

**CONTRACT # 12-15smc, AGREEMENT BETWEEN
THE ENGINEERS AND SURVEYORS INSTITUTE
AND THE
COUNTY OF FAUQUIER
FOR PEER REVIEW/PLAN REVIEW PROCESS**

THIS AGREEMENT entered into this 1st day of July, 2014, by and between the County of Fauquier (hereinafter called "the County") and the Engineers and Surveyors Institute, 4455 Brookfield Corporate Drive, Suite 107, Chantilly, Virginia, 20151 (hereinafter called "ESI").

In consideration of the mutual covenants set forth herein, the parties agree to the following:

1. **SERVICES PROVIDED:** ESI hereby agrees to provide one (1) staff engineer and, if necessary, an additional private sector engineer/planner to assist in the performance of plan review, plan process review and related services associated with designated land development plans for Fauquier County. The Director of Community Development (hereinafter called the "Director") and ESI shall assure that the engineers/planners provided for this agreement are qualified for the purposes of this agreement.

The purpose of this Contract is to achieve a quality and completeness improvement in the submitted plans and a subsequent reduction in the overall time required to review and approve land development plans in the County. ESI's duties shall include, but are not limited to the following:

- A. Participate in the review of engineering and associated plans submitted as part of a land development application. Such review will be for minimum submission standards (as defined by approved checklists). The review will identify any issues that are not in accordance with the applicable County standards. The minimum submission review will be limited to site plans, construction plans, infrastructure plans and any similar engineered plans intended for development.
 - B. Attend plan post review meetings when appropriate.
 - C. Perform other administrative, review and engineering tasks as deemed appropriate. The Director shall request these tasks which may include: carry out actual engineering plan review functions for the County during periods of staff absence and work overload, or providing staff support for a new program needing special technical expertise. Such additional services shall require prior approval and authorization by the Director and shall be with the concurrence of the Contractor.
 - D. ESI will conduct minimum submission plan review on an on-going basis and provide response back to the submitting firm representative within 5 business days following receipt.
2. **PERIOD OF AGREEMENT:** The period of this agreement shall be from July 1, 2014 through June 30, 2015. The parties may by mutual consent expressed in writing extend the period of the agreement for additional one year periods. Said consent for extension shall be executed prior to the expiration of the then current agreement.
3. **TERMINATION OF AGREEMENT:**
 - A. **Termination for Convenience**
Either party may terminate this agreement upon thirty (30) days advanced written notice to the other party. The County may terminate this agreement without advanced written notice provided that the County pays reasonable termination costs to ESI.
 - B. **Termination for Cause**
Either party may terminate this agreement for caused default or negligence on the part of the other party without written notice and without the payment of any termination costs.
 - C. **Termination Due to Unavailability of Funds in Succeeding Fiscal Years**

When funds are not appropriated or otherwise made available by the County to support continuation of performance in a subsequent fiscal year, the agreement shall be canceled and ESI shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the agreement.

4. **COMPENSATION:** ESI shall not be paid for services unless authorized by the Director or designee. Fauquier County shall pay the Contractor on a monthly basis at the rate of \$1,700 per month. The total annual charges shall not exceed \$20,400. However, if services are required which will exceed this amount, the amount may be increased with the prior written authorization of the County. The Contractor shall be permitted to charge the applicant directly for minimum submissions and team peer review services for all submissions at a rate of \$160 per hour. Of this rate, \$10 per hour will be reserved for technology improvements benefitting all of ESI and \$20 per hour will be set aside as an education fund to subsidize the continuing professional education of County employees taking classes with ESI. The Contractor shall apply any education funds so collected against invoices to the County for education fees and document the application of those funds on the invoices.
5. **METHOD OF PAYMENT:** The County shall pay ESI at the rate specified in Section 4 of this Agreement. Such sum shall be paid within 45 days of receipt of a properly completed invoice from ESI. Payment shall be made by check from the County directly to ESI.
6. **PROHIBITION AGAINST CONTINGENT FEES:** ESI warrants that it has not employed any company or person other than a bona fide employee working for ESI to solicit or secure this agreement and that it has not paid or agreed to pay any person, company or corporation, individual or firm, other than a bona fide employee working solely for ESI any favor, commission, percentage, gift or any other compensation contingent upon or resulting from the award or making of this or any other agreement. In the event of breach of this provision, the County shall have the right to terminate this agreement without liability, and at its discretion, to deduct from the agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.
7. **PROJECT AUDITS:** ESI shall maintain adequate records in such a manner that they may be audited in progress and upon completion of the project. A simple ledger sheet showing disbursement by line-item is preferred. ESI shall provide access to the following documents during this audit:
 - A. All paid vouchers including those for out-of-pocket expenses, and other reimbursements supported by invoices, including ESI copies of Periodic Estimate for Partial Payment;
 - B. Ledgers
 - C. Canceled Checks;
 - D. Deposit Slips;
 - E. Bank Statements;
 - F. Journals, if any;
 - G. Copies of all agreements and copies of any agreement amendments;
 - H. Insurance documents;
 - I. Payrolls;
 - J. Time sheets.
8. **INSURANCE:** ESI shall obtain, prior to the start of work, and keep in force, the insurance requirements as specified on Attachment A, the County Insurance Checklist, and certifies that they will maintain all required insurance coverage during the entire term of the Agreement and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

ESI shall furnish the certificate of insurance for the coverage required, endorsing Fauquier County as additional insured, within five business days of the execution of this Agreement.

9. **EMPLOYMENT DISCRIMINATION BY ESI PROHIBITED:** During the performance of this agreement, ESI certifies that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and Section 2.2-4311 of the *Virginia Public Procurement Act*. ESI shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the

basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin. ESI shall post in conspicuous places, available to employees, and applicants for employment, notices setting forth non-discrimination practices, and shall state, in all solicitations or advertisements for employees placed by or on behalf of the ESI, that he is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient to meet this requirement.

A. ESI shall include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000, so that the provisions, will be binding upon each sub-contractor or vendor.

10. ETHICS IN PUBLIC CONTRACTING: The provisions contained in Sections 2.2-4367 through 2.2-4377 of the Virginia Public Procurement Act as set forth in the 1950 Code of Virginia, as amended, shall be applicable to this Agreement.

11. DRUG-FREE WORKPLACE: During the performance of this contract, ESI agrees to (i) provide a drug-free workplace for their employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a Contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

12. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS AND FEDERAL IMMIGRATION LAW: During the term of any contract, ESI does not, and shall not during the performance of the contract for goods and services in the Commonwealth of Virginia, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

13. HOLD HARMLESS CLAUSE: During the term of this agreement, ESI shall indemnify, defend and hold harmless the County, its officials, employees, agents and representatives thereof, from all suits, actions, or claims, including attorney's fees, brought on account of any personal injuries, damages or violation of rights, sustained by any person or property in consequence of any neglect in safeguarding contract work, or on account of any negligent act or omission by the ESI or his employees, or from any claims or amounts arising from violation of any law, bylaw, ordinance, regulation or decree. This clause shall include claims involving infringement of patent or copyrights.

14. CHANGES TO THE CONTRACT: Changes can be made to the contract in any of the following ways:

A. The parties may agree to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.

B. The Owner may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Owner a credit for any savings. Said compensation shall be determined by one of the following methods.

1. By mutual agreement between the parties in writing; or

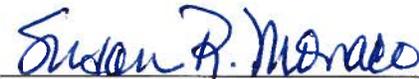
2. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Owner's right to audit the Contractor's records and/or determine the correct number of units independently; or
3. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the Owner with all vouchers and records of expenses incurred and savings realized. The Owner shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Procurement Division within thirty (30) days from the date of receipt of the written order from the Procurement Division. If the parties fail to agree on an amount of adjustment, the questions of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for relieving disputes provided by the Disputes Clause of this contract. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the Owner or with the performance of the contract generally.

C. No modification for a fixed price contract may be increased by more than 25% or \$50,000, whichever is greater without the advanced written approval of the Board of Supervisors or the School Board, as applicable.

15. The agreement represents the entire agreement between the parties, and shall be interpreted in accordance with the laws of the Commonwealth of Virginia.

WITNESS THE FOLLOWING SIGNATURES:

THE COUNTY OF FAUQUIER

Signature: 

Date: July 9, 2014

THE ENGINEERS AND SURVEYORS INSTITUTE

Signature: 
Terrance C. Ryan, PhD., P.E.
Executive Director

Date: July 1, 2014

FAUQUIER COUNTY
DIVISION OF RISK MANAGEMENT
INSURANCE CHECKLIST, ATTACHMENT A

Items marked "X" are required to be provided as part of this Agreement:

<u>Required</u>	<u>Coverage Required</u>	<u>Limits</u> <u>(figures denotes minimum)</u>
<u>X</u>	1. <i>Workers' Compensation and Employers' Liability;</i> Admitted in Virginia Employers' Liability All States Endorsement USL & H Endorsement Voluntary Compensation Endorsement Best's Guide Rating-A-VIII or better or its equivalent	1. Statutory Limits of the Commonwealth of VA Yes \$100,000/\$500,000/\$100,000 Statutory Statutory
<u>X</u>	2. <i>Commercial General Liability</i> General Aggregate Products/Completed Operations Personal and Advertising Injury Fire Legal Liability Best's Guide Rating-A-VIII or better or its equivalent	2. \$1,000,000 (CSL) Each Occurrence \$2,000,000 \$2,000,000 \$1,000,000 \$50,000 Per Occurrence
<u>X</u>	3. <i>Automobile Liability</i> Owned, Hired, Borrowed & Non-owned Motor Carrier Act End. Best's Guide Rating-A-VIII or better, or its equivalent	3. \$1,000,000 combined Single Limit Bodily Injury and Property Damage Each Occurrence (note, symbol "1" on liability coverage)
---	4. Prof. Errors and Omissions Best's Guide Rating-A-VIII or better or its equivalent	4. \$1,000,000 (CSL) Each Claim
---	5. Garage Liability	5. \$1,000,000 CSL Each Occurrence
---	6. Garage Keeper's Legal Liability Best's Guide Rating-A-VIII or better, Or its equivalent	6. a) Maximum Value of One Vehicle b) Maximum Value of All Vehicles Held by Contractor
---	7. Umbrella Liability Best's Guide Rating-A-VIII or better, or its equivalent.	7. \$1,000,000
---	8. Other Insurance:	
<u>X</u>	9. Auto and General Liability Policies <u>shall be endorsed to name</u> Fauquier County and/or as additional insured (This coverage is primary to all other coverage The County may possess and must be shown on the certificate)	
<u>X</u>	10. The Contractor shall provide 30 days written notice of any policy cancellation for policies specified on this Checklist to Fauquier County in accordance with the timelines and stipulations in the Code of Virginia Section 38.2-231.	
<u>X</u>	11. The Certificate must state Contract/Agreement No. and Title.	
<u>X</u>	12. Contractor shall submit Certificate of Insurance within five (5) business days from notification of award, and shall provide updated Certificates for the duration of the contract.	

Revised 4/4/13, Proc/HR