

## **CITY OF MANASSAS PARK - STAFF REPORT/RECOMMENDATION**

**REQUESTING DEPARTMENT:** *City Manager & City Attorney*

**MEETING DATE:** *October 15, 2019*

**SUBJECT/TOPIC:** *Consulting Services for Public Private Partnership (PPEA/PPTA)*

**BACKGROUND:** In February of 2013, the City signed a five year consultant services agreement (one year term with four one year renewal options) with Arcadis, U.S., Inc. to serve as the City's consultant for Public-Private Transportation Act (PPTA) and Public-Private Education Facilities and Infrastructure Act (PPEA) agreements that the City may have been interested in pursuing (see Attachment 1). Prior to that, the City had a similar agreement with HDR Architecture, Inc., which the City used for the PPEA project to design and build the Community Center. Unfortunately, with insufficient movement of Phase 3 City Center development efforts during the period of the Arcadis agreement (2013-2018), their services were not needed.

In January of 2019, with the City having completed its market analysis and concept plan development work with the City's market consultant StreetSense, and with the City Manager ready to issue and RFI (with guidance from StreetSense) for Phase 3 development, the City Manager prepared and issued an RFP for PPTA/PPEA consulting services (see Attachment 2). The City Manager briefed the Governing Body on this effort at the February 5<sup>th</sup>, 2019 meeting (see Attachment 3).

Unfortunately, the City did not receive any responses to its RFP for PPTA/PPEA consulting services at the time. With the City now actively making progress on the development of Phase 3 of City Center, the City Attorney and City Manager met with Arcadis representatives to determine if there was interest in them again becoming the City's PPTA/PPEA consultant. Arcadis expressed interest and submitted a proposal. The City Manager and City Attorney have negotiated an agreement with Arcadis (see Attachment 4- which includes their proposed scope of services for the Phase 3 Project as well) to have them be our PPTA/PPEA consultant for Phase 3.

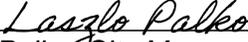
PPEA/PPTA projects are by their nature more complex than typical City projects that require separate solicitations for architects, engineers, contractors, and the disposition of public property. PPEA/PPTA projects can encompass all of these, and more. Because City Staff is stretched pretty thin, assistance is needed to help review concept plans received and to help negotiate any comprehensive agreement with a developer. Specifically, such consulting support is needed to ensure that the City:

- Has assistance with reviewing and complying with the PPEA/PPTA legal framework and processes
- Has assistance with preparation and review of development financials required for successful negotiations with a developer
- Uses best practices in negotiating and preparing any PPEA/PPTA comprehensive agreement with a developer
- Receives facility design support for its new City Hall (& Library) that will be part of Phase 3 City Center

**FINANCIAL IMPACT:**

\$70,470 for the scope of services for Phase 3 PPEA/PPTA consulting services.

**STAFF RECOMMENDATION:** Staff recommends that the Governing Body authorize the City Manager to sign an Agreement with Arcadis to have them serve as the City's PPEA/PPTA Consultant for Phase 3 at a cost not too exceed \$70,470.

<b>CITY MANAGER APPROVAL:</b>	 _____ Laszlo A. Palko, City Manager
<b>CITY ATTORNEY APPROVAL:</b> Required: _____ Not Required: _____	_____ Dean H. Crowhurst

**ATTACHMENTS:**

1. 2013 Consultant Services Agreement with Arcadis, U.S., Inc.
2. City of Manassas Park RFP for PPEA/PPTA Consulting Services- January 2019
3. Manager Update- February 5<sup>th</sup>, 2019
4. PPEA/PPTA Consultant Services Agreement- Arcadis U.S., Inc. along with Proposed Scope of Services

**THE CITY OF MANASSAS PARK  
CONSULTANT SERVICES AGREEMENT**

**THIS CONSULTANT SERVICES AGREEMENT** (this "Agreement") is made and entered into this 28<sup>th</sup> day of February, 2013, by and between THE CITY OF MANASSAS PARK, a Virginia municipal corporation (the "City"), and ARCADIS, U.S., INC., a Delaware corporation authorized to conduct business in the Commonwealth of Virginia (the "Consultant").

**WITNESSETH:**

**WHEREAS**, the City anticipates negotiating a comprehensive agreement pursuant to its receipt of an unsolicited proposal submitted pursuant to the Public-Private Transportation Act of 1995 (Va. Code § 56-556 *et seq.*) (the "PPTA") and the Public-Private Education Facilities and Infrastructure Act of 2002 (Va. Code § 56-575.1 *et seq.*) (the "PPEA") (the PPTA and the PPEA are together referred to as the "Acts"); and

**WHEREAS**, the City may receive future solicited and/or unsolicited proposals or bids pursuant to the Acts; and

**WHEREAS**, the City lacks sufficient resources to prepare for, review and evaluate proposals and/or bids received pursuant to the Acts or to analyze and prepare the specifications required for the public facilities to be constructed pursuant to one or more comprehensive agreements; and

**WHEREAS**, the City has issued that certain Request for Proposals for PPEA/PPTA Consultant Services (the "RFP") to provide PPEA/PPTA consulting services to the City on an as-needed basis, which RFP is attached hereto as Exhibit 1 and incorporated herein by reference; and

**WHEREAS**, following consideration of all proposals received by the City in response to the RFP, the City has determined that the Consultant's proposal (the "Proposal") was the most responsive and responsible, and that the Consultant is responsible, qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise to perform the services and tasks set forth in this Agreement. The Proposal is attached hereto as Exhibit 2 and incorporated herein by reference.

**NOW, THEREFORE**, for and in consideration of the foregoing recitals, each of which is hereby incorporated into this Agreement as if set forth herein in their entirety, the terms, conditions, covenants, and obligations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **SCOPE OF SERVICES.** The Consultant shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are set forth in the Scope of Services in Article IV of the RFP (the "Scope of Services"), which Scope of Services are hereby incorporated herein by reference. Such services and tasks will be requested by the City on an as-needed basis determined solely by

THE CITY OF MANASSAS PARK  
Consultant Services Agreement

the City. Nothing contained in this Agreement shall be construed to have obligated the City to include any City project within the Scope of Services or to otherwise have obligated the City to use the Consultant's services for any City project.

The Consultant represents that it is knowledgeable and experienced in providing technical consulting services comparable to services that would be provided by firms of the same or similar national reputation and that it shall perform those services included in the Scope of Services in a manner consistent with the generally accepted standard of care as of the time when, and in the locale where, the services are performed. The Consultant shall correct, at its own expense, any such service provided pursuant to this Agreement that does not conform to said standard of care for a period of one (1) year following the completion of the service. No other warranty is expressed or implied.

The City shall advise the Consultant in writing before design commencement of any budgetary limitations for the overall cost of construction. The Consultant will endeavor to work within such limitations and will submit to the City, upon request and to the extent it is included in the Scope of Services, an opinion of probable construction cost of a project or portion of a project. Opinions of probable construction cost will represent the Consultant's reasonable judgment as a design professional familiar with the construction industry, but will not represent that bids or negotiated prices will not vary from budgets or opinions of probable cost. The Consultant shall not be liable for the methods, means, sequence, techniques or procedures used by the City's construction contractors to perform, superintend or coordinate their work in accordance with the contract documents or any health or safety precautions required by any regulatory agencies. No review of a project by the Consultant shall relieve such construction contractors from full performance of the construction work and full responsibility for the health and safety of their employees or others affected by their work performance.

2. **TERM.** The initial term of this Agreement shall commence on the date of its execution (the "Effective Date") and shall terminate on the date that is one (1) year following the Effective Date. The term of this Agreement may be extended for up to four (4) additional 1-year periods, provided the City Manager has first authorized such extension prior to the termination of the then-current term. If the City Manager has not authorized such extension prior to the termination of the then-current term, this Agreement shall be deemed to have been terminated upon its expiration and shall thereafter have no further force and effect.

3. **COMPENSATION AND METHOD OF PAYMENT.**

A. Payments for services provided hereunder shall be made monthly following the performance of such services, in accordance with the fee schedule (the "Fee Schedule") set forth in section 7 of the Proposal.

B. No payment shall be made for any service rendered by the Consultant except for services identified and set forth in this Agreement.

THE CITY OF MANASSAS PARK  
Consultant Services Agreement

C. For all work outside the Scope of Services, the City shall pay the Consultant in accordance with the Fee Schedule.

D. The Consultant shall submit to the City Manager or his designee, on a form approved by the City Manager, an invoice for services rendered during the prior month. The City shall make payment to the Consultant within thirty (30) from receipt thereof.

E. The Consultant reserves the right to suspend or terminate work and this Agreement if any unpaid account exceeds sixty (60) days.

**4. REPORTS AND INSPECTIONS.**

A. The Consultant, at such times and in such forms as the City may require, shall furnish the City such statements, records, reports, data, and information as the City may request pertaining to matters covered by this Agreement.

B. During the term of this Agreement (as defined in section 2 above) and for a period of three (3) years following the expiration of such term, the Consultant shall at any time during normal business hours and as often as the City may deem necessary, make available for examination all its records and data with respect to all matters covered, directly or indirectly, by this Agreement and shall permit the City or its designated authorized representative to audit and inspect other data relating to all matters covered by this Agreement. The City may, at its discretion, conduct an audit at its expense, using its own or outside auditors, of the Consultant's activities which relate directly or indirectly to this Agreement.

**5. INDEPENDENT CONTRACTOR RELATIONSHIP.**

A. The parties intend that an independent contractor/City relationship will be created by this Agreement. No agent, employee, or representative of the Consultant shall be deemed to be an employee, agent, or representative of the City for any purpose, and the agents, employees and representatives of the Consultant are not entitled to any of the benefits the City provides for its employees. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, subcontractors and representatives during the performance of this Agreement.

B. In the performance of the services herein contemplated the Consultant is an independent contractor with the authority to control and direct the performance of the details of the work; however, the results of the work contemplated herein must meet the approval of the City and shall be subject to the City's general rights of inspection and review to secure the satisfactory completion thereof.

**6. CONSULTANT'S EMPLOYEES/AGENTS/REPRESENTATIVES.** The City may at its sole discretion require the Consultant to remove any employee(s), agent(s), or representative(s) from employment on City projects. The Consultant may, however, employ such individuals(s) on other projects not related to City projects.

THE CITY OF MANASSAS PARK  
Consultant Services Agreement

7. **DEBARMENT.** The City has adopted a debarment policy (the "Debarment Policy") for contractors pursuant to the provisions of the Virginia Public Procurement Act (Va. Code § 2.2-4300 *et seq.*). By executing this Agreement the Consultant affirms that it is not in violation of the terms of the Debarment Policy. If at any time during the term of this Agreement the Consultant is in violation of the Debarment Policy, the City shall have the unreviewable right to terminate this Agreement in accordance with the provisions of subsection 18B below.

8. **HOLD HARMLESS; INDEMNIFICATION.**

A. The Consultant shall indemnify and hold the City and its agents, employees, and officers harmless from, and shall process and defend at its own expense, any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the City arising out of the Consultant's defective performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the City, its agents, employees, and officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Consultant; and provided further, that nothing herein shall require the Consultant to hold harmless or defend the City, its agents, employees and/or officers from any claims arising from the sole negligence of the City, its agents, employees, and/or officers. The provisions of this section shall survive the expiration or termination of this Agreement.

B. Neither party shall be held liable to the other for special, incidental or consequential damages, including but not limited to, loss of use and loss of profit.

C. No liability shall attach to the City by reason of entering into this Agreement except as expressly provided herein.

9. **INSURANCE.** The Consultant shall procure and maintain, for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, employees, or subcontractors. The Consultant shall provide a certificate of insurance from its insurance company (a "Certificate of Insurance") evidencing:

A. General Liability insurance written on an occurrence basis with limits no less than one million dollars (\$1,000,000) combined single limit per occurrence and two million dollars (\$2,000,000) aggregate for personal injury, bodily injury and property damage.

B. Automobile Liability insurance with limits no less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.

C. Professional Liability (Errors and Omissions) insurance with limits no less than one million dollars (\$1,000,000) combined single limit per claim.

THE CITY OF MANASSAS PARK  
Consultant Services Agreement

D. Workers Compensation insurance with limits as set by statute and the employer's liability insurance, with limits no less than one half million dollars (\$500,000) combined single limit per employee/disease/accident.

E. The City shall be named as an additional insured on all general and automobile liability insurance policies, as well as any umbrella insurance policy used to meet the above-stated minimum coverage, with respect to work performed by or on behalf of the Consultant and a copy of the endorsement naming the City as an additional insured shall be attached to each Certificate of Insurance. Each Certificate of insurance shall provide that the City shall receive thirty (30) days advance notice of cancellation. The City reserves the right to request copies of any required insurance policies with confidential information such as information related to Consultant's other clients, removed.

F. The Consultant's insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

**10. TREATMENT OF ASSETS.** Title to all property furnished by the City shall remain in the name of the City and the City shall become the owner of the work product and other documents, if any, prepared by the Consultant pursuant to this Agreement. The City shall not reuse work product or materials provided by the Consultant pursuant to this Agreement on any other project, or for any other purpose other than that for which they were created, without the prior written consent of the Consultant. The Consultant shall not be liable for any unauthorized use of such work product or materials by the City or others.

**11. COMPLIANCE WITH LAWS.**

A. The Consultant, in the performance of this Agreement, shall comply with all applicable federal, state, and local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.

B. The Consultant specifically agrees to pay any applicable fees or charges which may be due on account of this Agreement.

C. The Consultant acknowledges that, pursuant to section 58.1-3133 of the Code of Virginia, the City's treasurer has the authority to withhold payment of any warrant drawn on this Agreement to pay any and all taxes and other charges due to the City from the Consultant. Furthermore, if such warrant is insufficient to pay the entire amount due, then the treasurer shall credit the bill for such taxes or other charges by the amount of the warrant.

**12. NONDISCRIMINATION.**

A. During the performance of this Agreement, the Consultant agrees as follows:

THE CITY OF MANASSAS PARK  
Consultant Services Agreement

1. The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or 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 Consultant. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2. The Consultant, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, will state that such Consultant is an equal opportunity employer.

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 section.

B. The Consultant 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.

**13. ASSIGNMENTS/SUBCONTRACTING.**

A. The Consultant shall not assign or delegate its rights or obligations under this Agreement or any portion of this Agreement without the written consent of the City. Any such consent must be sought in writing by the Consultant not less than thirty (30) days prior to the date of any proposed assignment or delegation. The City reserves the right to reject without cause any such assignment or delegation.

B. Any rights, work or services assigned or delegated hereunder shall be subject to each provision of this Agreement and procurement procedures where applicable as set forth in local, state or federal statutes, ordinance and guidelines.

C. Any technical/professional service subcontract not listed in this Agreement must have express advance written approval by the City.

**14. CHANGES.** Either party may request changes to the Scope of Services and performance to be provided hereunder; however, no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by both parties. Any such change or addition shall be attached to and made part of this Agreement as an amendment.

**15. MAINTENANCE AND INSPECTION OF RECORDS.**

A. The Consultant shall maintain books, records and documents which sufficiently and properly reflect all direct and indirect costs related to the performance of this

THE CITY OF MANASSAS PARK  
Consultant Services Agreement

Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit by the City, its authorized representative, the state auditor, or other governmental officials authorized by law to monitor this Agreement.

B. The Consultant shall retain all books, records, documents and other material relevant to this Agreement for a period of six (6) years after the expiration of this Agreement. The City or its designee shall have full access and right to examine any of said books, records, documents and other materials at all reasonable times during said period.

**16. PROHIBITED INTEREST.** No officer or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

**17. MODIFICATIONS TO TASKS AND MISCELLANEOUS PROVISIONS.**

A. All work proposed by the Consultant is based on current government ordinances and fees in effect as of the date of this Agreement.

B. Any changes to current government ordinances and fees which affect the scope or cost of the services proposed may be billed as an extra pursuant to subsection 3C above, or deleted from the Scope of Services, at the option of the City.

C. The City shall make provision for access to the property and/or project and adjacent properties as necessary for performing the services contemplated herein.

**18. TERMINATION.**

A. Except as otherwise provided in this Agreement, either party may terminate this Agreement at any time, by providing at least thirty (30) days written notice to the other party. The Consultant shall be paid its costs, including contract close-out costs, on work performed up to the time of termination. The Consultant shall promptly submit a termination claim to the City. If the Consultant has any property in its possession belonging to the City, the Consultant will account for the same, and dispose of it in a manner directed by the City.

B. If the Consultant fails to perform in the manner called for in this Agreement, or if the Consultant fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within three (3) business days following written notice thereof, the City may immediately terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the Consultant setting forth the manner in which the Consultant is in default. The Consultant will only be paid for services performed in accordance with the manner of performance set forth in this Agreement.

**19. NOTICE.** Except for notice provided to the parties in accordance with the procedures established for requesting work set forth in the Scope of Services, notice and other

THE CITY OF MANASSAS PARK  
Consultant Services Agreement

correspondence provided for in or required by this Agreement shall be hand delivered or sent by overnight mail, certified U.S. mail or via facsimile or e-mail to the City at One Park Center Court, Manassas Park, Virginia 20111, (703) 335-8813, or [j.zumwalt@manassasparkva.gov](mailto:j.zumwalt@manassasparkva.gov), as appropriate, and to the Contractor at the address, facsimile number or e-mail address designated on the signature page of this Agreement. Such notice shall be deemed received (i) upon actual receipt, (ii) on the same day if hand-delivered or sent via facsimile or electronic mail, (iii) the following day if sent using overnight mail, or (iv) three days later if sent using certified U.S. mail.

**20. THIRD PARTY RIGHTS.** Nothing herein is intended to confer rights of any kind in any third party. No member, officer, or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

**21. ATTORNEYS FEES AND COSTS.** If any legal action or proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in such action or proceeding.

**22. JURISDICTION AND VENUE.**

A. This Agreement has been and shall be construed as having been made and delivered within the Commonwealth of Virginia, and it is agreed by each party hereto that this Agreement shall be governed by laws of the Commonwealth of Virginia, both as to interpretation and performance.

B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement, or any provisions thereof, shall be instituted and maintained only in the United States District Court for the Eastern District of Virginia or a court of competent jurisdiction in Prince William County, Virginia.

**23. FORCE MAJEURE.**

Except for the obligation to make payment for services performed pursuant to this Agreement, any delay in or failure of performance by either party to this Agreement shall not constitute a default hereunder nor give rise to any claim for damage, cost, or expense, if and to the extent such delay or failure is reasonably caused by an occurrence beyond the control of the delayed or non-performing party. Notwithstanding the foregoing, a party which is for any reason delayed in or prevented from performing pursuant to this Agreement shall promptly notify the other party in writing of the reason for the non-performance and the anticipated extent of any delay or non-performance, and shall take reasonable steps to minimize the adverse impact of the delay or non-performance.

**24. SEVERABILITY.**

A. If, for any reason, any part, term, or provision of this Agreement is held by a court of competent jurisdiction to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be illegal, void or unenforceable.

B. If any provision hereof is in conflict with any statutory provision of the Commonwealth of Virginia, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and this Agreement shall be deemed as having been modified to conform to such statutory provisions.

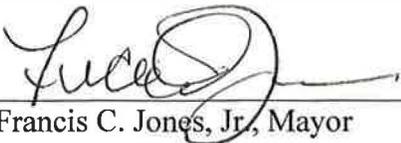
**25. ENTIRE AGREEMENT.** This Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. Both parties acknowledge that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

{Signature page follows}

THE CITY OF MANASSAS PARK  
Consultant Services Agreement

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed  
the day and year first hereinabove written.

**THE CITY OF MANASSAS PARK,**  
a Virginia municipal corporation

By:   
Francis C. Jones, Jr., Mayor

APPROVED AS TO FORM:

  
Dean H. Crowhurst, City Attorney

**ARCADIS, U.S., INC.,**  
a Delaware corporation

Address: 9861 BROKEN LAND PKWY  
STE 254  
COLUMBIA, MD 21046  
Tax ID#: 57-0373224

By:   
Name: W. STANLEY EMORY, JR.  
Title: SR. VICE PRESIDENT

Fax No.: 410-381-0109  
E-mail: stan.emory@arcadis-us.com

**EXHIBIT 1**

**REQUEST FOR PROPOSALS**

**THE CITY OF MANASSAS PARK**

**REQUEST FOR PROPOSALS  
FOR PPEA/PPTA CONSULTANT SERVICES**

**August 3, 2012**

THE CITY OF MANASSAS PARK  
Consultant Services Agreement

**NOTICE TO CONSULTANTS**

REQUEST FOR PROPOSALS FOR PPEA/PPTA CONSULTANT SERVICES

PROPOSALS DUE: NLT 3:00 p.m., August 20, 2012, to the City Manager at  
City Hall, One Park Center Court, Manassas Park, VA 20111

PROJECT NAME: PPEA/PPTA Consultant Services

COPIES OF RFP: Copies of this RFP are posted on the City website  
www.cityofmanassaspark.us (Click on Business/Doing Business  
with the City) and may be obtained from the City Clerk in City  
Hall, One Park Center Court, Manassas Park, VA 20111

SELECTION SCHEDULE: Selection made NLT August 31, 2012  
Notification made NLT September 7, 2012  
Contract execution NLT October 26, 2012

PROJECT LOCATION: Manassas Park, Virginia

PROJECT DESCRIPTION: Consulting Services for negotiation and implementation of both  
solicited and unsolicited proposals received pursuant to the Public-  
Private Transportation Act of 1995 and the Public-Private  
Education Facilities and Infrastructure Act of 2002

OWNER: The City of Manassas Park  
One Park Center Court, Manassas Park, VA 20111

CONTACT: James W. Zumwalt, City Manager, 703-335-8813,  
j.zumwalt@manassasparkva.gov

**The City of Manassas Park reserves the right to accept or reject any or all proposals.**

THE CITY OF MANASSAS PARK  
Consultant Services Agreement

**I. Introduction**

The City of Manassas Park, Virginia (the "City") is soliciting proposals from companies specializing in providing consulting services to local governments for negotiation and implementation of solicited and unsolicited proposals/bids received pursuant to the provisions of the Public-Private Transportation Act of 1995 (Va. Code § 56-556 *et seq.*) (the "PPTA") and the Public-Private Education Facilities and Infrastructure Act of 2002 (Va. Code § 56-575.1 *et seq.*) (the "PPEA") (the PPTA and the PPEA are together referred to as the "Acts"). The City has determined that because of the unique nature of the services requested, competitive sealed bidding is not practicable; the City will therefore acquire such services through competitive negotiation in accordance with subsection 2.2-4303C of the Code of Virginia.

Companies interested in submitting proposals pursuant to this request for proposals (this "RFP") should be prepared to provide on-call, as-needed, consulting services to prepare for, evaluate and provide recommendations to the City about any proposal to build a qualifying project or qualifying transportation project pursuant to the Acts. The City will negotiate with and intends to award a contract (the "Contract") to the company with the winning proposal, such Contract to be in substantially the form and content of the Consultant Services Agreement attached hereto as Exhibit A and incorporated herein by reference. The company with the winning proposal is hereinafter referred to as the "Consultant".

**II. Background**

The City's governing body (the "Governing Body") adopted updated guidelines for PPEA and PPTA projects on December 6, 2011 (the "Guidelines"). A copy of the Guidelines and this RFP may be obtained by contacting the City Clerk at 703-335-8808 or by clicking on Business/Doing Business with the City on the City's website (<http://www.cityofmanassaspark.us>).

The City is preparing to enter into negotiations for a comprehensive agreement pursuant to an unsolicited PPEA/PPTA proposal submitted by EPI Partners, LLC ("EPI Partners"). If the negotiations are successful, the City and EPI Partners will enter into a formal relationship to work together over a long period of time to develop downtown Manassas Park. It is anticipated that the City will require periodic assistance from the Consultant to assist with this process.

In addition to the EPI Partners submission, the City anticipates the need for Consultant assistance in evaluating future solicited and unsolicited PPEA/PPTA proposals.

**III. Related Information**

The City reserves the right to obtain any of the services anticipated in this RFP by soliciting additional requests for proposals if determined to be in the City's best interest to do so.

Any representative designated by the City pursuant to this solicitation shall have no authority to bind the City unless such authority is expressly provided by the City in writing. The City's designation of a representative shall not be deemed to relieve the Consultant of any

THE CITY OF MANASSAS PARK  
Consultant Services Agreement

responsibilities under the Contract.

The Consultant's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the work.

The selection of a company as the Consultant shall not be deemed as having guaranteed or granted to the Consultant any work under the Contract, such work to be on an as-needed basis and in the sole discretion of the City.

**IV. Scope of Services**

The City anticipates the types of services listed below may be requested of the Consultant. The Consultant will be expected to make presentations and to work closely and coordinate with the Governing Body, the City's planning commission (the "Planning Commission"), the City Manager, the City Attorney, the City Engineer, the City Planner and other City staff in its provision of services. Before work on any assignment begins, the task will be defined in writing, maximum time and/or costs limits will be prescribed, and an individual will be identified as the lead point of contact for that task for both the City and the Consultant.

The City anticipates that it may need Consultant help with:

**A. Evaluation of Future Solicited and Unsolicited Bids/Proposals**

Evaluation of solicited and unsolicited bids/proposals that are received by the City in accordance with the Guidelines, including management of the evaluation process.

**B. Negotiation of Interim and Comprehensive PPEA/PPTA Agreements**

Evaluation of specific terms of interim and comprehensive agreements and advice on the structure of the agreements.

**C. Preparation of Master Plans**

For each master plan prepared pursuant to a PPEA/PPTA proposal (particularly that for the downtown area), guidance through and evaluation of the trade off between the aesthetically desirable and the economically feasible.

**D. Preparation of General Development Plans**

Preparation of a general development plan for any qualifying project or qualifying transportation project, whether solicited—by advertising a request for proposals or an invitation to bid—or unsolicited or evolving out of a comprehensive PPEA/PPTA agreement. Such general development plan will take into consideration the City's stated objectives, the surrounding land use(s), the desired

THE CITY OF MANASSAS PARK  
Consultant Services Agreement

land use(s), and traffic flow and will be prepared to encourage solicited and unsolicited bids/proposals in accordance with the Acts.

**E. Research and assistance establishing agreements with adjacent jurisdictions and/or agencies**

**F. Structuring specific PPEA/PPTA projects which may include:**

- Construction of a multi-level parking garage near the Virginia Railway Express commuter rail station in the City.
- Acquisition or construction of a new City Hall.

**G. Implementing Comprehensive PPEA/PPTA Agreement**

Advise City on implementation of specific phases of plan, program management, and related tasks.

**H. Cost estimating and evaluation of the financial feasibility of specific development proposals**

Preliminary evaluation of project and project budget requirements, each in terms of the other, and assistance with preparation of preliminary estimates of construction costs for early schematic designs based on area, volume and/or other standards. Development of detailed estimates of project construction costs for the City's consideration, such estimates to be developed by using estimating techniques which anticipate the various elements of a project, with follow-on coordination with the City if construction costs for any project might exceed the project's budget, and recommendations for possible corrective action.

**I. Financing and Development**

Recommendation to the City of various financing options and funding sources for projects, including grant availability, tax incentives, the creation of community development authorities, ownership by the City's Economic Development Authority, etc. Work may include provision of advice as to the various options for land ownership and facility operation, and evaluation of subject land and development constraints, including certified appraisals of the subject property if needed.

**V. Content and Evaluation of Proposal**

Each proposal shall be limited to 20 pages, including resumes and supportive information which may be included in an appendix. Proposals should contain, and will be evaluated based on, the following information:

THE CITY OF MANASSAS PARK  
Consultant Services Agreement

- A written narrative statement describing the proposer's general background, the proposer's experience with public facilities constructed pursuant to the PPEA and/or the PPTA, and the proposer's general experience in municipal projects, including experience in the design and construction of infrastructure improvements (e.g., water, sewer, storm sewer, streets).
- Names, qualifications and experience of personnel and to be assigned to City projects, preferably in the form of a resume.
- Familiarity with and understanding of the specific needs of the City of Manassas Park.
- The strength of the proposer's local (Virginia) office(s).
- The proposer's ability to draw on other personnel as required for specialty projects, including the qualifications and experience of such other personnel.
- The proposer's demonstrated ability to stay on time and within budget.
- The fee schedule for project manager(s) and other members of the proposer to be assigned to the City of Manassas Park's projects, along with the firm's standard fee schedule.
- Evaluation by other jurisdictions for which the Consultant has done similar work. (Include name and contact information for at least four individuals familiar with the Consultant's work.)
- Description of insurance coverage, including fiduciary liability coverage.
- Other factors deemed relevant by the selection committee, including references, current workload, presentation of proposal.

**VI. Selection Process**

- Proposals will be received by the City Manager prior to 3:00 p.m. on August 20, 2012 at City Hall, One Park Center Court, Manassas Park, Virginia 20111.
- A selection committee made up of the City Manager, the City Attorney, the City Public Works Director and Planner.Director will review and evaluate the written proposals. At its sole discretion, the selection committee may choose to short list and interview those proposers that it deems to be the top prospects. The selection committee may request additional information from the firms to be interviewed.
- Selection of Consultant will be made no later than August 31, 2012.

THE CITY OF MANASSAS PARK  
Consultant Services Agreement

- Selected Consultant will be notified by September 7, 2012.
- Recommendation made to Governing Body to enter into an agreement with the selected Consultant no later than October 2, 2012.
- Execution of Contract no later than October 26, 2012.

The City of Manassas Park reserves the right to:

- Disqualify incomplete proposals.
- Waive minor defects in the proposals submitted.
- Request additional information from respondents.
- Change the nature or scope of projects without penalty.
- Negotiate terms with one or more of the short-listed firms.
- Reject any or all proposals without penalty.
- Select a firm directly from the proposals without follow-up interviews.
- Take any steps deemed necessary to act in the City's best interest.

**VII. Notice of Award; Contract**

Following approval by the Governing Body, the City of Manassas Park will provide to the selected firm an approved notice of award (the "Notice of Award") and three copies of the Contract. The Contract must be executed and returned with proof of insurance to the City Manager by 3:00 p.m. on the date that is ten (10) calendar days following the date of the Notice of Award. The Contract term will be one (1) year from the date of execution, renewable for up to four (4) additional 1-year periods upon approval of the Governing Body, after which the City will issue another request for proposals.

**VIII. Information to be submitted**

To be considered, four (4) copies of each proposal must be received by the City Manager at City Hall, One Park Center Court, Manassas Park, Virginia 20111 no later than 3:00 p.m. on August 20, 2012. Questions may be addressed to the City Manager by telephone at 703-335-8813 or by email at [j.zumwalt@cityofmanassaspark.gov](mailto:j.zumwalt@cityofmanassaspark.gov).

# **THE CITY OF MANASSAS PARK**

## **REQUEST FOR PROPOSALS FOR PPEA/PPTA CONSULTANT SERVICES**

**January 28, 2019**

## NOTICE TO CONSULTANTS

### REQUEST FOR PROPOSALS FOR PPEA/PPTA CONSULTANT SERVICES

PROPOSALS DUE: NLT 3:00 p.m., March 15, 2019, to the City Manager at  
City Hall, One Park Center Court, Manassas Park, VA 20111

PROJECT NAME: PPEA/PPTA Consultant Services

COPIES OF RFP: Copies of this RFP are posted on the City website  
[www.cityofmanassaspark.us](http://www.cityofmanassaspark.us) (Click on Business/Doing Business  
with the City) and may be obtained from the City Clerk in City  
Hall, One Park Center Court, Manassas Park, VA 20111

SELECTION SCHEDULE: Selection made NLT April 17, 2019  
Notification made NLT April 29, 2019  
Contract execution NLT May 10, 2019

PROJECT LOCATION: Manassas Park, Virginia

PROJECT DESCRIPTION: Consulting Services for negotiation and implementation of both  
solicited and unsolicited proposals received pursuant to the Public-  
Private Transportation Act of 1995 and the Public-Private  
Education Facilities and Infrastructure Act of 2002

OWNER: The City of Manassas Park  
One Park Center Court, Manassas Park, VA 20111

CONTACT: Laszlo A Palko, City Manager, 703-335-8813,  
[l.palko@manassasparkva.gov](mailto:l.palko@manassasparkva.gov)

**The City of Manassas Park reserves the right to accept or reject any or all proposals.**

## **I. Introduction**

The City of Manassas Park, Virginia (the "City") is soliciting proposals from companies specializing in providing consulting services to local governments for negotiation and implementation of solicited and unsolicited proposals/bids received pursuant to the provisions of the Public-Private Transportation Act of 1995 (Va. Code § 56-556 *et seq.*) (the "PPTA") and the Public-Private Education Facilities and Infrastructure Act of 2002 (Va. Code § 56-575.1 *et seq.*) (the "PPEA") (the PPTA and the PPEA are together referred to as the "Acts"). The City has determined that because of the unique nature of the services requested, competitive sealed bidding is not practicable; the City will therefore acquire such services through competitive negotiation in accordance with Subsection 2.2-4303C of the Code of Virginia.

Companies interested in submitting proposals pursuant to this request for proposals (this "RFP") should be prepared to provide on-call, as-needed, consulting services to prepare for, evaluate and provide recommendations to the City about any proposal to build a qualifying project or qualifying transportation project pursuant to the Acts. The City will negotiate with and intends to award a contract (the "Contract") to the company with the winning proposal, such Contract to be in substantially the form and content of the Consultant Services Agreement attached hereto as Exhibit A and incorporated herein by reference. The company with the winning proposal is hereinafter referred to as the "Consultant".

## **II. Background**

The City's governing body (the "Governing Body") adopted updated guidelines for PPEA and PPTA projects on December 6, 2011 (the "Guidelines"). A copy of the Guidelines and this RFP may be obtained by contacting the City Clerk at 703-335-8808 or by clicking on Business/Doing Business with the City on the City's website (<http://www.cityofmanassaspark.us>).

The City anticipates the need for Consultant assistance in evaluating future solicited and unsolicited PPEA/PPTA proposals.

## **III. Related Information**

The City reserves the right to obtain any of the services anticipated in this RFP by soliciting additional requests for proposals if determined to be in the City's best interest to do so.

Any representative designated by the City pursuant to this solicitation shall have no authority to bind the City unless such authority is expressly provided by the City in writing. The City's designation of a representative shall not be deemed to relieve the Consultant of any responsibilities under the Contract.

The Consultant's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the work.

The selection of a company as the Consultant shall not be deemed as having guaranteed or granted to the Consultant any work under the Contract, such work to be on an as-needed basis

and in the sole discretion of the City.

#### **IV. Scope of Services**

The City anticipates the types of services listed below may be requested of the Consultant. The Consultant will be expected to make presentations and to work closely and coordinate with the Governing Body, the City's planning commission (the "Planning Commission"), the City Manager, the City Attorney, the City Engineer, the City Planner and other City staff in its provision of services. Before work on any assignment begins, the task will be defined in writing, maximum time and/or costs limits will be prescribed, and an individual will be identified as the lead point of contact for that task for both the City and the Consultant.

The City anticipates that it may need Consultant help with:

**A. Evaluation of Future Solicited and Unsolicited Bids/Proposals**

Evaluation of solicited and unsolicited bids/proposals that are received by the City in accordance with the Guidelines, including management of the evaluation process.

**B. Negotiation of Interim and Comprehensive PPEA/PPTA Agreements**

Evaluation of specific terms of interim and comprehensive agreements and advice on the structure of the agreements.

**C. Preparation of Master Plans**

For each master plan prepared pursuant to a PPEA/PPTA proposal (particularly that for the downtown area), guidance through and evaluation of the trade off between the aesthetically desirable and the economically feasible.

**D. Preparation of General Development Plans**

Preparation of a general development plan for any qualifying project or qualifying transportation project, whether solicited—by advertising a request for proposals or an invitation to bid—or unsolicited or evolving out of a comprehensive PPEA/PPTA agreement. Such general development plan will take into consideration the City's stated objectives, the surrounding land use(s), the desired land use(s), and traffic flow and will be prepared to encourage solicited and unsolicited bids/proposals in accordance with the Acts.

**E. Research and assistance establishing agreements with adjacent jurisdictions and/or agencies**

**F. Structuring specific PPEA/PPTA projects which may include:**

- Acquisition or construction of a new City Hall.

**G. Implementing Comprehensive PPEA/PPTA Agreement**

Advise City on implementation of specific phases of plan, program management, and related tasks.

**H. Cost estimating and evaluation of the financial feasibility of specific development proposals**

Preliminary evaluation of project and project budget requirements, each in terms of the other, and assistance with preparation of preliminary estimates of construction costs for early schematic designs based on area, volume and/or other standards. Development of detailed estimates of project construction costs for the City's consideration, such estimates to be developed by using estimating techniques which anticipate the various elements of a project, with follow-on coordination with the City if construction costs for any project might exceed the project's budget, and recommendations for possible corrective action.

**I. Financing and Development**

Recommendation to the City of various financing options and funding sources for projects, including grant availability, tax incentives, the creation of community development authorities, ownership by the City's Economic Development Authority, etc. Work may include provision of advice as to the various options for land ownership and facility operation, and evaluation of subject land and development constraints, including certified appraisals of the subject property if needed.

**V. Content and Evaluation of Proposal**

Each proposal shall be limited to 20 pages, including resumes and supportive information which may be included in an appendix. Proposals should contain, and will be evaluated based on, the following information:

- A written narrative statement describing the proposer's general background, the proposer's experience with public facilities constructed pursuant to the PPEA and/or the PPTA, and the proposer's general experience in municipal projects, including experience in the design and construction of infrastructure improvements (e.g., water, sewer, storm sewer, streets).
- Names, qualifications and experience of personnel and to be assigned to City projects, preferably in the form of a resume.
- Familiarity with and understanding of the specific needs of the City of Manassas Park.

- The strength of the proposer's local (Virginia) office(s).
- The proposer's ability to draw on other personnel as required for specialty projects, including the qualifications and experience of such other personnel.
- The proposer's demonstrated ability to stay on time and within budget.
- The fee schedule for project manager(s) and other members of the proposer to be assigned to the City of Manassas Park's projects, along with the firm's standard fee schedule.
- Evaluation by other jurisdictions for which the Consultant has done similar work. (Include name and contact information for at least four individuals familiar with the Consultant's work.)
- Description of insurance coverage, including fiduciary liability coverage.
- Other factors deemed relevant by the selection committee, including references, current workload, presentation of proposal.

#### **VI. Selection Process**

- Proposals will be received by the City Manager prior to 3:00 p.m. on March 15, 2019 at City Hall, One Park Center Court, Manassas Park, Virginia 20111.
- A selection committee made up of the City Manager, the City Attorney, the City Community Development & Public Works Director and City Planning & Zoning Director will review and evaluate the written proposals. At its sole discretion, the selection committee may choose to short list and interview those proposers that it deems to be the top prospects. The selection committee may request additional information from the firms to be interviewed.
- Selection of Consultant will be made no later than April 17, 2019.
- Selected Consultant will be notified by April 29, 2019.
- Recommendation made to Governing Body to enter into an agreement with the selected Consultant no later than May 7, 2019.
- Execution of Contract no later than May 10, 2019.

The City of Manassas Park reserves the right to:

- Disqualify incomplete proposals.

- Waive minor defects in the proposals submitted.
- Request additional information from respondents.
- Change the nature or scope of projects without penalty.
- Negotiate terms with one or more of the short-listed firms.
- Reject any or all proposals without penalty.
- Select a firm directly from the proposals without follow-up interviews.
- Take any steps deemed necessary to act in the City's best interest.

**VII. Notice of Award; Contract**

Following approval by the Governing Body, the City of Manassas Park will provide to the selected firm an approved notice of award (the "Notice of Award") and three copies of the Contract. The Contract must be executed and returned with proof of insurance to the City Manager by 3:00 p.m. on the date that is ten (10) calendar days following the date of the Notice of Award. The Contract term will be one (1) year from the date of execution, renewable for up to four (4) additional 1-year periods upon approval of the Governing Body, after which the City will issue another request for proposals.

**VIII. Information to be submitted**

To be considered, four (4) copies of each proposal must be received by the City Manager at City Hall, One Park Center Court, Manassas Park, Virginia 20111 no later than 3:00 p.m. on March 15, 2019. Questions may be addressed to the City Manager by telephone at 703-335-8813 or by email at [l.palko@manassasparkva.gov](mailto:l.palko@manassasparkva.gov) .

## EXHIBIT A

### **CONSULTANT SERVICES AGREEMENT**

THIS CONSULTING SERVICES AGREEMENT (this "Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2019, by and between THE CITY OF MANASSAS PARK, a Virginia municipal corporation (the "City"), and \_\_\_\_\_, a Virginia corporation (the "Consultant").

#### WITNESSETH:

WHEREAS, the City anticipates negotiating a comprehensive agreement pursuant to its receipt of an unsolicited proposal submitted pursuant to the Public-Private Transportation Act of 1995 (Va. Code § 56-556 *et seq.*) (the "PPTA") and the Public-Private Education Facilities and Infrastructure Act of 2002 (Va. Code § 56-575.1 *et seq.*) (the "PPEA") (the PPTA and the PPEA are together referred to as the "Acts"); and

WHEREAS the City may receive future solicited and/or unsolicited proposals or bids pursuant to the Acts; and

WHEREAS, the City lacks sufficient resources to prepare for, review and evaluate proposals and/or bids received pursuant to the Acts or to analyze and prepare the specifications required for the public facilities to be constructed pursuant to one or more comprehensive agreements; and

WHEREAS, the City has issued that certain Request for Proposals for PPEA/PPTA Consultant Services (the "RFP") to provide PPEA/PPTA consulting services to the City on an as needed basis; and

WHEREAS, following consideration of all proposals received by the City in response to the RFP, the City has determined that the Consultant's proposal was the most responsive and responsible, and that the Consultant is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise to perform the services and tasks set forth in this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and obligations contained herein, the parties hereto agree as follows:

**1. SCOPE OF SERVICES.** The Consultant shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are set forth in the Scope of Services in Article IV of the RFP (the "Scope of Services"), which Scope of Services are hereby incorporated herein by reference. Such services and tasks will be requested by the City on an as needed basis determined solely by the City.

**2. TERM.** The initial term of this Agreement shall commence on the date of execution (the "Effective Date") of this Agreement and shall terminate on the date that is one (1)

THE CITY OF MANASSAS PARK  
Consultant Services Agreement

year following the Effective Date. The term of this Agreement may be extended for up to four (4) additional 1-year periods, provided the City Manager has first authorized such extension prior to the termination of the then-current term. If the City Manager has not authorized such extension prior to the termination of the then-current term, this Agreement shall be deemed to have been terminated upon its expiration and shall thereafter have no further force and effect.

**3. COMPENSATION AND METHOD OF PAYMENT.**

A. Payments for services provided hereunder shall be made monthly following the performance of such services, in accordance with the fee schedule (the "Fee Schedule") attached hereto as Exhibit 1 and incorporated herein by reference.

B. No payment shall be made for any service rendered by the Consultant except for services identified and set forth in this Agreement.

C. For all work outside the Scope of Services, the City shall pay the Consultant in accordance with the Fee Schedule.

D. The Consultant shall submit to the City Manager or his designee, on a form approved by the City Manager, an invoice for services rendered during the prior month. The City shall make payment to the Consultant within thirty (30) from receipt thereof.

E. The Consultant reserves the right to suspend or terminate work and this Agreement if any unpaid account exceeds sixty (60) days.

**4. REPORTS AND INSPECTIONS.**

A. The Consultant, at such times and in such forms as the City may require, shall furnish the City such statements, records, reports, data, and information as the City may request pertaining to matters covered by this Agreement.

B. The Consultant shall at any time during normal business hours and as often as the City may deem necessary, make available for examination all its records and data with respect to all matters covered, directly or indirectly, by this Agreement and shall permit the City or its designated authorized representative to audit and inspect other data relating to all matters covered by this Agreement. The City may, at its discretion, conduct an audit at its expense, using its own or outside auditors, of the Consultant's activities which relate directly or indirectly to this Agreement.

**5. INDEPENDENT CONTRACTOR RELATIONSHIP.**

A. The parties intend that an independent Consultant/City relationship will be created by this Agreement. No agent, employee, or representative of the Consultant shall be deemed to be an employee, agent, or representative of the City for any purpose, and the agents,

THE CITY OF MANASSAS PARK  
Consultant Services Agreement

employees and representatives of the Consultant are not entitled to any of the benefits the City provides for its employees. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, subcontractors and representatives during the performance of this Agreement.

B. In the performance of the services herein contemplated the Consultant is an independent contractor with the authority to control and direct the performance of the details of the work; however, the results of the work contemplated herein must meet the approval of the City and shall be subject to the City's general rights of inspection and review to secure the satisfactory completion thereof.

**6. CONSULTANT'S EMPLOYEES/AGENTS/REPRESENTATIVES.** The City may at its sole discretion require the Consultant to remove any employee(s), agent(s), or representative(s) from employment on City projects. The Consultant may, however, employ such individuals(s) on other projects not related to City projects.

**7. DEBARMENT.** The City has adopted a debarment policy (the "Debarment Policy") for contractors pursuant to the provisions of the Virginia Public Procurement Act (Va. Code § 2.2-4300 *et seq.*). By executing this Agreement the Consultant affirms that it is not in violation of the terms of the Debarment Policy. If at any time during the term of this Agreement the Consultant is in violation of the Debarment Policy, the City shall have the unreviewable right to terminate this Agreement in accordance with the provisions of subsection 18B below.

**8. HOLD HARMLESS; INDEMNIFICATION.**

A. The Consultant shall indemnify and hold the City and its agents, employees, and officers harmless from, and shall process and defend at its own expense, any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the City arising out of, in connection with, or incident to the execution of this Agreement and/or the Consultant's defective performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the City, its agents, employees, and officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Consultant; and provided further, that nothing herein shall require the Consultant to hold harmless or defend the City, its agents, employees and/or officers from any claims arising from the sole negligence of the City, its agents, employees, and/or officers. The provisions of this section shall survive the expiration or termination of this Agreement.

B. No liability shall attach to the City by reason of entering into this Agreement except as expressly provided herein.

**9. INSURANCE.** The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its

THE CITY OF MANASSAS PARK  
Consultant Services Agreement

agents, representatives, employees, or subcontractors. The Consultant shall provide a certificate of insurance from its insurance company (a "Certificate of Insurance") evidencing:

A. General Liability insurance written on an occurrence basis with limits no less than one million dollars (\$1,000,000) combined single limit per occurrence and two million dollars (\$2,000,000) aggregate for personal injury, bodily injury and property damage.

B. Automobile Liability insurance with limits no less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.

C. Professional Liability (Errors and Omissions) insurance written on an occurrence basis with limits no less than one million dollars (\$1,000,000) combined single limit per occurrence.

D. Workers Compensation insurance written on an occurrence basis with limits no less than one half million dollars (\$500,000) combined single limit per occurrence.

E. The City shall be named as an additional insured on all insurance policies, as respect to work performed by or on behalf of the Consultant and a copy of the endorsement naming the City as an additional insured shall be attached to each Certificate of Insurance. Each Certificate of insurance shall warrant that the City shall receive thirty (30) days advance notice of cancellation. The City reserves the right to request certified copies of any required insurance policies.

F. The Consultant's insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

**10. TREATMENT OF ASSETS.** Title to all property furnished by the City shall remain in the name of the City and the City shall become the owner of the work product and other documents, if any, prepared by the Consultant pursuant to this Agreement.

**11. COMPLIANCE WITH LAWS.**

A. The Consultant, in the performance of this Agreement, shall comply with all applicable federal, state, and local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.

B. The Consultant specifically agrees to pay any applicable fees or charges which may be due on account of this Agreement.

C. The Consultant acknowledges that, pursuant to Section 58.1-3133 of the Code of Virginia, the City's treasurer has the authority to withhold payment of any warrant

THE CITY OF MANASSAS PARK  
Consultant Services Agreement

drawn on this Agreement to pay any and all taxes and other charges due to the City from the Consultant. Furthermore, if such warrant is insufficient to pay the entire amount due, then the treasurer shall credit the bill for such taxes or other charges by the amount of the warrant.

**12. NONDISCRIMINATION.**

A. During the performance of this Agreement, the Consultant agrees as follows:

1. The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or 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 Consultant. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2. The Consultant, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, will state that such Consultant is an equal opportunity employer.

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 section.

B. The Consultant 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.

**13. ASSIGNMENTS/SUBCONTRACTING.**

A. The Consultant shall not assign or delegate its rights or obligations under this Agreement or any portion of this Agreement without the written consent of the City. Any such consent must be sought in writing by the Consultant not less than thirty (30) days prior to the date of any proposed assignment or delegation. The City reserves the right to reject without cause any such assignment or delegation.

B. Any rights, work or services assigned or delegated hereunder shall be subject to each provision of this Agreement and procurement procedures where applicable as set forth in local, state or federal statutes, ordinance and guidelines.

C. Any technical/professional service subcontract not listed in this Agreement must have express advance written approval by the City.

THE CITY OF MANASSAS PARK  
Consultant Services Agreement

**14. CHANGES.** Either party may request changes to the Scope of Services and performance to be provided hereunder; however, no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by both parties. Any such change or addition shall be attached to and made part of this Agreement as an amendment.

**15. MAINTENANCE AND INSPECTION OF RECORDS.**

A. The Consultant shall maintain books, records and documents which sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit by the City, its authorized representative, the state auditor, or other governmental officials authorized by law to monitor this Agreement.

B. The Consultant shall retain all books, records, documents and other material relevant to this Agreement for a period of six (6) years after the expiration of this Agreement. The City or its designee shall have full access and right to examine any of said books, records, documents and other materials at all reasonable times during said period.

**16. PROHIBITED INTEREST.** No officer or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

**17. MODIFICATIONS TO TASKS AND MISCELLANEOUS PROVISIONS.**

A. All work proposed by the Consultant is based on current government ordinances and fees in effect as of the date of this Agreement.

B. Any changes to current government ordinances and fees which affect the scope or cost of the services proposed may be billed as an extra pursuant to subsection 3C above, or deleted from the Scope of Services, at the option of the City.

C. The City shall make provision for access to the property and/or project and adjacent properties as necessary for performing the services contemplated herein.

**18. TERMINATION.**

A. Except as otherwise provided in this Agreement, either party may terminate this Agreement at any time, by providing at least thirty (30) days written notice to the other party. The Consultant shall be paid its costs, including contract close-out costs, on work performed up to the time of termination. The Consultant shall promptly submit a termination claim to the City. If the Consultant has any property in its possession belonging to the City, the Consultant will account for the same, and dispose of it in a manner directed by the City.

THE CITY OF MANASSAS PARK  
Consultant Services Agreement

B. If the Consultant fails to perform in the manner called for in this Agreement, or if the Consultant fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within three (3) business days following written notice thereof, the City may immediately terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the Consultant setting forth the manner in which the Consultant is in default. The Consultant will only be paid for services performed in accordance with the manner of performance set forth in this Agreement.

**19. NOTICE.** Except for notice provided to the parties in accordance with the procedures established for requesting work set forth in the Scope of Services, notice and other correspondence provided for in or required by this Agreement shall be hand delivered or sent by overnight mail, certified U.S. mail or via facsimile or e-mail to the City at One Park Center Court, Manassas Park, Virginia 20111, (703) 335-8813, or [l.palko@manassasparkva.gov](mailto:l.palko@manassasparkva.gov), as appropriate, and to the Contractor at the address, facsimile number or e-mail address designated on the signature page of this Agreement. Such notice shall be deemed received (i) upon actual receipt, (ii) on the same day if hand-delivered or sent via facsimile or electronic mail, (iii) the following day if sent using overnight mail, or (iv) three days later if sent using certified U.S. mail.

**20. THIRD PARTY RIGHTS.** Nothing herein is intended to confer rights of any kind in any third party. No member, officer, or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

**21. ATTORNEYS FEES AND COSTS.** If any legal action or proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in such action or proceeding.

**22. JURISDICTION AND VENUE.**

A. This Agreement has been and shall be construed as having been made and delivered within the Commonwealth of Virginia, and it is agreed by each party hereto that this Agreement shall be governed by laws of the Commonwealth of Virginia, both as to interpretation and performance.

B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement, or any provisions thereof, shall be instituted and maintained only in the United States District Court for the Eastern District of Virginia or a court of competent jurisdiction in Prince William County, Virginia.

**23. SEVERABILITY.**

A. If, for any reason, any part, term, or provision of this Agreement is held by a court of competent jurisdiction to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be illegal, void or unenforceable.

B. If it should appear that any provision hereof is in conflict with any statutory provision of the Commonwealth of Virginia, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and this Agreement shall be deemed as having been modified to conform to such statutory provisions.

**24. ENTIRE AGREEMENT.** This Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. Both parties acknowledge that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

{Signature page follows}

THE CITY OF MANASSAS PARK  
Consultant Services Agreement

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

**THE CITY OF MANASSAS PARK,**  
a Virginia municipal corporation

By: \_\_\_\_\_  
Jeanette Rishell, Mayor

**CONSULTANT:**

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

\_\_\_\_\_  
\_\_\_\_\_

Tax ID#: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Fax No.: \_\_\_\_\_

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

THE CITY OF MANASSAS PARK  
Consultant Services Agreement

EXHIBIT 1

**FEE SCHEDULE**

# Manager Update- RFI/RFP



## Phase 3 RFI

- To be issued final week of February- sent directly to 47 target developers (44 of which were provided by StreetSense).
- City Manager to attend ICSC Retail Conference on March 4-5<sup>th</sup> at the National Harbor to engage with developers and businesses in person as well.
- We are requesting basic concepts right now to solicit initial interest and potential negotiating partners for a P3.
- We will bring back the best proposals to the Governing Body for approval and recommendation.
- Proposals will be due to City Manager on April 15<sup>th</sup> to give plenty of time.
- Goal is to have fleshed out proposals to the Governing Body in the Summer of 2019.

# Public Private Partnership Consultant RFP

- Soliciting proposals from companies specializing in providing consulting services to local governments for negotiation and implementation of proposals/bids received pursuant to the provisions of the Public-Private Transportation Act of 1995 and the Public-Private Education Facilities and Infrastructure Act of 2002.
- The City had a contract for this that expired 1 year ago (5 year agreement- 1 year with 4 year extensions) with Arcadis and HDR architecture prior to Arcadis in 2007 (5 year agreement as well).
- On-Call consultant to help guide the City in a potential PPTA/PPEA phase 3 development negotiation and implementation with a developer (including financing mechanisms and establishments of CDAs).
- Due on March 15<sup>th</sup> with selection and vote by May 2019 to have available in the summer as we begin seriously evaluating proposals for phase 3 and drafting PPTA/PPEA agreements.

## **PPEA/PPTA CONSULTANT SERVICES AGREEMENT**

**THIS PPEA/PPTA CONSULTANT SERVICES AGREEMENT** (this “Agreement”) is made and entered into this \_\_\_\_ day of October, 2019, by and between THE CITY OF MANASSAS PARK, a Virginia municipal corporation, its successors and assigns (collectively, the “City”), and ARCADIS, U.S., INC., a Delaware corporation authorized to conduct business in the Commonwealth of Virginia, its successors and assigns (collectively, the “Contractor”).

### **WITNESSETH:**

**WHEREAS**, the City anticipates negotiating a comprehensive agreement pursuant to its receipt of a solicited proposal for a new City Hall, public streets, and public parking (the “Public Facilities”) submitted pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002 (Va. Code § 56-575.1 *et seq.*) (the “PPEA”) and/or the Public-Private Transportation Act of 1995 (Va. Code § 33.2-1800 *et seq.*) (the “PPTA”) (the PPEA and the PPTA are together referred to as the “Acts”); and

**WHEREAS**, the City lacks sufficient resources to analyze and prepare the specifications required for the Public Facilities or to negotiate to one or more comprehensive agreements; and

**WHEREAS**, pursuant to the City’s small purchase procedures (City Code § 2-175) and the Virginia Public Procurement Act (Va. Code § 2.2-4300 *et seq.*), the City solicited quotations for the Project (the “Solicitation”); and

**WHEREAS**, in response to the Solicitation, the Contractor submitted a proposal to provide PPEA/PPTA consultant services to the City dated October 11, 2019 (the “Proposal”), which Proposal is attached to this Agreement as Exhibit A and incorporated herein by this reference; and

**WHEREAS**, the City has determined that the Contractor’s Proposal is responsive to the Solicitation and meets the needs of the City, and that the Contractor is responsible, qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, where required, to perform the services and tasks set forth in this Agreement, and therefore desires to contract with the Contractor in accordance with the terms and conditions of the Proposal and the Virginia Public Procurement Act.

**NOW, THEREFORE**, in consideration of the foregoing recitals, each of which is hereby incorporated herein by this reference, and the terms, conditions, covenants, and obligations contained herein, the parties hereto agree as follows:

### **1. SCOPE OF SERVICES.**

The Contractor shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are set forth in the Proposal (the “Scope of Services”). The work performed will be bound by the specifications according to this Agreement.

**2. TERM.**

The term of this Agreement shall commence on the date of execution of this Agreement and shall terminate upon completion and acceptance by the City of the Public Facilities.

**3. COMPENSATION AND METHOD OF PAYMENT.**

A. Payment for services included in the Scope of Services shall be made in accordance with the fee schedule included in the Proposal.

B. No payment shall be made for any service rendered by the Contractor except for services identified and set forth in this Agreement.

C. The Contractor shall submit to the City Manager or his designee, on a form approved by the City Manager, an invoice for services rendered. The City shall make payment to the Contractor within thirty (30) days from receipt thereof.

D. For all work outside the Scope of Services, the Contractor shall submit a task proposal based on direction by the City. The City shall pay the Contractor for such work consistent with the Proposal.

**4. MAINTENANCE OF RECORDS; REPORTS AND INSPECTIONS.**

A. The Contractor, at such times and in such forms as the City may require, shall furnish the City such statements, records, reports, data, and information as the City may request pertaining to matters covered by this Agreement.

B. The Contractor shall retain all books, records, documents, data and other material relevant to all matters covered, directly or indirectly, by this Agreement for a period of six (6) years after the expiration of this Agreement. The Contractor shall at all reasonable times during said 6-year period, and as often as the City may deem necessary in its sole discretion, make available for examination and permit the City or its designated authorized representative to audit and inspect all such books, records, documents, data and other material.

C. The City Manager or his designee shall have full access and right to examine any of said books, records, documents and other materials at all reasonable times during said 6-year period.

**5. INDEPENDENT CONTRACTOR RELATIONSHIP.**

A. The parties intend that an independent Contractor/City relationship will be created by this Agreement. No employee, agent, or representative of the Contractor shall be deemed to be an employee, agent, or representative of the City for any purpose, and the employees, agents, and representatives of the Contractor are not entitled to any of the benefits the City provides for its employees. The Contractor will be solely and entirely responsible for its acts and for the acts of its employees, agents, representatives, and subcontractors during the performance of work contemplated by this Agreement.

B. In the performance of the work contemplated herein, the Contractor shall be an independent contractor with the authority to control and direct the performance of the details of the work; provided, however, that the results of the work contemplated herein must meet the approval of the City and shall be subject to the City's general rights of inspection and review to secure the satisfactory completion thereof.

**6. CONTRACTOR'S EMPLOYEE/AGENTS/REPRESENTATIVES.**

The City may at its sole discretion require the Contractor to remove any employee(s), agent(s), or representative(s) from employment on City projects. The Contractor may, however, employ such individuals(s) on other projects not related to City projects.

**7. INSURANCE.**

A. The Contractor shall procure and maintain, for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees, or subcontractors. The Contractor shall provide a certificate of insurance from its insurance company (a "Certificate of Insurance") evidencing:

1) **COMMERCIAL GENERAL LIABILITY.** Commercial General Liability insurance written on an occurrence basis with limits no less than two million dollars (\$2,000,000) combined single limit per occurrence and four million dollars (\$4,000,000) aggregate for personal injury, bodily injury and property damage.

2) **AUTOMOBILE LIABILITY.** Automobile Liability insurance with limits no less than two million dollars (\$2,000,000) combined single limit per accident for bodily injury and property damage.

3) **PROFESSIONAL LIABILITY.** Professional Liability (Errors and Omissions) insurance written on a Claims Made basis with limits no less than five million dollars (\$5,000,000).

4) **WORKERS COMPENSATION.** Workers Compensation insurance written on an occurrence basis with limits no less than one half million dollars (\$500,000) combined single limit per occurrence.

B. The City shall be named as an additional insured on all insurance policies, including any umbrella insurance policy used to meet the above-stated minimum coverage, with respect to work performed by or on behalf of the Contractor and a copy of the endorsement naming the City as an additional insured shall be attached to each Certificate of Insurance. Each Certificate of Insurance shall warrant that the City shall receive thirty (30) days advance notice of cancellation of the relevant insurance policy. The City reserves the right to request certified copies of any required insurance policies.

C. The Contractor's insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

**8. HOLD HARMLESS; INDEMNIFICATION.**

A. The Contractor shall indemnify and hold the City and its agents, employees, and officers harmless from, and shall process and defend at its own expense, any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the City and/or its agents, employees, and/or officers arising out of, in connection with, or incident to the execution of this Agreement and/or the Contractor's defective performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the gross negligence of the City, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Contractor, its agents, representatives, employees, and subcontractors; and provided further, that nothing herein shall require the Contractor to hold harmless or defend the City, its agents, employees and/or officers from any claims arising from the sole negligence of the City, its agents, employees, and/or officers. The provisions of this section shall survive the expiration or termination of this Agreement.

B. No liability shall attach to the City by reason of entering into this Agreement except as expressly provided herein.

**9. DISPUTES.**

A. Except as otherwise provided in this Agreement, any disputes concerning a question of fact arising under this Agreement which is not disposed of by this Agreement shall be decided by the City. The decision of the City shall be final and conclusive unless, within thirty (30) days from the date of receipt of such decision, the Contractor shall deliver to the City a written and signed appeal addressed to the City Manager.

B. In connection with any appeal proceeding conducted pursuant to this section, the Contractor will be afforded an opportunity to be heard by a hearing officer designated by the City's Governing Body (the "Hearing Officer") and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor will proceed diligently with the performance of this Agreement and in accordance with the City's decision. The decision of the Hearing Officer shall be final and conclusive, but shall not be arbitrary or unreasonable.

**10. TREATMENT OF ASSETS.**

Title to all property furnished by the City shall remain in the name of the City and the City shall become the owner of the work product and other documents, if any, prepared by the Contractor pursuant to this Agreement.

**11. COMPLIANCE WITH LAWS.**

A. The Contractor, in the performance of this Agreement, shall comply with all applicable federal, state, and local laws, ordinances, regulations, and policies, including certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.

B. The Contractor specifically agrees to pay any applicable fees or charges which may be due on account of this Agreement.

**12. ASSIGNMENTS/SUBCONTRACTING.**

A. The Contractor shall not assign or delegate its rights or obligations under this Agreement or any portion of this Agreement without the written consent of the City Manager or his designee. Any such consent must be sought in writing by the Contractor not less than thirty (30) days prior to the date of any proposed assignment or delegation. The City Manager or his designee reserves the right to reject without cause any such assignment or delegation. Notwithstanding the foregoing, claims for compensation due or to become due the Contractor from the City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment shall be promptly furnished to the City Manager.

B. Any rights, work or services assigned or delegated hereunder shall be subject to each provision of this Agreement and procurement procedures where applicable as set forth in local, state and/or federal statutes, ordinances, regulations and guidelines.

C. Any technical/professional service subcontract not listed in this Agreement must have express advance written approval by the City.

**13. PAYMENT TO SUBCONTRACTORS; MATERIEMEN; LABORERS.**

If the City reasonably believes that the Contractor has failed to pay subcontractors, materialmen, or laborers for Work within a reasonable time of when payment is due, then the City may, after having notified the Contractor, either pay unpaid bills or withhold from the release of the Contractor's payment bond for this Project, a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged, plus a ten percent (10%) fee for administering such claims.

**14. CHANGES.**

Either party may request changes to the Scope of Services and performance to be provided hereunder; provided, however, that no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by both parties. Any such change or addition shall be attached to and made part of this Agreement as an amendment.

**15. PROHIBITED INTEREST.**

No officer or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds hereof.

**16. MODIFICATIONS TO TASKS AND MISCELLANEOUS PROVISIONS.**

A. All work proposed by the Contractor is based on current government ordinances and fees in effect as of the date of this Agreement.

B. Any changes to the scope or cost of the services proposed by this Agreement resulting from a change to current government ordinances and/or fees may, at the sole option of the City, be treated as work outside the Scope of Services pursuant to Subsection 3D above or deleted from the Scope of Services.

C. The City shall make provision for access to the property and/or project and adjacent properties as necessary for performing the services contemplated herein.

**17. TERMINATION FOR CAUSE; DEFAULT AND REMEDY.**

A. The City may promptly terminate this Agreement upon the occurrence of one or more of the following events.

1) If the Contractor or any subcontractor substantially violates any of the provisions of this Agreement;

2) If the Contractor repeatedly fails or becomes unable to perform the work included in the Scope of Services as required herein, or fails to provide services included in the Scope of Services for a period of seventy-two (72) hours;

3) If the Contractor (i) becomes insolvent in a bankruptcy sense; (ii) is generally not paying its debts as they become due, or within a reasonable time thereafter; (iii) suffers, voluntarily or involuntarily, the entry of an order by any court or governmental authority authorizing the appointment of or appointing of a custodian, receiver, trustee, or other officer with similar powers with respect to it or any portion of its property which remains undismissed for a period of ninety (90) days; (iv) suffers, voluntarily or involuntarily, with or without judicial or governmental authorization, any such custodian, receiver, trustee, or other officer with similar powers to take possession of any part of its property which third party remains in possession for an excess of ninety (90) days; (v) suffers, voluntarily or involuntarily, the filing of a petition respecting an assignment for the benefit of creditors which is not dismissed for a period of ninety (90) days; (vi) is dissolved; (vii) becomes the subject of any proceeding, suit, or action at law or in equity under or relating to any bankruptcy, reorganization or arrangement of debt, insolvency, readjustment of debt, receivership, liquidation, or dissolution law or statute or amendments thereto to be commenced by or against it or against any of its property which remains undismissed for a period of ninety (90) days; (viii) voluntarily suspends substantially all of its business operations; (ix) is merged with, acquired by, or otherwise absorbed by any individual, corporation, or other business entity or organization of any kind except for any individual corporation or other business entity or organization which is controlled by, controlling, or under common control with the Contractor; or (x) takes action for the purpose of any of the foregoing.

Termination shall be effected by serving a notice of termination on the Contractor and its surety (if applicable) setting forth the manner in which the Contractor is in default. The Contractor will only be paid for services performed in accordance with the manner of performance set forth in this Agreement prior to termination.

B. The Contractor shall be entitled to a hearing before the Hearing Officer upon the issue of termination for cause if it submits a written request to the City Manager therefor within seven (7) days of the service of the notice of the City's intent to terminate. The Contractor shall

be entitled to be heard at such hearing on the issue of termination for cause. The Contractor shall not bring an action against the City, its officers, agents or employees arising out of or relating to the termination of this Agreement before the decision is issued by the Hearing Officer.

C. The Contractor shall continue the performance of this Agreement to the extent not terminated under the provisions of this section.

D. The rights and remedies of the City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

**18. NONDISCRIMINATION.**

A. During the performance of this Agreement:

1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or 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, will 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 for the purpose of meeting the requirements of this section.

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.

**19. DRUG-FREE WORKPLACE.**

A. During the performance of this Agreement:

1) The Contractor will provide a drug-free workplace for the Contractor's employees.

2) The Contractor will 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.

3) The Contractor will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace.

B. The Contractor will include the provisions of the foregoing paragraphs 1, 2 and 3 in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

**20. COMPLIANCE WITH FEDERAL IMMIGRATION LAW.**

The Contractor does not, and shall not during the performance of this Agreement, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

**21. THIRD PARTY RIGHTS.**

Nothing herein is intended to confer rights of any kind in any third party. No member, officer, or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

**22. NOTICE.**

Except for notice provided to the parties in accordance with the procedures established for requesting work set forth in the Scope of Services, notice and other correspondence provided for in or required by this Agreement shall be hand delivered or sent by overnight mail or certified U.S. mail to the City at One Park Center Court, Manassas Park, Virginia 20111, and to the Contractor at the address designated for the Contractor on the Contractor's signature page. Such notice shall be deemed received (i) upon actual receipt, (ii) on the same day if hand-delivered, (iii) the following day if sent using overnight mail, or (iv) three days later if sent using certified U.S. mail.

**23. ATTORNEYS' FEES AND COSTS.**

If any legal action or proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorneys' fees and other costs incurred in such action or proceeding.

**24. JURISDICTION AND VENUE.**

A. This Agreement has been and shall be construed as having been made and delivered within the Commonwealth of Virginia and shall be governed by laws of the Commonwealth of Virginia, both as to interpretation and performance.

B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained only in a court of competent jurisdiction in Prince William County, Virginia, or the United States District Court for the Eastern District of Virginia, Alexandria Division, and any other appropriate appellate Court thereof, to the exclusion of the courts of any other state, territory, country, or other jurisdiction.

**25. SEVERABILITY; WAIVER.**

A. If, for any reason, any part, term, or provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, void or unenforceable, the remaining parts, terms, and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be illegal, invalid, void or unenforceable.

B. If any part, term, or provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, void or unenforceable with respect to particular circumstances, such part, term, or provision shall nevertheless remain in full force and effect in all other circumstances.

C. If it should appear that any provision hereof is in conflict with any statutory provision of the Commonwealth of Virginia, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and this Agreement shall be deemed as having been modified to conform to such statutory provisions.

D. One or more waivers by the City of any default shall not be deemed to be a waiver of any subsequent default. Waiver of any provision of this Agreement shall not be construed to be modification of the terms of this Agreement, unless stated to be such in writing, signed by the City's authorized representative. The forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of that or any other provision of this Agreement.

**26. AMBIGUITY; MEANING OF "CITY".**

A. Although this Agreement has been drafted by the City, the Contractor acknowledges that it has been afforded the opportunity to have this Agreement reviewed by legal counsel and expressly agrees that any ambiguity herein shall be resolved in favor of the City.

B. The term "City", as used in this Agreement, shall mean the person, board, commission, committee, or other subunit of the City having the legal obligation or right to act on behalf of the City, as the context may require.

**27. ENTIRE AGREEMENT.**

This Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement.

**28. MISCELLANEOUS.**

Headings and captions are provided in this Agreement for ease of reference only and shall not be used to construe or interpret any provision of this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original; but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

THE CITY OF MANASSAS PARK,  
a Virginia municipal corporation

By: \_\_\_\_\_  
Laszlo Palko, City Manager

COMMONWEALTH OF VIRGINIA  
CITY OF MANASSAS PARK, to wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by Laszlo Palko, City Manager of the City of Manassas Park, Virginia.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Dean H. Crowhurst, City Attorney

CONTRACTOR:

ARCADIS, U.S., INC., a Delaware corporation  
authorized to conduct business in the  
Commonwealth of Virginia

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

Tax ID#: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE/Commonwealth of \_\_\_\_\_  
CITY/COUNTY OF \_\_\_\_\_, to wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
201\_\_, by \_\_\_\_\_ as \_\_\_\_\_  
of Arcadis, U.S., Inc., a Delaware corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**EXHIBIT A**  
**THE PROPOSAL**

## **SCOPE OF SERVICES**

### **PPTA/PPEA Consultant for City of Manassas Park PPTA/PPEA Solicitation**

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### **GENERAL**

This Scope of Services defines the services to be provided by Arcadis as Owner's Representative to assist the City of Manassas Park with a PPEA Solicited Proposal for the new City Hall (Project). Services will be performed in accordance with the Public-Private Education Facilities and Infrastructure Act (PPEA) of 2002 and the Combined Public-Private Transportation Act and Public-Private Educational Facilities and Infrastructure Act Guidelines" adopted by the City of Manassas Park (the "PPTA/PPEA Guidelines").

Arcadis will provide consultation on the PPEA process for the City of Manassas Park pursuant to the PPTA/PPEA Guidelines. Arcadis will assist the City of Manassas Park to develop technical requirements, project cost evaluation, and the Comprehensive Agreement. The proposal is being structured as a Time & Material Not to Exceed since the scope of the development project is not fully defined and thus, the level of effort needed for services is difficult to estimate.

### **PROJECT DESCRIPTION**

The following is a brief description of the "Project."

The Project consists of assisting the City of Manassas Park with solicited proposals for the new City Hall and parking project. The objective of the project is to construct a new City Hall and parking using a land swap with a developer to fund the project. In order to meet this objective, the Comprehensive Agreement must be structured to maximize proposer options, so the competition is focused on innovative ways to meet the needs of the City of Manassas Park while maintaining the quality of the building. To foster this result, it will be imperative that the specific needs of the project including program, detailed space requirements, functionality, minimum level of quality (materials), and any project constraints are included .

## **TASK 1**      **PRE-PROPOSAL SERVICES**

### **1.1:**            ***Kick-Off Meeting***

Arcadis will attend a kick-off meeting with the City of Manassas Park staff to initiate the PPEA project. Arcadis proposes to chair this meeting and will provide an agenda and minutes. The agenda will include:

- Define Project Objectives
- Review interaction with stakeholders to develop the program, functional narrative, room data sheets, and minimum level of quality.
- Review the current adopted PPEA Guidelines and the procedures for a solicited proposal.
- Define procurement strategy to balance the mixed-use development with the needs of the City Hall in the Comprehensive Agreement
- Discuss Public Communications Plan: Who to meet with and when; public meetings; when to release what information.

Arcadis will identify “action items” for the next month and assign ownership and due dates.

DELIVERABLE: Attend one (1) kick-off meeting  
Minutes of meeting (electronic copy)

### **1.2**            ***Planning Meetings***

Arcadis will participate in planning meetings with the City of Manassas Park staff to develop the technical requirements and Comprehensive Agreement. The agenda will include:

- Define the process and procedures required by the PPTA/PPEA Guidelines for Solicited Proposal evaluations;
- Coordinate with various stakeholders to develop the project program and technical requirements
- Discuss scope and quality of project
- Establish schedules and milestones for the next steps of evaluation and selection, as required by the PPTA/PPEA Guidelines.

Arcadis will identify “action items” and assign ownership and due dates.

DELIVERABLE: Participate in two (2) planning meetings

### **1.3 Develop Requirements**

Arcadis will conduct research and prepare documents as required to provide the City of Manassas Park with the information necessary to support the project technical requirements including:

- Obtain site information from existing documents
- Develop Parking Programming Requirements
- Develop City Hall Programming Requirements
- Develop Room Data Sheet Requirements
- Develop Minimum Level of Quality Specifications

DELIVERABLES:

Project Program and Room Data Sheets

Minimum Level of Quality Requirements

### **1.4 Development of the Comprehensive Agreement**

Arcadis will assist in the development of the Comprehensive Agreement and required attachments.

## **TASK 2 PROPOSAL EVALUATION**

### **2.1 Solicited Proposal Evaluation**

Arcadis will assist the City of Manassas Park in the evaluation of solicited proposals

Arcadis will participate in two (2) meetings to discuss the proposal evaluation with the City of Manassas Park.

DELIVERABLES: Proposal Evaluation

### **2.2 Project Cost Evaluation**

Arcadis will provide a budget estimate to evaluate the total cost of the project including the construction cost of the new City Hall and Parking and value of the proposed development. The purpose is to provide a comparison of the new City Hall value verses the value of the land being swapped with the developer.

DELIVERABLES: Cost Comparison budget estimate

## **ADDITIONAL SERVICES**

Arcadis shall perform the following additional services with the prior written consent of the City of Manassas Park, and for only such additional compensation as may be authorized in writing by the City of Manassas Park:

1. Assist in negotiations and Comprehensive Agreement.
2. Attending meetings in excess of those outlined elsewhere in this Scope of Work in The City of Manassas Park.
3. Detailed cost estimating or engineering services (civil, structural, mechanical, electrical, etc.) as requested by the City of Manassas Park to analyze the proposals received.
4. Preparation and deliverance of any public presentations, in addition to those listed elsewhere in this Scope of Work.
5. Document re-writes, reports, or printing in addition to those listed elsewhere in this Scope of Work.

## **RELATIONSHIPS OF THE PARTIES**

The City of Manassas Park anticipates entering into an Interim and/or Comprehensive Agreement(s) (separate from this contract) with a “Private Entity” (as defined by the PPTA/PPEA regulations), for the design and construction of some or all of the projects described in the Project Description section above. The Private Entity will include a design party (called “Engineer”) and a construction party (called “Construction Contractor”.) The Interim and/or Comprehensive Agreement(s) will obligate the Private Entity to provide design, procurement and construction services for the Project.

The Private Entity and the City of Manassas are jointly responsible for the design requirements and design criteria of the Project and each shall perform in accordance with the Interim and/or Comprehensive Agreement(s) between the Private Entity and the City of Manassas Park.

Nothing in this AGREEMENT shall be construed to mean that Arcadis assumes any of the responsibilities or duties of the Private Entity, or the Private Entity’s Engineer or Construction Contractor. The Private Entity will be solely responsible for construction means, methods, techniques, sequences and procedures used in the construction of the Project and for the safety of its personnel, property and its operations and for performing in accordance with the Interim and/or Comprehensive Agreements between the City of Manassas Park and the Private Entity. The Private Entity is solely responsible for the design requirements and design criteria of the Project and shall perform in accordance with the Interim and/or Comprehensive Agreements between the City of Manassas Park and the Private Entity.

## **FEE SUMMARY – TIME AND MATERIALS NOT TO EXCEED**

TOTAL = \$70,470.00