the Contract.

**22. Delays.** Time is of the essence. The Contractor must keep the Town advised at all times of status of Parties' agreement. If delay is foreseen, the Contractor shall give immediate written notice to Town. Should Contractor fail to deliver the proper item/service at the time and place contracted for, or within a reasonable period of time thereafter as agreed to in writing by the Town, or should the Contractor fail to make a timely replacement of rejected item/service when so required, the Town may purchase item/service of comparable quality and quantity in the open market to replace the undelivered or rejected item/service. The Contractor shall reimburse the Town for all costs in excess of the Contract price when purchases are made in the open market; or, in the event that there is a balance the Town owes to the Contractor from prior transactions, an amount equal to the additional expense incurred by the Town as a result of the Contractor's nonperformance shall be deducted from the balance as payment.

**23. Substitutions.** No substitutions, additions or cancellations, including those of key personnel, are permitted after Contract award without written approval by the Town.

**24. Contractual Disputes**. The Contractor shall give written notice to the Town Manager of intent to file a claim for money or other relief within ten (10) calendar days of the occurrence giving rise to the claim or at the beginning of the work upon which the claim is to be based, whichever is earlier.

The Contractor shall submit its invoice for final payment within thirty (30) days after completion or delivery.

The claim, with supporting documentation, shall be submitted to the Town Manager by US Mail, courier, or overnight delivery service, no later than sixty (60) days after final payment. If the claim is not disposed of by agreement, the Town Manager shall reduce his/her decision to writing and mail or otherwise forward a copy thereof to the Contractor within thirty (30) days of the Town's receipt of the claim.

No Contractor shall institute any legal action until all statutory requirements have been met. Each party shall bear its own costs and expenses resulting from any litigation, including attorney's fees.

**25. Severability.** In the event that any provision shall be adjudged or decreed to be invalid, by a court of competent jurisdiction, such ruling shall not invalidate the entire Contract but shall pertain only to the provision in question and the remaining provisions shall continue to be valid, binding and in full force and effect.

**26. Force Majeure.** A party will not be held responsible for failure to perform the duties and responsibilities imposed by the contract due to legal strikes, fires, civil disobedience, riots, rebellions, acts of God and similar occurrences beyond the control of the party that make performance impossible or illegal, unless otherwise specified in the Contract.

If a party asserts Force Majeure as an excuse for failure to perform the party's obligation, that party must immediately notify the other party giving full particulars of the event of force majeure and the reasons for the event of force majeure preventing that party from, or delaying that party in performing its obligations under this contract and that party must use its reasonable efforts to mitigate the effect of the event of force majeure upon its or their performance of the contract and to fulfill its or their obligations under the contract.

An event of force majeure does not relieve a party from liability for an obligation which arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner which matured prior to the occurrence of that event.

The Contractor has no entitlement and Town has no liability for: (1) any costs, losses, expenses, damages or the payment of any part of the contract price during an event of force majeure; and (2) any delay costs in any way incurred by the contractor due to an event of force majeure.

**27. Insurance.**

Contractor shall secure at its own expense general liability insurance in an amount not less than $1,000,000 solely contained in a Commercial General Liability Policy or in combination with an Umbrella or Excess Policy. Included shall be coverage for Bodily Injury and Property Damage resulting from the operations, products, and completed operations of the contractor.

Contractor shall also carry the following coverages: (A) automobile insurance contained in a Commercial Auto Policy or in combination with an Umbrella or Excess Policy; (B) Workers Compensation insurance, which meets the statutory requirements of the Commonwealth of Virginia; (C) Cyber / Professional Liability insurance which shall protect the Contractor for claims resulting from alleged professional errors and omissions and/or cyber events, with limits of liability not less than $1,000,000; and (D)other insurance coverage deemed by the Town to be appropriate to this agreement.

The above-mentioned coverage shall be placed with an insurance carrier licensed to do business in the Commonwealth of Virginia. The carrier must have an AM Best Rating of A or better. A Certificate of Insurance identifying coverage shall be furnished to the Town. The Town of Appomattox shall be named as an additional insured on commercial general liability, umbrella/excess coverage, and automobile coverage. Liability coverage shall contain wording prohibiting cancellation of coverage, failure to renew, or reduction in limit without the insurer first giving 30 days' prior written notice of such action to the Town.

**28. Authorization.** Contractor affirms that its signatory below is legally authorized to sign this Contract on its behalf.

In witness whereof, the Parties below execute this Contract as of the date first above written.

**Town of Appomattox**

By:

Its:

Date:

**Contractor**

By:

Its:

Date: