

TOWN OF WARRENTON



Purchasing Policies & Procedures

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INTRODUCTION

In compliance with the Code of the Town of Warrenton and the laws of the Commonwealth of Virginia, this Purchasing manual has been prepared for use by all departments of the Town of Warrenton. The Virginia Public Procurement Act, Chapter 7, *Code of Virginia*, outlines public policies pertaining to governmental procurement from non-governmental sources. Additionally, Section 11-41 (F) authorizes localities to establish written purchasing procedures not requiring competitive sealed bids or competitive negotiation for single or term contracts not expected to exceed \$50,000, providing however that these small purchase procedures provide for competition wherever practicable.

Purchasing involves the procurement of materials, supplies, equipment, and services at the lowest possible cost consistent with the quality needed for the proper operation of the various municipal services. Our goal is the promotion of the Town's best interest through intelligent action and fair dealing which will result in obtaining the optimum value for each dollar spent.

To have an effective purchasing operation, all involved personnel must work as a team. Individuals whose duties require them to become a part of the purchasing function must be totally aware of the Town's purchasing procedures. It is essential for all concerned to have a clear understanding of the goals and objectives of an efficient purchasing operation.

The purpose of this manual is to delineate the Town's purchasing policies, serve as a general framework within which decisions can be made, act as a guide to consistent purchasing practices, point out the various employee's duties and responsibilities, and ensure that the Town's reputation for fairness and integrity is maintained. It is the intent of the policies and procedures outlined within this manual to provide Town staff with a manageable and efficient set of guidelines for purchasing goods and services for the Town, while ensuring competition as required by state law.

This system will allow the Town of Warrenton to maintain its financial records in accordance with Generally Accepted Accounting Principles and other regulations as required. The system will provide a summary of outstanding purchase orders at any one time, i.e., encumbrances. It will be possible to prevent over-encumbering an appropriation, as this will be verified before a purchase order is issued. Although it is the responsibility of the Department Head to keep expenditures within the budget, the availability of funds will be verified by the Purchasing Agent prior to the issuance of the purchase order.

PURCHASING PRINCIPLES

CODE OF CONDUCT

No elected official or employee of the Town of Warrenton, or any member of his or her immediate family shall have any pecuniary interest, either directly or indirectly, in any contract, purchase or purchase order for any supplies, materials, equipment or contractual services used by or furnished to the Town. Nor shall such officials or employees accept or receive, directly or indirectly, from any persons or firms to which any contract or purchase order may be awarded, or from whom or which any purchase is made, by rebate, gift, or otherwise, any money or anything of value whatsoever, or any promise, obligation for future reward or compensation. Violation by a supplier shall result in disbarment from future Town purchasing activities.

Proprietary information from competing vendors shall not be disclosed to the public or to competitors.

ETHICS IN PUBLIC PROCUREMENT

For clarification, refer to the *Code of Virginia*, Chapter 7, Virginia Public Procurement Act, Article 4, Ethics in Public Contracting. Compliance with this section of the Act is mandatory for the Town of Warrenton.

QUALITY VS. QUANTITY

Quality means suitability. It does not necessarily have to be the best or highest quality, but rather the correct quality for the purpose intended. Quality is not measured by price only. It may be determined by analysis, physical test, measurements, and performance. To secure proper quality, specifications must be developed in cooperation with the using department so that the vendor understands exactly what is desired.

COMPETITION

All purchasing transactions, regardless of whether by formal advertising or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition and which avoids placing unreasonable requirements on qualified vendors. In order to insure objective vendor performance and eliminate unfair competitive advantage, a vendor who or which develops or drafts specifications or a request for proposal for a particular purchase may be excluded from competing and supplying that item or service.

SPECIFICATIONS

Solicitations of offers, whether by formal advertising or negotiations, shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be purchased. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement.

Invitations for bids and requests for proposals shall clearly set forth all requirements which bidders must fulfill in order for bids and proposals to be properly evaluated. Factors to be used in evaluating bids or proposals shall be clearly stated in the solicitation to enable bidders to know how their bids or proposals will be evaluated. If a solicitation requires a listing of subcontractors or sub-item vendors, a bidder's failure to list such shall make that bid nonresponsive.

DOCUMENTATION

The thorough documentation of purchasing activities requires special emphasis in public purchasing due to

the nature of most transactions and of the imposition of controls to protect the public interest. Central to the Town's public purchasing regulations is the requirement that purchases in excess of \$3,500 be supported by written documents evidencing that all purchasing regulations have been complied with, or if not, what circumstances justified non-compliance.

USE OF BRAND NAMES

Unless otherwise provided in the Invitation for Bid, the name of a certain brand does not restrict bidders to a specific brand, make or manufacturer's name, but conveys the general style, type, character and quality of the article desired. Any article that the Town, in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation and suitability for the purpose intended shall be acceptable.

BIDDER'S LIST

The Purchasing Agent shall be responsible, with the assistance from the various Department Heads, to maintain a current file of sources of goods, services, construction, etc., to be known as the Bidder's List. Any vendor can be included on the Bidder's List upon their request.

The Purchasing Agent shall encourage purchaser's to solicit bids from all prospective suppliers of a needed good or service, that have requested their name to be included on the Bidder's List.

DELEGATION

The Town Manager may delegate the procurement of any goods or services to the Purchasing Agent or other responsible officials under the jurisdiction of the Purchasing Agent.

PUBLIC ACCESS TO PROCUREMENT INFORMATION

Except as provided below, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act

1. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
2. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the Town Manager decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.
3. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the Town Manager decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.
4. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
5. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or pre-qualification application submitted pursuant to subsection B of §11-46, *Code of Virginia*, shall not be subject to public

disclosure under the Virginia Freedom of Information Act; however, the bidder, offeror or contractor must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.

EMPLOYMENT DISCRIMINATION BY CONTRACTORS PROHIBITED / DRUG-FREE WORKPLACE

Every contract over \$10,000 shall include the following provisions:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, such notices of nondiscrimination.
 - b. 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.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
3. During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the 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.

METHODS OF PURCHASING

Purchases should be made by one of the following methods: small purchase procedures; formal advertising; competitive negotiation or noncompetitive negotiation.

SMALL PURCHASE PROCEDURES

Competitive bids are not required for the purchase of materials, equipment, services, or supplies, costing in the aggregate of not more than \$50,000; however, prices shall, whenever practicable, be obtained from three or more qualified vendors. Written documentation shall be maintained showing the price quotations and supporting the final amount of the purchase. This documentation may be in the form of itemized purchase orders, vouchers, bills, sales slips, memoranda or oral price quotations, written proposals, or copies of or references to catalogues or price lists.

Small purchase procedures may be used if the Town does not expect the aggregate amount of the purchase to exceed the established ceiling. The aggregate amount involved in any one transaction must include all items that should properly be grouped together. Requirements shall not be broken down into two or more transactions for the purpose of using small purchase procedures.

FORMAL ADVERTISING

Bids are publicly solicited and a firm-fixed-price order (lump sum or unit price) shall be given to the responsible bidder whose bid conforms most closely to all the terms and conditions of the invitation for bids and is lowest in price.

COMPETITIVE NEGOTIATION

Proposals are requested from known sources of particular goods or services, excluding professional services, as defined. Negotiations are normally conducted with more than one of the sources submitting proposals and either a fixed-price or cost reimbursement agreement is concluded, as appropriate. If competitive negotiation is used, the following requirements shall apply:

Proposals, including price, shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement.

When price is not the only factor, the request for proposal shall identify all significant evaluation factors.

Written or oral discussions may be conducted with all responsible offerors who submit proposals, except that the discussions should be omitted where clearly inappropriate, unnecessary, or impracticable.

The Purchasing Agent and the head of the using department shall review the proposals. Award shall be made to the most responsible offeror whose proposal will be most advantageous to the Town, price and other factors considered. All contracts shall be awarded by the Town Manager. The Purchasing Agent shall notify unsuccessful offerors promptly. Upon request, unsuccessful offerors shall be informed of the reasons for not receiving the award.

Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising. The Purchasing Agent's records shall include written statements, prepared by those individuals making such decisions, citing the reasons for not using formal advertising.

NONCOMPETITIVE NEGOTIATIONS

Subject to specific approval of the Town Manager, it may be determined that the Town's interest will be best served by purchasing certain goods or services through noncompetitive negotiations. Such determination shall, after thorough investigation, be supported by one of the following conditions:

1. A good or service may be truly unique and produced or provided only by one vendor.
2. An emergency exists, in which case the emergency purchasing guidelines shall be adhered to.
3. A department may have standardized in the use of a particular material, supply or type of equipment for the purpose of economy in maintenance.
4. Purchases made in a joint or cooperative effort between the Town and other governmental bodies may be made through noncompetitive negotiation provided that said procurement is otherwise exempted from competitive requirements.
5. The following types of procurement are specifically exempt from any competitive requirements:
 - a. Expert witnesses, and other services associated with litigation or regulatory proceedings
 - b. An extension of the term of an existing contract for services, to allow completion of any work undertaken but not completed during the original term of the contract.

Noncompetitive negotiation may be used only when a purchase or the award of a contract is infeasible under the methods set forth above. A written statement justifying the use of noncompetitive negotiation and selection of the particular vendor shall be placed on file prior to a purchase negotiated under noncompetitive conditions.

NEGOTIATION WITH LOWEST RESPONSIVE BIDDER

Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the Town may negotiate with the apparent low bidder to obtain a contract price within available funds. Such negotiations may only take place if described in writing and included in the Invitation for Bid.

PURCHASES IN GENERAL

PURCHASES OF LESS THAN \$3,500

For purchases less than \$3,500, the Department Head shall encourage adequate planning and procurement procedures within the respective departments. Purchases of common operating supplies shall be coordinated with the Purchasing Agent and Accounts Payable to ensure not only the proper economic order quantity but also the best possible vendor.

PURCHASES FROM \$3,500 TO \$14,999

For purchases from \$3,500 to \$14,999, Department Heads should exercise extreme care to insure that the best price is paid for the items purchased. The Town Manager may require evidence of competitive pricing, which should be from at least three (3) vendors. The Department requesting the purchase to be made should contact the Purchasing Agent prior to submitting a requisition form in order to determine if competitive pricing will be required.

A Telephone Bid Request Form must be attached to the requisition in order to verify that the Department Head, or his designee, contacted various companies to obtain the best price for a particular item.

Split purchasing, a practice whereby a department will make several purchases at one time under \$15,000 in order to avoid going through the purchase order procedure, will not be allowed, as it is detrimental to the goal of exercising proper fiscal control over Town expenditures.

As an example, the purchase of auto parts and vehicle fuel purchased in small amounts throughout the year shall be considered split purchases for the purposes of this section. Several thousand dollars are expended for these items in the course of a year, placing the Town of Warrenton in a position to solicit favorable discounts and terms. It is the responsibility of the Department Head to seek out these favorable terms by considering the purchase of such items in the form of a blanket Purchase Order.

PURCHASES FROM \$15,000 TO \$49,999

On purchases from \$15,000 to \$49,999, there must be three (3) written quotations submitted by possible suppliers. These written quotations must be attached to the Purchase Requisition Form and submitted to the Purchasing Agent.

PURCHASES OF \$50,000 OR MORE

Any procurement of supplies, materials, equipment and services totaling \$50,000 or more must be obtained through a formal bidding procedure, unless otherwise authorized by the Town Manager. This requirement is based on Section 15.2-1236 of the *Code of Virginia*, 1950, as amended and Sec. 2-221 of the Warrenton Town Code. The Town Manager, after having determined that such goods or services are necessary for the efficient and effective operation of the Department requesting the item, shall authorize the Purchasing Agent to seek bid quotations in writing to include the following information:

1. The specific deadline for the submission of sealed bids which includes the date, time and place. All sealed bids are to be clearly marked on the envelope.
2. The amount and type of bond required, if any.
3. The description of the items or work to be done.
4. Completion date.
5. Trade-in information, if applicable.
6. Conditions of delivery.

7. Notification of requirement that all bidders must submit signed statements of non-collusion with other bidders on the bid in question.
8. A place where complete plans and specifications can be obtained or reviewed.
9. Certificate of insurance requirements, where applicable.

Bids are to be opened and read at the specified time and place. Bids not received on time are to be returned unopened and shall be considered nonresponsive. Any or all bids may be rejected. All bids are formally awarded by the Town Manager. Notification of bid award will be by normal purchase order procedures.

Competitive bidding is not required for the following:

1. Items that are on established Virginia State contracts.
2. Sole source items.
3. Any supplies, equipment, services, contracts, etc., when approved in advance by the Town Manager.
4. Dues, subscriptions, utilities, etc.
5. Items traded or exchanged with another locality.
6. Legal services associated with actual or potential litigation.
7. Purchases for special police work where the Chief of Police certifies to the Town Manager that the goods or services are necessary for undercover police operations.

Price shall be a major factor in the award of a bid or contract; however, the following factors will be considered in selecting the lowest responsible bidder of both products and services:

1. Durability and reliability.
2. Availability of replacement.
3. Availability of back up service and/or support.
4. Past relationships with the vendor or contractor.
5. Delivery date of the product or completion date of service.
6. Familiarity and experience with government procedures and needs.
7. Financial condition.

EMERGENCY PURCHASES

In circumstances where an emergency purchase must be made and the Town Manager is unavailable to authorize a needed expenditure, the Town Manager's designee may review and may approve the purchase, and the Department may make the purchase. The initials of the Town Manager above the Department Heads signature will signify approval by the Town Manager after the fact. In all instances, a confirming requisition and explanation is required to be submitted the following working day.

The Department should be able to demonstrate the following:

1. A delay in purchasing the item would result in danger to public safety and health.
2. A delay in purchasing would result in the Town incurring substantial cost or serious exposure to potential litigation.
3. A delay in purchasing would prevent the Town from the performance of any of its normal daily operations and service.
4. A delay in purchasing would result in undue danger or hardship on Town employees in the performance of their duties.

PURCHASE REQUISITIONS

All town departments must submit to the purchasing agent a purchase requisition for the purchase of any item totaling \$3,500 (one thousand dollars) or more.

PURPOSE

The purchase requisition serves to inform the Town Manager and the Purchasing Agent of the needs of the department, to correctly define the materials, supplies, equipment or services needed, and authorizes the Finance Department to obligate funds from the requesting department's budget. It is essential, therefore, that careful attention be given to completing all information required by the form so that misunderstandings in ordering be kept to a minimum.

WHEN IS THE PURCHASE REQUISITION PREPARED?

Requisitions must be prepared well in advance of the date the goods will be needed so that the Department Head will be able to obtain competitive prices and still allow ample time for delivery.

WHO PREPARES THE PURCHASE REQUISITION?

The Department Head, or his designee, shall prepare and authorize the purchase requisition.

The purchase requisition is prepared in triplicate. A fully executed requisition is distributed as follows:

1. White (Original) – File copy with purchase order
2. Yellow – Accounts Payable
3. Pink - Department Head making requisition

The originating Department is responsible for resolving any questions regarding the anticipated purchase before the Purchase Requisition is forwarded to the Town Manager. All requests must specify requested vendors, complete with appropriate vendor numbers, from the Town's Approved Vendor List. The Town Manger reserves the right to make the final choice of vendor.

The details of the goods or services requisitioned should be clearly stated on the Purchase Requisition. The quantity should be indicated as well as the units in which the goods are ordered. An estimated unit price should be provided by the Department as well as an extended total. The complete accounting code shall be indicated in the appropriate space. In no event should this total exceed the unencumbered balance of the appropriation.

The Department Head or his designee must certify on each requisition that the items requested are necessary and that unencumbered funds are available in their budget.

PURCHASE ORDERS

PURPOSE OF PURCHASE ORDER

A purchase order authorizes the seller to ship and invoice materials and services as specified. Purchase orders shall be written so that they are concise and clear. A purchase order represents an obligation to purchase goods and/or services. At the same time a purchase order is issued, the departmental budgetary line item is encumbered in the amount of the order in an effort to prevent over expending and to better reflect the financial position of the Town of Warrenton at any given time.

WHEN PURCHASE ORDERS ARE ISSUED AND EXCEPTIONS

Purchase orders shall be issued by the Purchasing Agent after:

1. The requisition is signed by the Department Head;
2. It is determined that funds are available for such purchase;
3. The requisition is approved by the Town Manager;
4. The appropriate vendor has been determined.

Purchase orders are ordinarily not issued for the following expenditures:

1. Allowances to Town employees.
2. Advertisements and public notices.
3. Court costs and Clerk's fees.
4. Employee membership dues.
5. Postage.
6. Insurance premiums.
7. Utilities and communications.
8. Travel expenses.
9. Meals for emergency crews.
10. Goods or services under formal contract or personal services for which fees are fixed by State law or Town ordinance.
11. Subscriptions, books and manuals.
12. Photocopies.
13. Equipment service agreements.
14. Unique goods or services produced or provided by only one known vendor and not exceeding \$50 in unit price.

PREPARATION OF PURCHASE ORDERS

The Department shall submit all Purchase Requisitions to the Purchasing Agent, to certify that an unencumbered balance exists sufficient to meet the obligation. Once availability of funds is determined, the Purchase Requisition is forwarded to the Town Manager for approval. If funds are available, the correct vendor has been selected, and the purchase is appropriate, the Town manager will sign the Purchase Requisition and return it to the Purchasing Agent. The Purchasing Agent prepares the purchase order, assigns a purchase order number, encumbers the appropriate fund balance and distributes the Purchase order as follows:

1. White (Original) – Vendor
2. Blue - Purchasing Agent
3. Pink - Accounts Payable
4. Gold - Originating Department

COMPETITIVE SEALED BIDS

REQUIREMENTS FOR COMPETITIVE SEALED BIDS

Whenever the proposed expenditure is estimated to be \$50,000 or more, an invitation to Bid is prepared by the Purchasing Agent in consultation with the affected department.

SEALED BID PROCEDURES

Upon receipt of a request from a department, the Purchasing Agent, in consultation with the department, prepares specifications, a bidder's list, and a public notice for publication, if practical, in a newspaper of general circulation at least ten days in advance.

POLICY

Upon receipt of a purchase requisition, the Purchasing Agent will, after verifying the accounting codes and determining whether or not funds are available, immediately seek a source of supply and enter into transactions for the purchase of goods or services.

GENERAL PROCEDURE FOR SECURING BIDS

The Purchasing Agent shall solicit bids on purchases from all vendors maintained on the official bid list that provide the goods or service sought. He may, if necessary, solicit bids from other responsible prospective vendors obtained from catalogues, etc. as suggested by Department Heads.

Such solicitation shall occur at least ten (10) days before the bids are to be received. At the discretion of the Purchasing Agent, the request for bids can either be in writing, by telephone, or in person.

CONDITIONS FOR FORMAL ADVERTISING

The procurement of goods and non-professional services costing \$50,000 or more shall ordinarily be subject to formal advertisement, placed in local newspapers at least ten (10) days in advance of bid deadline, and posted in a conspicuous place, accessible to the general public, in the Town Hall.

To be effective, the process of formal advertisement is based upon certain presumptions, as follows:

1. A complete, adequate, and realistic specification is available;
2. Two or more responsible vendors are willing and able to compete effectively;
1. The purchase lends itself to a firm-fixed-price bid, and selection of the successful bidder can appropriately be made principally on the basis of price; and
3. Sufficient time is available for the bidders to prepare and submit their bids.

REQUIREMENTS FOR FORMAL ADVERTISING

If formal advertising is used, the following requirements shall apply:

1. A public notice inserted at least once in a newspaper and at least ten (10) days before the final date of submitting bids shall advertise all such purchases.
2. All bids shall be opened and read aloud publicly.
3. A purchase award shall be made with reasonable promptness by written notice to that responsible bidder whose bid best conforms to the advertisement and is lowest in price. Where specified, factors such as delivery time, discounts, transportation

costs, life-cycle costs, as well as the quality of the goods or services to be supplied and their conformity with the specifications shall be considered in determining the lowest bid. Any or all bids may be rejected for sound reasons or in the Town's best interest.

4. If all bids received in response to the formal advertisement are for the same unit price or total amount, the Purchasing Agent shall have the authority to reject all bids and to purchase the goods or service on the open market, provided the price paid by negotiation does not exceed the bid price.
5. Each bid, with the name of the bidder, shall be entered on a record and each record with the successful bid indicated thereon shall, after the purchase award be open for public inspection.
6. If the possibility exists that only a single bid might be received for a particular procurement, the Town shall insure that a fair and reasonable price is obtained by providing written notice to prospective bidders stating that, in the event a single bid is received, a cost analysis of the bid will be performed. If only a single bid is received and it is impossible to perform a valid cost analysis, the bidder shall be required to furnish a detailed cost proposal for audit and possible subsequent negotiation.
7. A formal advertisement shall be sufficient in detail to allow a prospective bidder to submit their bid or it may generally advise the bidder of the availability of bid documents and additional information. In either event, the bidder will be instructed, as follows:
 - a. The bids must be sealed and the general procedure under which they are opened.
 - b. The deadline for submitting the bid.
 - c. The time, date and place for opening the bid.
 - d. Any special markings required on the outside of the bid envelope.
 - e. All specifications of the goods or service to be purchased.
 - f. The conditions, if any, under which variations to the specifications will be allowed.
 - g. Warranty requirements.
 - h. Delivery requirements
 - i. The statement that the Town reserves the right to reject any or all bids and to waive formalities.
 - j. Any other information required of a prudent bidder.
 - k. Minority Bid Requirements.
8. The Town has developed typical "General Terms and Conditions" for construction projects, purchases of good and purchases of services as shown as Exhibits E through G. These General Terms & Conditions should be used in the standard IFB or RFP issued for Competitive Sealed Bids or Proposals. It is important to note that the Department of General Services had developed an extensive list, which can be found in the Agency Procurement Manual, of atypical terms and conditions that may be useful in certain situations.

AWARD OF THE BID

The "lowest responsible bidder" is defined in the Purchasing ordinance as follows:

1. The ability, capacity and skill of the bidder to perform the contract or provide the service required;

2. Whether the bidder can perform the contract or provide the service within the time specified without delay or inference;
3. The integrity, reputation and experience of the bidder;
4. The quality of performance of previous contracts or services.
5. The previous and existing compliance by the bidder to perform the contract or provide the services.
6. The availability of parts and maintenance.
7. The number and scope of conditions attached to the bid.
8. Maintenance and service requirements, which shall include, but not be limited to, availability, cost, quality or delivery of parts.

BID DEPOSITS AND PERFORMANCE BONDS

When the Purchasing Agent deems it prudent, subject to the approval of the Town Manager, bid and/or performance bonds may be prescribed in a request for bids to assure that the terms are efficiently and accurately executed. Unsuccessful bidders shall be entitled to return of such surety. A successful bidder shall forfeit any surety required by the Purchasing Agent upon failure on his part to perform within a specified number of days after the purchase award and/or upon failure to provide the goods or service as specified.

DISQUALIFICATION OF BIDDERS

The Town Manager, with the advice of the Purchasing Agent, may for cause declare certain vendors as irresponsible bidders and may disqualify them from receiving any business from the Town for a definite period of time (3 months to 3 years).

WITHDRAWAL OF BIDS DUE TO ERROR (§2-204, Town Code)

Bids may be withdrawn by a vendor or contractor due to error providing the following four conditions are met:

1. A bid must be substantially lower than the other bids.
2. The low bid must be due to a clerical error rather than a mistake in judgment.
3. An unintentional omission of quantity of work, labor or material must be clearly shown by the original work papers or materials used in the preparation of the bid.
4. The bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice.

Such work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of subsection D of §11-52, *Code of Virginia*. Any mistake shall be proved only from the original work papers, documents and materials delivered as required.

If a bid contains both clerical and judgmental mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake.

No bidder who is permitted to withdraw a bid shall supply any material or labor for the firm that was ultimately awarded the contract.

If the Town denies the withdrawal of a bid, it shall notify the bidder in writing stating the reasons for its decision, and award the contract to such bidder at the bid price.

CONTRACTS

Regardless of the method by which bids are solicited and the process by which a vendor is selected, every decision to purchase goods or services for the Town shall be evidenced by a formal written contract or purchase order, or both.

In contracts with a value of \$10,000 or greater the contractor and all subcontractors must be an equal opportunity employer, agree not to discriminate in employment on the basis of race, religion, color, sex, national origin, age, or handicap, and agree to comply with the provisions stated in §11-51 of the *Code of Virginia* and Warrenton Town Code §2-195.

USUAL CONTRACT PROVISIONS

Where a written contract is used to bind the Town and a vendor into a purchase agreement, the contract shall define a sound and workable arrangement, including but not limited to the following provisions:

1. The scope and extent of the contract.
2. The time for completion of the contract, including dates for completion of significant tasks.
3. The contract price and method of payment.
4. Identification of key personnel and facilities necessary to accomplish the contract terms within the required time.
5. The extent of subcontracting agreements.
6. Provision for changes by the Town as to the general scope of the contract.
7. Provisions for contract termination or suspension by the Town upon default by the contractor or for the convenience of the Town.
8. Provisions for resolution of disputes arising under the contract through adjudication, administrative remedies or arbitration, at the option of the Town.
9. Sanctions or penalties for nonperformance by the contractor.
10. Access to contractor records and provisions to ensure contractor conformance with contract terms and conditions.
11. Prohibition against contingent fees and gratuities.
12. Retainage on construction contracts shall be limited to five percent (5%), regardless of the contract's value.
13. All bids or proposals for construction contracts in excess of \$75,000 must be accompanied by a bid bond not to exceed five percent (5%) of the amount bid. When a construction contract exceeding \$75,000 is awarded, a prime contractor must furnish performance and payment bonds with a value of one hundred percent (100%) of the contract amount.

The Town Attorney has developed "standard" contract templates for use in purchases of Goods & Non-Professional Services (see Exhibit H) and for use in the purchase of Professional Services (see Exhibit I).

In addition, on contracts other than construction, at the discretion of the Town Manager, bidders may be required to submit with their bid, a bid bond or a certified check in the amount of the bid, which shall be forfeited to the Town upon the bidder's failure to meet the terms of the contract satisfactorily.

In lieu of a bid, payment or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.

EXECUTION OF CONTRACTS

All contracts shall be executed on behalf of the Town by the Town Manager.

CONSTRUCTION CONTRACTS OVER \$50,000

Contracts for construction work costing more than \$50,000, shall be let by action of the Town Manager. Such contracts and the procurement processes involved may be primarily coordinated by consulting engineers, architects, or like professionals. Outside consultants shall be responsible for observing the principles of this manual and all other applicable legalities.

REVIEW OF CONTRACTS BY TOWN ATTORNEY

All contracts shall be subject, at the discretion of the Town Manager, to review by the Town Attorney, whose duty it shall be to determine if the contract is in such form as will properly safeguard the rights and interests of the Town.

CONTRACTING FOR PROFESSIONAL SERVICES

(Compliance Mandatory, *Code of Virginia*, Chapter 7, Virginia Public Procurement Act, §11-37, 3a)

A request for proposal shall be issued for all professional services required by the Town. The request shall not require the offerors to furnish estimates of costs. Later, at the discussion stage, non-binding estimates may be requested by the Town Manager.

Professional services shall be procured by competitive negotiation as required by the Virginia Public Procurement Act where the life of the professional services contract is valued at \$50,000 or more. For contracts with lifetime values of less than \$50,000, optional methods of procurement are at the discretion of the Town Manager.

Professional services are defined as work performed by an independent contractor within the scope of the practice of accounting, architecture, land surveying, landscape architecture, law, medicine, optometry, pharmacy, actuary, or professional engineering.

The Town manager shall engage in individual discussion with all offerors deemed fully qualified, responsible and suitable on the basis of initial response and with emphasis on professional competence, to provide the required services.

At the conclusion of the discussion stage, based on information gathered and the results of the evaluation factors as published in the Request for Proposal, the Town Manager shall select two or more offerors whose professional qualifications and proposed services are deemed most meritorious. At this point, contract negotiations can begin. Negotiations will be conducted with the first choice offeror. If a contract cannot be satisfactorily negotiated, the Town Manager shall formally end all negotiations with the first choice offeror and begin negotiations with the second choice. This process shall continue until a contract is successfully negotiated.

Once negotiations are complete and a provider has been determined to be the best possible choice for the Town and the individual service required, a Professional Services Contract should be executed.

SURPLUS AND OBSOLETE PROPERTY

Each department shall report its surplus and obsolete material and equipment to the Purchasing Agent, describing the item(s), quantity, general condition, location, and identifying number if available.

Included in this report by the department shall be a recommendation as to the method of disposition properly supported by relevant facts.

The Purchasing Agent may handle surplus and obsolete property in any of the following ways:

1. By transferring to other Town departments.
2. By trading in on new property.
3. By public auction.
4. By public sale, upon advertising for sealed bids.
5. By selling as scrap.
6. By junking.

Sales of special police equipment, where the Chief of Police certifies that the property should be disposed of privately, are exempt.

TRANSFER TO OTHER DEPARTMENTS

Materials or equipment declared to be surplus by a using department must be made available for transfer to any other department having a productive use of it. This shall be done by the Purchasing Agent, by memorandum to all departments, describing the property and advising where it is available for inspection. Any department desiring transfer of the property will signify their purposes in writing to the Purchasing Agent.

DISPOSITION BY SALE OR DISCARDING

Surplus materials or equipment not desired for interdepartmental transfer shall, at the direction of the Purchasing Agent, be sold on competitive bids in its original form or as scrap. Surplus items found to be totally lacking in value may be discarded.

Items with an estimated value exceeding \$3,500 shall ordinarily be sold upon the submission of sealed bids. Bid forms shall be provided in such cases, which shall include the following:

1. Description of the item(s) being offered for sale as to nature, size, grade, number, etc.
2. Deadline and place for submission of bid.
3. Amount of the bid, by unit and total amount.
4. Amount of bid deposit or security, if required.
5. Other information appropriate to the bidding process.

All sales of surplus items will be public and offers to sell shall be announced by advertisement at least once in a local newspaper and at least ten days before the sale. The Purchasing Agent shall also solicit bids by contracting suppliers and other prospective buyers.

PROCEEDS FROM SALES OF SURPLUS AND OBSOLETE PROPERTY

All proceeds from sale of surplus or obsolete materials and/or equipment are to be credited to the fund that owned such surplus or obsolete materials and/or equipment.

THE TELEPHONE BID REQUEST FORM

Telephone bid requests shall be used only where reasonable to reduce delays and the expense of written bids and where there are an adequate number of vendors available to provide competitive bids, or in emergency situations requiring immediate action to prevent disruption of Town services or severe hardship.

Such requests for bids shall ordinarily be used only to purchase goods or services costing less than \$3,500 without prior approval of the Town Manager.

The Department Head, or designee, shall complete a Telephone Bid Request Form each time bids are requested by telephone to document the information received. The completed form shall be attached to the requisition before being sent to the Purchasing Agent. Once approved, the Telephone Bid Request Form becomes a permanent part of the Purchase Order.

INSTRUCTIONS FOR COMPLETING THE TELEPHONE BID REQUEST FORM

1. Describe the item(s) on which bids are being requested, including size, color, quantity, type of material and construction, etc.
2. List any special terms and conditions (such as delivery time) that are stated when talking with the supplier's representative, especially those terms and conditions that influence the bid price.
3. For each company contacted, provide the following information:
 - a. Date that telephone contact is made.
 - b. Name of the company and telephone number.
 - c. Name of the supplier's representative from whom the bid price was received.
 - d. Bid price.
 - e. Any comments about the company or its bid that might influence the Town's purchasing decision, or indicate the successful bidder.
4. Provide any general comments, such as how the purchasing decision was made and the reasons.
5. The Department Head, or duly authorized representative who requested the bids, signs and dates the form.

VIOLATIONS

Violations of these regulations by an employee of the Town of Warrenton may result in one or more of the following:

1. Voiding the purchase order that was made in violation of the purchase procedure.
2. The employee/department being made to pay for the item purchased in violation of the procedure.
3. Dismissal of employee for repeated and deliberate violations of the policies and procedures contained herein.

In addition, all individuals involved in the Procurement process should become familiar with the rules and regulations stated in the current Town of Warrenton Personnel Policies and Procedures.

PROCEDURE CHECKLIST

PURCHASES LESS THAN \$3,500

Employee obtains verbal approval from Department Head for emergency or minor purchases.
Department Head coordinates with the Purchasing Agent and Accounts Payable the purchase of normal operating supplies.
Department makes purchase.

PURCHASES FROM \$3,500 TO \$9,999

Department Head obtains at least three verbal estimates for goods or services.
Department Head prepares Purchase Requisition, attaches telephone estimates to requisition, and submits to Purchasing Agent.
Purchasing Agent certifies that funds are available and sends to Town Manager.
Town Manager approves Purchase Requisition and returns to the Purchasing Agent.
Purchasing Agent prepares Purchase Order.
Purchasing Agent encumbers funds.
Purchasing Agent distributes Purchase Order to Vendor, Department Head and Accounts Payable.
Upon receipt of goods or services, Department Head checks goods or services received against approved Purchase Order. Department Head indicates on invoice and Purchase Order that Vendor has fulfilled his or her obligation and approves Purchase Order for payment and indicates the date the goods were received.
Department Head forwards all receiving information to Accounts Payable.
Accounts Payable process invoice and Purchase Order for payment.

PURCHASES FROM \$15,000 TO \$29,999

Department Head obtains at least three written estimates.
Department Head prepares Purchase Requisition, attaches written estimates to requisition, and submits to Purchasing Agent.
Purchasing Agent certifies that funds are available and forwards to Town Manager for approval.
Town Manager approves Purchase Requisition and returns to Purchasing Agent.
Purchasing Agent prepares Purchases Order.
Purchasing Agent encumbers funds.
Purchasing Agent distributes Purchase Order to Vendor, Department Head and Accounts Payable.
Upon receipt of goods or services, Department Head checks goods or services received against approved Purchase Order. Department Head indicates on invoice and Purchase Order that Vendor has fulfilled his or her obligation and approves Purchase Order for payment and indicates the date the goods were received.
Department Head forwards all receiving information to Accounts Payable.
Accounts Payable process invoice and Purchase Order for payment.

PURCHASES OF \$50,000 OR MORE

Department prepares Purchase Requisition and submits to Purchasing Agent.
Purchasing Agent certifies that funds are available and forwards to Town Manager for approval.
Town Manager approves Purchase Requisition and returns to Purchasing Agent.
Department Head prepares the necessary specifications.
Town Manager determines the form of procurement appropriate.
Town Manager authorizes Purchasing Agent, in conjunction with the Department Head to:
Solicit bids in local newspaper and from bidder list.
Conduct competitive negotiations.

Conduct non-competitive negotiations.
Bids received by Purchasing Agent on specified date.
Bids opened in public with Purchasing Agent, Department Head or his designee, and other interested parties.
Purchasing Agent and Department Head reviews bids and makes recommendation to Town Manager.
Town Manager authorizes action on bids.
Purchasing Agent prepares Purchase Order.
Purchasing Agent encumbers funds.
Purchasing Agent distributes Purchase Order to Vendor, Department Head and Accounts Payable.
Upon receipt of goods or services, Department Head checks goods or services received against approved Purchase Order. Department Head indicates on invoice and Purchase Order that Vendor has fulfilled his or her obligation and approves Purchase Order for payment and indicates the date the goods were received.
Department Head forwards all receiving information to Accounts Payable.
Accounts Payable process invoice and Purchase Order for payment.

EXHIBIT A

**Town of Warrenton
Telephone Bid Requests**

Description of item(s) on which bids were requested:

List any special conditions:

| Date | Company & Telephone # | Person Contacted | Bid Price | Comments |
|-------------|--------------------------------------|-------------------------|------------------|-----------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

Comments:

Signature

Date

EXHIBIT C

Mandatory Requirement

(To be executed and submitted with bid)

Any person submitting a bid for construction work to any building, highway, sewer or other structure, the performance of which would require a contractor's license pursuant to the provisions of Sec. 54.1-1100 of the Code of Virginia, 1950, as amended, be required to submit **as part of their bid:**

Satisfactory proof that such person is duly licensed under the terms of Sec. 54.1-1100 of the Code of Virginia, 1950, as amended, including the furnishing of any such contractor's number. **A copy of your contractor's license can be attached to this form to meet this requirement.**

I certify that the _____ State Contractors License of
_____, doing business as
_____ is in
good standing and not subject to revocation as a contractor, subcontractor or owner/developer
pursuant to Sec. 54.1-1100 of the Code of Virginia, 1950, as amended.

Signed and sealed this _____ of _____, 20 _____.

Principal

Title

State of Virginia, County of _____, to wit:

The foregoing instrument was acknowledged before me the _____ day of _____,

20 ____ by _____.

NOTARY PUBLIC / REGISTRATION #

MY COMMISSION EXPIRES

EXHIBIT D

TOWN OF WARRENTON, VIRGINIA

INVITATION FOR BID – XXXXXXXXXXXXX

IFB NUMBER: #XX-XXX

CLOSING DATE: XXXXXXXXXX AT 2:00 PM

**ALL BIDS MUST BE RECEIVED BY THE CLOSING DATE AND TIME TO BE
CONSIDERED**

One (1) original and (1) copy of each bid, including any attachment, shall be mailed or delivered to:

**Town of Warrenton
Purchasing Agent
18 Court Street
Warrenton, Virginia 20186**

All inquiries for information regarding procurement procedures, selection criteria, bid submission requirements, or other fiscal/administrative concerns shall be directed to:

Purchasing Agent
18 Court Street
Warrenton, VA 20186

Phone: 540-347-1102
Fax: 540-349-2414
e-mail: staff@warrentonva.gov

For technical information relating to this IFB, please contact:

Xxxxxx
xxxxxx
Warrenton, VA 20186

Phone: 540-347-xxxx
Fax: 540-349-xxxx
e-mail: xxxxxxxxxxxxxx

In compliance with this Invitation for Bid and all the conditions imposed herein, the undersigned offers and agrees to furnish the goods and/or services in accordance with the signed bid or as mutually agreed upon by subsequent negotiations.

| | | | |
|--------------|---------------------------------|----------|-------|
| Name | _____ | Date | _____ |
| | PRINT OR TYPE COMPANY NAME | | |
| Address | _____ | Fax # | _____ |
| | _____ | | |
| Submitted by | _____ | Phone # | _____ |
| Signature | _____ | FEIN/SSN | _____ |
| | PRINT OR TYPE INDIVIDUAL'S NAME | | |

**CERTIFICATION PAGE
RETURN THIS PAGE WITH PROPOSAL SUBMISSION**

EXHIBIT E

TOWN OF WARRENTON, VIRGINIA GENERAL TERMS AND CONDITIONS CONSTRUCTION PROJECTS

The following General Terms and Conditions shall become part of all solicitations for construction projects that involve building, altering, repairing, improving or demolishing any structure, building or paving projects, and any draining, dredging, excavation, grading or similar work upon real property. These General Terms and Conditions shall be a part of any such Invitation for Bid/Request for proposal in addition to the General Terms and Conditions - Services.

1. DEFINITIONS

- a. The term "**Town**" shall mean The Town of Warrenton through the governing body or other agent with authority to execute the contract for the Town.
- b. The term "**Contractor**" means the person, firm or corporation named such in the contract and includes the plural number and the feminine gender when such are named in the contract as the Contractor.
- c. The term "**Subcontractor**" means only those having a direct contract with the Contractor and it includes one who furnishes material worked to a special design but does not include one who merely furnishes material not so worked.
- d. The "**Project Inspector**" means one or more individuals employed or designated by the Town to make inspections, observe progress, approve schedules and accept services under the terms of the contract. The Town shall notify the Contractor in writing of the appointment of such Project Inspector.
- f. The term "**Drug-Free Workplace**" means a site for the performance of work done in connection with a specific contract awarded to a contractor as a result of this solicitation, 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

2. CONTRACT DOCUMENTS

The contract entered into by the parties shall consist of the Invitation for Bids/Request for Proposals, the signed Bid/Offer submitted by the Contractor, the Town of Warrenton standard contract form or Purchase Order, the General and Special Terms and Conditions, the Specifications with drawings, if any, including all modifications thereof, all which shall be referred to collectively as the Contract Documents.

3. LAWS AND REGULATIONS

- a. The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the work.
- b. The Contractor and Subcontractor shall comply with the Virginia Contractors Registration Law, Title 54, Chapter 7, Code of Virginia (1950), as amended. All nonresident Contractors and Subcontractors submitting bids/ proposals on the work described herein

shall register with the Department of Labor and Industry under the provisions of the Subsection 40.1-30 of the code of Virginia (1950), as amended.

4. CONDITIONS AT SITE, BUILDING OR STRUCTURE

Bidders/Offerors shall visit the contract work site or sites and shall be responsible for having ascertained pertinent local conditions such as location, accessibility and general character of the site, building or structure, and the character and extent of existing work within or adjacent to the site.

5. PREPARATION AND SUBMISSION OF BIDS/PROPOSALS

- a. Bids/proposals must give the full business address of the bidder/offeror and be signed by him or her with his or her usual signature. Bids/proposals by partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership or any authorized representative, followed by the designation of the person signing. Bids/proposals by Corporations must be signed with the legal name of the corporation followed by the name of the State in which it is incorporated and by the signature and designation of the president, secretary or other person authorized to bind it in the matter. The name of each person signing shall also be typed or printed below the word President, secretary, Agent, or other designation without disclosing the principal, may be held to be the bid/proposal of the individual signing. When requested by the Town, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.
- b. Identification of Bid/Proposal Envelope: The signed bid/proposal should be returned in a separate envelope or package sealed to the Purchasing Agent and identified as follows:

From:

Name of Bidder Due Date Time

Address City/State/Zip Code

Description of Invitation or Request for Proposal

The envelope should be addressed as directed in the solicitation.

6. WITHDRAWAL OR MODIFICATION OF BIDS/PROPOSALS PRIOR TO DUE DATE

Bids/proposals may be withdrawn or modified by written or telegraphic notice received from Bidders/Offerors prior to the time fixed for bid/proposal receipt.

7. RECEIPT AND OPENING OF BIDS/PROPOSALS

- a. It is the responsibility of the bidder/offeror to assure that the bid/proposal is delivered to the place designated for receipt of bids/proposals prior to the time set for receipt of bids/proposals. No bid/proposal received after the time designated for receipt of bids/proposals will be considered.
- b. Bids received in response to an Invitation for Bids will be opened at the time and place stated in the solicitation and bidder's names and prices made public for the information of bidders and

other interested who may be present either in person or by representative. The Purchasing Agent, whose duty it is to open the bids, will decide when the specified time has arrived. No responsibility will be attached to any agent of the Town for the premature opening of a bid not properly addressed or identified. In the case of the proposals received in response to a Request for Proposal, public openings are not required; however, if a public opening is held, only the names of the offerors will be read aloud.

8. WITHDRAWAL OF BID DUE TO ERROR (INVITATION FOR BIDS ONLY)

- a. The bidder shall submit to the Purchasing Agent his original work papers, document and materials used in the preparation of the bid within two business days after the date fixed for submission of bids. The work papers shall be delivered in person or by certified mail. The bidder shall identify in sufficient detail the nature of the mistake. Such mistake shall be proved only from the original work papers, documents and materials delivered as required herein.
- b. No bid may be withdrawn under this section when the result would be awarding the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.
- c. If a bid is withdrawn under the authority of this section, the lowest remaining bid shall be deemed to be the low bid.
- d. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.
- e. If the Town denies the withdrawal of a bid under the provisions of this section, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsive and responsible bidder.

9. SUBCONTRACTS

- a. The Contractor shall, as soon as practicable after the signing of the contract, notify the Town in writing of the names of Subcontractors proposed for the principle parts of the work. The Contractor shall not employ any Subcontractor that is not responsible or otherwise suitable. The Town shall not direct the Contractor to contract with any particular Subcontractor, however, the Town may disapprove the use of any Subcontractor deemed unsuitable.
- b. The Contractor must agree that he is fully responsible to the Town for the acts and omissions of the Subcontractors and of persons either directly or indirectly employed by them as well as those persons directly employed by the Contractor himself.

10. SEPARATE CONTRACTS

The Town reserves the right to let other contracts in connection with the project or services, the work under which will proceed simultaneously with the performance of the Contract. The Contractor shall afford other separate contractors reasonable opportunity for the introduction and storage of their materials and the performance of their work. The Contractor shall take all reasonable action to coordinate his or her work with the separate contractors. If the work done by the separate contractor

is defective or so performed as to prevent the Contractor from carrying out the work according to the plans and specifications, the contractor shall immediately notify the Town upon discovering such conditions.

11. PROJECT INSPECTOR AS THE TOWN'S AGENT

- a. The Project Inspector shall use all powers under the Contract to enforce its faithful performance. The Project Inspector shall determine the amount, quality, acceptability, and fitness of all parts of the work; shall interpret the Contract Documents and extra work orders; and shall decide all other questions in connection with the work. The Project Inspector shall recommend suspension of the work whenever such suspension may be necessary to ensure the proper execution of the Contract. The Project Inspector shall have no authority to approve or order changes in the work which alter the concept or which call for an extension of time or a change in the contract price. Upon request, the Project Inspector shall confirm in writing within ten (10) days any oral order, direction, requirement or determination.
- b. All orders from the Town shall be transmitted through the Project Inspector.

12. INSPECTION

- a. All materials and workmanship, if not otherwise designated by the specifications, shall be subject to inspection, examination and test by the Project Inspector at any and all times during manufacture and/or construction. The Project Inspector shall have authority to reject defective material and workmanship and require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material shall be satisfactorily replaced with proper material without charge therefore, and the Contractor shall promptly segregate and remove the rejected material from the premises. If the contractor fails to proceed at once with replacement of rejected material and/or the correction of defective workmanship, the Town may, by contract or otherwise, replace such material and/or correct such workmanship charging the cost to the contractor. The Town may terminate the right of the Contractor to proceed as provided in the Default Clause, the Contractor being liable for any damage to the same extent as provided in the Default Clause for termination there under.
- b. The Project Inspector may recommend to the Town that the work be suspended when in his or her judgment the intent of the plans and specifications is not being followed. Any such suspension shall be continued only until the matter in question is settled to the satisfaction of the Town. The cost of any such work stoppage shall be borne by the Contractor unless it is later determined that no fault existed in the Contractor's work.
- c. The Project inspector may immediately suspend any work that is being pursued in an unsafe manner and where in his or her judgment, the potential for serious personal injury or property damage exists.
- d. The Project Inspector shall not:
 1. Authorize deviations from the Contract Documents;
 2. Enter into the area of responsibility of the Contractor's superintendent;
 3. Issue directions relative to any aspect of means, methods, techniques, sequences, or procedures;
 4. Issue a certificate for payment.

13. SUPERINTENDENCE BY CONTRACTOR

- a. The Contractor shall be responsible for all means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the Contract except where otherwise specified in the Contract Documents.
- b. The Contractor shall, at all times, enforce the strict discipline and good order among the workers on the project, and shall not employ on the site any unfit person or anyone not skilled in the work assigned to him or her.

14. CONTRACTOR'S TITLE TO MATERIALS

No materials or supplies for the work shall be purchased by the contractor or by any Subcontractor subject to any chattel mortgage or under a conditional sales or other agreement by which an interest is retained by the seller. The Contractor warrants that he has clear title to all materials and supplies for which he invoices for payment.

15. WARRANTY OF MATERIALS AND WORKMANSHIP

- a. The Contractor warrants that, unless otherwise specified, all materials and equipment incorporated in the work under the contract shall be new, first class, and in accordance with the Contract Documents and shall be performed by persons qualified in their respective trades.
- b. Work not conforming to these warranties shall be considered defective.
- c. This warranty of materials and workmanship is separate and independent from and in addition to any other guarantees in this Contract.

16. USE OF PREMISES AND REMOVAL OF DEBRIS

- a. The Contractor expressly undertakes, either directly or through its Subcontractor:
 - 1. To perform this Contract in such a manner as not to interrupt or interfere with the operation of any existing activity on the premises or at the location of the work;
 - 2. To store its apparatus, materials, supplies, and equipment in such an orderly fashion at the site of the work as will not unduly interfere with the progress of its work or the work of the Town or any other Contractor; and
 - 3. To place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work.
 - 4. To effect all cutting, filling or patching of its work required to make the same conform to the plans and specifications, and except with the consent of the Project Inspector, not to cut or otherwise alter the work of any other contractor. The Contractor shall not damage or endanger any portion of the work by cutting, patching or otherwise altering any work, or by excavation.
 - 5. To clean up frequently all refuse, rubbish, scrap, materials and debris caused by its operations, to the end that at all times the site of the work shall present a neat, orderly and workmanlike appearance.

17. PROTECTION OF PERSONS AND PROPERTY

- a. The Contractor expressly undertakes, both directly and through its Subcontractors, to take

every precaution at all times for the protection of persons and property, including the Town's employees and property and its own.

- b. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work.
- c. The Contractor shall continuously maintain adequate protection of all work from damage and shall protect the Town's property from injury or loss arising in connection with this contract. The Contractor shall make good any such damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or caused by agents or employees of the Town. The Contractor shall adequately protect the adjacent property as provided by law and the Contract Documents, and shall provide and maintain all passageways, guard fences, lights and other facilities for protection required by public authority, local conditions, or any of the Contract Documents.
- d. In an emergency affecting the safety or life of individuals, or of the work, or of adjoining property, the Contractor, without special instruction or authorization from the Town, is hereby permitted to act at its discretion, to prevent such threatened loss or injury. Also, should the Contractor in order to prevent threatened loss or injury, be instructed or authorized to act by the Town, he shall so act, without appeal. Any additional compensation or extension of time claimed by the Contractor on account of any emergency work shall be determined as provided by Section 18, Changes in the Work.

18. CHANGES IN THE WORK

- a. The Town may at any time by written order, make changes in the work of this Contract and within the general scope thereof, except that no fixed price contract may be increased by more than twenty-five percent of the amount of the contract or ten thousand dollars (\$15,000), whichever is greater. In making any change, the charge or credit for the change shall be determined by one of the following methods as selected by the Town.
 - 1. The change order shall stipulate the mutually agreed price that shall be added to or deducted from the contract price. If the price change is an addition to the contract price, it shall include the Contractor's overhead and profit.
 - 2. By estimating the number of unit quantities of each part of the work which are changed and then multiplying the estimated number by of such unit quantities by the applicable unit price (if any) set forth in the contract or other mutually agreed unit price. If the Town decides to authorize work in accordance with until price, measurement of unit quantities shall be on a net basis.
 - 3. By ordering the Contractor to proceed with the work and to keep, and present in such form as the Town may direct, a correct account of the cost of the change together with all vouchers therefore. The cost shall include an allowance for overhead and profit to be mutually agreed upon by the Town and the Contractor.
- b. The Contractor shall furnish the Town with an itemized breakdown of the quantities and prices used in computing the value of any change that might be ordered.
- c. In figuring changes, instructions for measurements of quantities set forth in the specifications shall be followed.
- d. All change orders must indicate that the completion date of the project is either not extended or is extended by a specific number of days. Both the old, and if there is one, the new date

must be stated.

19. CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT

If the work should be stopped under any order of any court or other public authority for a period of three (3) months through no fault of the Contractor or of anyone employed by the Contractor, or if the Town should arbitrarily fail to issue any certificate for payment within a reasonable time after they are due, or if the Town should fail to pay the Contractor within thirty (30) days any sum certified by the Town, then the Contractor may, upon fourteen (14) calendar days written notice to the Town, stop work or terminate the contract. The Contractor may then recover the Town payment for the cost of the work actually performed, together with the overhead and profit thereon, but profit shall be recovered only to the extent that the contractor can demonstrate that there would have been a profit on the entire contract if the work had been completed. The Contractor may not receive profit or any other type of compensation for parts of the work that were not performed. The Contractor may recover the cost of physically closing down the job site, but no other costs of termination. The Town may offset any claims it may have against the Contractor against the amounts due to the Contractor.

20. TOWN'S RIGHT TO TERMINATE CONTRACT

- a. If the Contractor should be adjudged bankrupt, or if he or she should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his or her insolvency, the Town may terminate the Contract. If the Contractor should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials, or if he should fail to make prompt payment to Subcontractors or for material or labor, or persistently disregards laws, ordinances or the instructions of the Town, or otherwise be in substantial violation of any provision of the contract, then the Town may terminate the contract.
- b. Prior to the termination of the Contract, the Town shall give the Contractor fourteen (14) calendar days written notice. Upon termination of the contract, the Town shall take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method deemed expedient. In such case the Contractor shall not be entitled to receive any further payment. If the expense of finishing the work, including compensation for additional managerial and administrative services, shall exceed the unpaid balance of the contract price, the Contractor shall pay the difference to the Town. The expense incurred by the Town as herein provided, and the damage incurred through the Contractor's default, shall be certified by the Town.
- c. Termination of the Contract under this section is without prejudice to any other right or remedy of the Town.

21. NOTICE OF REQUIRED DISABILITY LEGISLATION COMPLIANCE

The Town of Warrenton is required to comply with state and federal disability legislation: The Rehabilitation Act of 1993 Section 504, The Americans with Disabilities Act (ADA) for 1990 Title II and the Virginians with Disability Act of 1990.

Specifically, the Town of Warrenton, may not, through its contractual and/or financial arrangements, directly or indirectly avoid compliance with Title II of the Americans with Disabilities Act, Public Law 101-336, which prohibits discrimination by public entities on the basis of disability. Subtitle A protects qualified individuals with disability from discrimination on the basis of disability in the

services, programs, or activities of all State and local governments. It extends the prohibition of discrimination in federally assisted programs established by the Rehabilitation Act of 1973 Section 504 to all activities of State and local governments, including those that do not receive Federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability in Titles I, III, and V of the Americans with Disabilities Act. The Virginians with Disabilities Act of 1990 follows the Rehabilitation Act of 1973 Section 504.

22. ANTI-DISCRIMINATION

By submitting their bids/proposals, Bidders/Offerors certify to the Owner 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*. If the award is made to a faith-based organization, the organization 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 and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, §2.2-4343.1(E)). In every contract over \$10,000 the provisions in A and B below apply:

- a. During the performance of this contract, the Contractor agrees as follows:
 1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The Contractor agrees to post in a conspicuous place, 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 A. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

23. INSURANCE

Contractor must provide the Town with a certificate of insurance naming the Town of Warrenton as additional insured before work may begin. Insurance requirements are as follows:

- A. The contractor shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property which may

arise from or in connection with the delivery of the product hereunder by the contractor, his agents, representatives, employees or subcontractors.

- B. The contractor shall provide a certificate of insurance naming the Town of Warrenton as additional insured and if requested a certified copy of said policy or endorsement(s) before commencement of contract. All insurance shall be placed with an insurer licensed to do business in the Commonwealth of Virginia. The underwriter shall be subject to the approval of the Town of Warrenton.

The contractor shall maintain limits no less than:

1. Commercial General Liability: \$3,500,000 combined single limit per occurrence for bodily injury, personal injury and property damage. The general aggregate limit shall apply separately to this project of the general aggregate shall be twice the required occurrence limit.
2. Automobile Liability: \$3,500,000 combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' Compensation as required by the Code of Virginia and Employers Liability with limits of \$3,500,000 per accident.

24. DRUG-FREE WORKPLACE

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

25. BONDS

Upon the award of any (i) construction contract exceeding \$100,000 awarded to any prime contractor or (ii) construction contract exceeding \$100,000 awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned by the Town of Warrenton, the contractor shall furnish to the Town of Warrenton the following bonds:

- a. Performance Bond:

A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specification and conditions of the contract.

- b. Payment Bond:

A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work.

- c. In lieu of the payment or performance bonds specified above, a contractor may furnish a certified check or cash escrow in the face amount required for the bond.

EXHIBIT F

TOWN OF WARRENTON, VIRGINIA GENERAL TERMS AND CONDITIONS GOODS

1. MANDATORY USE OF TOWN FORMS, TERMS AND CONDITIONS

Failure to submit a bid/proposal on the official Town form provided shall be a cause for rejection of the bid/proposal. Return of the complete document is required. Modification of or additions to any portion of the solicitation may be cause for rejection of the bid/proposal; however, the Town reserves the right to decide, on a case-by-case basis, in its sole discretion, whether or not to reject such a bid/proposal as nonresponsive.

2. PRECEDENCE OF TERMS

In case of a conflict between the General Terms and Conditions and any Special Terms and Conditions for use in a particular procurement, the Special Terms and Conditions shall apply.

3. CLARIFICATION OF TERMS

If any prospective bidder/offeror has questions about the specifications or other solicitation documents, the prospective bidder/offeror should contact the Purchasing Agent or the Department Head whose name appears on the face of the solicitation by five days before the bid opening date. Any revisions to the solicitation will be made only by a written addendum issued by the Purchasing Agent.

4. BRAND NAME OR EQUAL

Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict bidders/offerors to the specific brand, make or manufacturing name, but conveys the general style, type, character and quality of the article needed. Any article that the Town, in its sole discretion, determines to be equal to that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The bidder/offeror is responsible for clearly and specifically showing that the product being offered, by providing specific descriptive literature, catalog cuts and technical details, to enable the Town to decide whether the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified.

Normally in competitive sealed bidding, only the information furnished with the bid will be considered in the evaluation process. Failure to furnish adequate data for evaluation purposes may result in the Town declaring the bid nonresponsive. Unless the bidder/offeror clearly shows in his bid/proposal that the product being offered is an equal product, such bid/proposal will be considered to offer the brand name product referenced in the solicitation.

5. TRANSPORTATION AND PACKAGING

By submitting a bid/proposal, all bidders/offerors certify and warrant that the price offered for FOB Destination includes only the actual freight costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein,

standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with the purchase order number, commodity description and quantity.

6. TESTING AND INSPECTION

The Town reserves the right to conduct any test/inspection it may deem advisable to assure supplies and services conform to the specifications.

7. PAYMENT TERMS

Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after receipt of an invoice, or acceptance of the goods by the Town of Warrenton, whichever occurs later. This shall not affect offers of discounts for payment in less than 30 days, however.

8. INVOICES

Invoices for the seller shall submit items ordered, delivered and accepted direct to the payment address shown on the purchase order/contract. All invoices shall show the Town's contract number and/or purchase order number.

9. TAXES

Sales to the Town of Warrenton are exempt from state and local sales taxes. State sales and use tax certificates of exemptions will be issued upon request.

10. DEFAULT

In case of failure to deliver goods or services according to the contract terms and conditions, the Town, after due oral or written notice, may obtain them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be beyond any other remedies that the Town may have.

11. ASSIGNMENT OF CONTRACT

A contract shall not be assignable by the contractor in whole or in part without the written consent of the Town.

12. ANTITRUST

By entering into a contract, the bidder/offeror conveys, sells, assigns and transfers to the Town of Warrenton all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia relating to the particular goods or services purchased or acquired by the Town of Warrenton under said contract.

13. ETHICS IN PUBLIC CONTRACTING

By submitting a bid/proposal, all bidders/offerors certify that their bids/proposals are made

without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder/offeror, supplier, manufacturer or subcontractor about their bid/proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

14. ANTI-DISCRIMINATION

By submitting a bid/proposal all bidders/offerors certify to the Town that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, and the Virginia Fair Employment Act of 1975, as amended, where applicable, and Section 11-51 of the Virginia Public Procurement Act that provides:

In every contract more than \$10,000, the provisions in A and B below apply:

A. During the performance of this contract, the contractor agrees as follows:

The Seller will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the seller. The seller agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

The seller, in all solicitations or advertisements for employees placed by or for the seller, will state that such sellers are equal opportunity employers.

Notices, advertisements and solicitations placed according to federal law, rule or regulation shall be deemed sufficient for meeting the requirements of this section.

B. The seller will include the provisions of A above in every subcontract or purchase order more than \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

15. INDEMNIFICATION

Sellers agree to indemnify, defend and hold harmless the Town of Warrenton, its officers, agents and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by any materials, goods, or equipment of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the Town or to the failure of the Town to use the materials, goods or equipment in the manner already and permanently described by the seller of the materials, goods or equipment delivered.

16. DEBARMENT STATUS

By submitting a bid/proposal, all bidders/offerors certify that they are not currently debarred from submitting bids/proposals on contracts by the Town of Warrenton, nor are they an agent of any person or entity that is currently debarred from submitting bids/proposals on contracts by the Town of Warrenton.

17. APPLICABLE LAW AND COURTS

Any contract resulting from this solicitation shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The seller shall comply with applicable federal, state and local laws and regulations.

18. QUALIFICATIONS OF BIDDERS/OFFERORS

The Town may make such reasonable investigations as deemed proper and necessary to determine the ability of the bidder/offeror to perform the work or furnish the item(s) and the bidder/offeror shall furnish the Town all such information and data for this purpose as may be requested. The Town reserves the right to inspect the bidder's/offeror's physical plant prior to award to satisfy questions regarding the bidder's/offeror's capabilities. The Town further reserves the right to reject any bid/proposal if the evidence submitted by, or investigations of, such bidder/offeror fail to satisfy the Town that such bidder/offeror is properly qualified to carry out the obligations of the contract and to complete the work or furnish the item(s) contemplated therein.

19. NOTICE OF REQUIRED DISABILITY LEGISLATION COMPLIANCE

The Town of Warrenton is required to comply with state and federal disability legislation: The Rehabilitation Act of 1993 Section 504, The Americans with Disabilities Act (ADA) for 1990 Title II and the Virginians with Disability Act of 1990.

Specifically, the Town of Warrenton, may not, through its contractual and/or financial arrangements, directly or indirectly avoid compliance with Title II of the Americans with Disabilities Act, Public Law 101-336, which prohibits discrimination by public entities on the basis of disability. Subtitle A protects qualified individuals with disability from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. It extends the prohibition of discrimination in federally assisted programs established by the Rehabilitation Act of 1973 §504 to all activities of State and local governments, including those that do not receive Federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability in Titles I, III, and V of the Americans with Disabilities Act. The Virginians with Disabilities Act of 1990 follows the Rehabilitation Act of 1973 §504.

EXHIBIT G

TOWN OF WARRENTON, VIRGINIA GENERAL TERMS AND CONDITIONS SERVICES

1. MANDATORY USE OF TOWN FORM AND TERMS AND CONDITIONS

Failure to submit a bid/proposal on the official Town form provided for that purpose shall be a cause for rejection of the bid/proposal. Return of the complete document is required. Modification or additions to any portion of the solicitation may be cause for rejection of the bid/proposal; however, the Town reserves the right to decide, on a case-by-case basis, in its sole discretion, whether or not to reject such a bid/proposal as nonresponsive.

2. PRECEDENCE OF TERMS

In the event there is a conflict between the General Terms and Conditions and any Special Terms and Conditions for use in a particular procurement, the Special Terms and Conditions shall apply.

3. CLARIFICATION OF TERMS

If any prospective bidder/offeror has questions about the specifications or other solicitation documents, the prospective bidder/offeror should contact the Purchasing Agent or the Department Head whose name appears on the face of the solicitation no later than five days before the opening date. Any revisions to the solicitation will be made only by addendum issued by the Purchasing Agent.

4. TESTING/INSPECTION

The Town reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

5. PAYMENT TERMS

Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days.

6. INVOICES

Invoices for items ordered, delivered and accepted shall be submitted by the bidder/offeror direct to the payment address shown on the purchase order/contract. All invoices shall show the Town's contract number and/or purchase order number.

7. DEFAULT

In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Town, after due oral or written notice, may procure them from other sources and hold the bidder/offeror responsible for any resulting additional purchase and administrative

costs. This remedy shall be in addition to any other remedies that the Town may have.

8. ASSIGNMENT OF CONTRACT

A contract shall not be assignable by the bidder/offeror in whole or in part without the written consent of the Town.

9. ANTITRUST

By entering into a contract, the bidder/offeror conveys, sells, assigns and transfers to the Town of Warrenton all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Town of Warrenton under said contract.

10. ETHICS IN PUBLIC CONTRACTING

By submitting their bids/proposals, all bidders/offerors certify that their bids/proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder/offeror, supplier, manufacturer, or subcontractor in connection with their bid/proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

11. ANTI-DISCRIMINATION

By submitting their bids/proposals, all bidders/offerors certify to the Town 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. They must also conform to the American Disability Act of 1990 and Section 11-51 of the Virginia Public Procurement Act that provides:

In every contract over \$10,000, the provisions in A and B, below apply:

- a. During the performance of this contract, the bidder/offeror agrees as follows:

The bidder/offeror will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonable and necessary to the normal operation of the bidder/offeror. The bidder/offeror agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

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

Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting requirements of this section.

- b. The bidder/offeror will include the provisions of A. above in every subcontract or purchase order over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

12. INDEMNIFICATION

Bidder/offeror agrees to indemnify, defend, and hold harmless the Town of Warrenton, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, services or equipment of any kind or nature furnished by the bidder/offeror, provided that such liability is not attributable to the sole negligence of the Town or to failure of the Town to use the materials, goods or equipment in the manner already and permanently described by the bidder/offeror on the materials, goods or equipment delivered. The vendor agrees that this clause shall include claims involving infringement of patent or copyright.

13. DEBARMENT STATUS

By submitting their bids/proposals, all bidders/offerors certify that they are not currently debarred from submitting bids/proposals on contracts by the Town of Warrenton, nor are they an agent of any person or entity that is currently debarred from submitting bids/proposals on contracts by the Town of Warrenton.

14. APPLICABLE LAW AND COURTS

Any contract resulting from this solicitation shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The bidder/offeror shall comply with applicable federal, state and local laws and regulations.

15. QUALIFICATIONS OF BIDDERS/OFFERORS

The Town may make such reasonable investigations as deemed proper and necessary to determine the ability of the bidder/offeror to perform the work/furnish the item(s) and the bidder/offeror shall furnish to the Town all such information and data for this purpose as may be requested. The Town reserves the right to inspect the bidder's/offeror's physical plant prior to award to satisfy questions regarding the bidder's/offeror's capabilities. The Town further reserves the right to reject any bid/proposal if the evidence submitted by, or investigations of, such bidder/offeror fails to satisfy the Town that such bidder/offeror is properly qualified to carry out the obligations of the contract and to complete the work/furnish the item(s) contemplated therein.

16. SAFETY

All contractors and subcontractors performing services for the Town of Warrenton are required and shall comply with all Occupational Safety and Health Administration (OSHA) and any other applicable rules and regulations. All contractors and subcontractors shall be responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site area under this contract.

17. NOTICE OF REQUIRED DISABILITY LEGISLATION COMPLIANCE

The Town of Warrenton is required to comply with state and federal disability legislation: The Rehabilitation Act of 1993 §504, The Americans with Disabilities Act (ADA) for 1990 Title II and the Virginians with Disability Act of 1990.

Specifically, the Town of Warrenton, may not, through its contractual and/or financial arrangements, directly or indirectly avoid compliance with Title II of the Americans with Disabilities Act, Public Law 101-336, which prohibits discrimination by public entities on the basis of disability. Subtitle A protects qualified individuals with disability from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. It extends the prohibition of discrimination in federally assisted programs established by the Rehabilitation Act of 1973 Section 504 to all activities of State and local governments, including those that do not receive Federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability in Titles I, III, and V of the Americans with Disabilities Act. The Virginians with Disabilities Act of 1990 follows the Rehabilitation Act of 1973 Section 504.

EXHIBIT H

Sample Contract - Purchase of Goods and Non-Professional Services

TOWN OF WARRENTON

AGREEMENT FOR THE FURNISHING OR MATERIALS AND/OR SERVICES

THIS AGREEMENT, made and entered into this __ day of, 20__, by and between _____ of _____ of the first part (hereinafter referred to at times as "Contractor") and the Town of Warrenton, Virginia, A Virginia Municipal Corporation, party of the second part, (hereinafter referred to at times as "Town").

WITNESSETH:

WHEREAS, pursuant to §2-197 et seq of the Code for the Town of Warrenton (adopted January 5, 1988) and §11-35 et seq of the Code of Virginia of 1950, as amended, the "Town" extended an invitation to bid for certain services to be rendered and materials furnished, all of which is more fully set out in the Proposal Sheet of the Town of Warrenton, a copy of which is attached hereto and incorporate herein by reference as Exhibit "A"; and

WHEREAS, in response to the described "invitation to bid", the Contractor, by his written proposal dated _____, did extend a bid for performing the described services and supplying the described materials; said written proposal which is incorporated herein by reference as Exhibit "B"; and

WHEREAS, pursuant to §2-205 of the Code for the Town of Warrenton (adopted January 5, 1988), the Town has determined the "Contractor" to be the lowest responsible bidder; and

WHEREAS, pursuant to §2-206 (a) of the Code for the Town of Warrenton (adopted January 5, 1988), the Town has determined the bid of the "Contractor" attached hereto as Exhibit "B" to be the lowest responsive bid; and

WHEREAS, the Town of Warrenton is of the opinion, and the Contractors, represent and covenant, that the Contractors are fully qualified and able to provide the services materials required of this contract, and that the Contractors have all registrations, certificates, licenses or permits, according to the law, rules or regulations of the United States Government, Commonwealth of Virginia, or any local jurisdiction, necessary to provide the services materials required of this contract in and for the Town of Warrenton, Virginia and are not currently debarred from submitting bids/proposals on contracts with the Town of Warrenton, nor are they an agent of any person or entity that is currently debarred from submitting bids/proposals on contracts with the Town of Warrenton; and

WHEREAS, the Town desires to award the contract for the furnishing of materials and services described in Exhibit "A" to the Contractor as the lowest responsive and responsible bidder pursuant

to the terms and provisions of this contract; and

WHEREAS, the Contractors acknowledge and represent that the Town of Warrenton has made available to them, and they have inspected or examined, or have had the opportunity to inspect or examine the contents of all plans, documents, and specifications contained in this proposal and all other equipment, environment or items of any kind or nature which is necessary to fulfill their responsibilities under this contract, and in consideration of which, both of the parties hereto fully understand the terms, conditions, scope, and responsibilities concerning the providing of the services and materials of this contract.

NOW THEREFORE, in consideration of the mutual promises, covenants, agreements and understandings, hereinafter contained, as well as in consideration of the sum of ONE DOLLAR (\$1.00) cash in hand paid by each of the parties hereto to the other, receipt whereof, at and before the signing and sealing of these presents, it is hereby acknowledged, the said parties do hereby covenant and agree as follows:

1) PERFORMANCE

The Contractor agrees to perform all work and services required of him in a professional workmanlike manner as set out in the Invitation for Bid of the Town attached hereto as Exhibit "A". He agrees to comply all requirements of the specifications contained in the invitation for bids, the Town of Warrenton Public Facility Manual, and any other requirements and/or regulations of the Commonwealth of Virginia or the United States Government.

A) Contractor agrees to provide any payment or performance bonds required by the Code of the Town of Warrenton (Adopted January 5, 1988) (§2-213) and/or the Code of Virginia of 1950, as amended.

B) All plans, documentation, reports and or illustrations, which may constitute the "Product", shall remain or become the sole property of the Town of Warrenton; including, the right to obtain exclusive license or copyrights on said products as applicable. Contractors hereby waive, assign, and/or release to the Town of Warrenton any claim they may have, whether by common law or statutory rights, pertaining to the ownership, use, reproduction, assignment, sale or transfer of the products produced from this contract or their rights to obtain copyrights and extensions, thereof and to prevent the infringement thereof or licenses for the exclusive ownership and control of the product. Contractor agrees to assign any rights and to cooperate with Town of Warrenton in connection with any suit or action threatened or instituted by or against the Town of Warrenton relating to the rights herein set out.

2) FURNISHING OF MATERIALS AND WORK

The Contractor agrees to furnish all materials and perform all services and labor described in accordance with the plans and specifications attached to the Invitation to Bid of the Town. Any changes in the plans and specifications shall be in writing signed by both parties with a notation of the price of such changes.

3) PAYMENTS TO CONTRACTOR

The Town agrees to pay the Contractor for said work and materials in the amount set out in the bid of the "Contractor" as attached hereto upon acceptance of the work by the TOWN unless set out differently within the described Invitation to Bid of the TOWN or as set out herein following:

4) COMPLETION OF WORK:

The Contractor agrees to commence work on or before _____, 20____. Thereafter, he agrees to complete the work according to the plans and specifications, and any agreed changes thereto, described in the Town "Invitation to Bid" in a timely manner, but no later than _____. At the completion of the work, the "Contractor" agrees to furnish to the Town a waiver of all Mechanics' and Material men's Liens, suitable in form and completeness to the Town.

A) The parties hereto may extend or modify these completion times by subsequent written agreement.

B) If contractors do not complete the work within the time limit(s) described herein, liquidated damages in the amount of \$ _____ per calendar day will be assessed.

5) CONDITIONS

This agreement is specifically conditioned upon the following:

A) _____

B) _____

6) INSURANCE AND INDEMNIFICATION

A) The Contractor shall maintain such insurance with minimum coverage limits of _____ as will protect and indemnify the Town from claims under workmen's compensation acts and from claims for damages because of property damage or bodily injury, including death, which may arise from and during operations under this contract, whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by either of them.

B) The Contractor agrees to indemnify, defend and hold harmless, the Town of Warrenton, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from, or caused by, the use of any materials, goods, or equipment of any kind or nature furnished by the contractor; any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the Town or the failure of the Town to use the materials, goods, or equipment in the manner already and permanently described by the contractor on the materials, goods, or equipment delivered.

7) TERMINATION OF CONTRACT AND REMEDIES

A) This contract shall automatically terminate upon the contractor's loss of any license required to conduct its business in Virginia or to perform the services required by this contract.

B) The Town shall have the right, at its sole discretion, to terminate the contract in the

occurrence of any of the following events:

i) If the Contractor shall default in the performance of his duties hereunder or in the completion of the work within the time specified, and the default shall not be corrected within ten (10) days after written notice by the Town to the Consultant/Contractor at its address set out herein, then and in that event.

ii) If the Contractor shall become insolvent and/or file a petition of bankruptcy.

C) No failure of the Town of Warrenton, in its sole discretion, to seek termination of this contract/or legal redress of any defaults by the Consultant/contractor, shall constitute a waiver of future default or right to exercise any and all legal rights described herein.

D) In the event of termination of this contract pursuant to its terms and provisions, the Town may seek such legal remedies as may be available to it, including:

i) Procuring such services from any other sources and hold the contractor for any resulting additional purchase and administrative costs.

ii) Suit for all damages for breach of this agreement, which the contractor agrees shall include, but not be limited to, administrative costs and reasonable attorney fees incurred.

8) INTERESTS OF CONTRACTORS

Contractors covenant and represent that they are aware of the provisions of the "Virginia State and Local Government Conflict of Interests Act" contained in §2.1-639.1 et seq of the Code of Virginia of 1950, as amended, and the "Ethics in Public Contracting" laws contained in §11-72 of the Code of Virginia of 1950, as amended, and §2-261 of the Code for the Town of Warrenton, as amended, pertaining prohibited conduct in regards to contracts by local government(s) and to which they specifically represent and covenants they are in compliance, including but not limited to:

A) That they have no interest or relationship, direct or indirect, to any member of the Town Council for the Town of Warrenton, employee or representative of the Town of Warrenton which would prohibit the award of this Contract or nor have they engaged in any conduct which would constitute prohibited conduct or a conflict of interest under the provisions of laws of the Commonwealth of Virginia or the Town of Warrenton.

B) Contractors covenant that they have not engaged in or participated directly or indirectly in any conduct prohibited by the provisions of §11-78 of the Code of Virginia of 1950, as amended, including, but not limited to, i) their having neither demanded, nor received from any other bidder/offeror, supplier, manufacturer, or subcontractor any kickback, payment, loan, subscription, advance, deposit of money, services or anything present or promised as an inducement for the award of

their proposal, or any subcontract or order related to this contract; ii) that their proposal is made without collusion or fraud; iii) that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan subscription, advance, deposit of money, services or loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

9) **NON-DISCRIMINATION**

A) The Contractors represents and certifies that they presently are, and will in the future, conform and comply with all provisions and requirements of law in all aspects pertaining to: the submission of the described bid as incorporated herein as Exhibit "B"; the negotiation and execution of this contract; the performance of all services required by this contract; the furnishing of all materials required by this contract; and all its intents including, but not limited to compliance with all applicable provisions of Federal, State and local law including, but not limited to:

- 1) the Federal Civil Rights Act of 1964 as amended;
- 2) the "Virginia Fair Employment Act of 1975, as amended," [§ 2.1-376.1, **et. seq.**, of the Code of Virginia of 1950, as amended];
- 3) the "Virginia Public Procurement Act" [§ 11-51 **et. seq.** of the Code of Virginia of 1950, as amended];
- 4) the "Americans with Disabilities Act of 1990 (ADA) [42 U.S.C. §12101, et seq., as amended];
- 5) any non-discrimination regulations or requirements of law as placed by the United States and/or Commonwealth of Virginia in the performance of this contract;.,

B) In complying with the provisions of law, the Contractor agrees as follows:

1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor will not discriminate against any employee or applicant for employment with a disability capable to perform the essential functions of any job, with or without reasonable accommodations, as defined as qualified or otherwise provided by the American with Disabilities Act of 1990.

(i) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(ii) The contractor will include the provisions of A) above, in every subcontract or purchase order over Ten Thousand Dollars (\$10,000.00), in order that the provisions be

binding upon each subcontractor or vendor.

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 employee.

(i) Notices, advertisements, and solicitations placed in accordance with federal law, rules or regulations, shall be deemed sufficient for the purpose of meeting the requirements of this section.

10) **ASSIGNMENT**

The obligations, and responsibilities of the Contractors under this Contract may not be assigned, either in whole or in part, without the written consent of the Town of Warrenton.

11) **GOVERNING LAW AND COURTS**

The laws of the Commonwealth of Virginia shall govern this agreement. Any litigation with respect to this Contract shall be brought within the courts of the Commonwealth of Virginia. Additionally, both parties hereto acknowledge the Circuit Court of Fauquier County, Virginia to be the preferred venue for litigation on any issue pertaining to this agreement.

A) The Contractor shall comply with applicable federal, state, and local, laws and regulation.

B) The Contractor shall comply with all requirements of law of the Town of Warrenton, including, but not limited to those described and contained in the Code for the Town of Warrenton [Adopted January 5, 1988], and the Public Facilities Manual for the Town of Warrenton.

C) Any invalidation of any term or provision of this Agreement shall not modify, impair or otherwise affect the validity of the remainder of this Agreement, and the remainder of this Agreement shall continue in full force and effect as fully as though the invalidated term or provision were not a part hereof.

12) **BINDING EFFECT**

All parties acknowledge that the binding effect of this agreement shall be specifically subject to full compliance with all applicable provisions and procedures concerning procurement of professional services contained in §11-37 **et. seq.** of the Code of Virginia of 1950, as amended, and §2-218 of the Code for the Town of Warrenton, as amended, and is subject to final approval through appeal procedures contained therein. In the event that this agreement is canceled due to any of the appeal procedure(s) contained in §11-37 **et. seq.** of the Code of Virginia of 1950, as amended, and §2-218 **et. seq.** of the Code for the Town of Warrenton, then in that event, this agreement will be deemed canceled without further obligation or claim on behalf of either party.

13) **ENTIRE AGREEMENT**

A) The proposal for _____ dated _____ submitted by the Contractors, where not in conflict with the provisions of this Contract, are incorporated herein and made a part hereof by reference as Exhibit "B". In the event of conflict

with any provisions herein, the provisions of this contract will supersede and control. The following documents constitute the entire understanding of the parties:

i) The Town of Warrenton invitation to bid dated

ii) All plans and specifications in possession of the Town of Warrenton and/or referred to in this agreement or in the invitation to bid which were incorporated by reference.

iii)The proposal of the contractor dated _____.

These documents supersede any and all prior agreements, representations, or understandings between the parties. No representations or warranties other than those expressly herein set forth herein are of any force and effect.

i) No modification or waiver of any of the terms hereof, shall be valid unless in writing and signed by both of the parties. No waiver of any breach hereof or default hereunder shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

WITNESS the following signatures and seals effective the date hereinabove first written:

PARTY OF THE FIRST PART:

(CONTRACTOR) _____
Date

(ADDRESS)

(TELEPHONE)

PARTY OF THE SECOND PART:

TOWN OF WARRENTON

By: _____
Town Manager _____
Date

EXHIBIT I

Sample Contract - Purchase Professional Services

**TOWN OF WARRENTON
PROFESSIONAL SERVICES CONTRACT**

THIS PROFESSIONAL SERVICES CONTRACT, made and entered into this ___ day of , 20___, by and between _____ hereinafter referred to at times as the "Consultants", parties of the first part; and the TOWN OF WARRENTON, VIRGINIA, A Virginia Municipal Corporation, hereinafter referred to at times as the "Town," party of the Second part.

WHEREAS, Section 2-218 of the Code for the Town of Warrenton (Adopted January 5, 1988) authorizes and empowers the Town Manager, on behalf of the Town of Warrenton, Virginia to negotiate and enter into contracts for the provision of professional services to the Town of Warrenton; and

WHEREAS, pursuant to the provisions of §2-181 of the Code for the Town of Warrenton (Adopted January 5, 1988), Professional Services as used herein are defined as work performed by an independent contractor within the scope of the practice of 1) Accounting; 2) Architecture; 3) Land Surveying; 4) Landscape Architecture; 5) Pharmacy; 6) Medicine; 7) Optometry; 8) Law; or 9) Professional Engineering; and

WHEREAS, the Town of Warrenton desires to contract for the provision of the following described professional services and necessary materials to the Town of Warrenton; to-wit: _____; and

WHEREAS, in response to the request of the Town, the Consultant, did submit its proposal for performing the described professional services and supplying the described materials; and

WHEREAS, pursuant to §2-218 of the Code for the Town of Warrenton (Adopted January 12, 1988), the Town Manager has undertaken competitive negotiation to determine the most meritorious contract for the furnishing of the requested professional services to the Town at a fair and reasonable price; and

WHEREAS, the Town of Warrenton is of the opinion, and the Consultants, _____, represent and covenant, that the Consultants are fully qualified, able, and otherwise suitable, to provide the professional services required of this contract; and that the Consultants have all registrations, certificates, licenses or permits, according to the law, rules or regulations of the United States Government, Commonwealth of Virginia, or any local jurisdiction, necessary to perform said described professional services in and for the Town of Warrenton, Virginia and are not currently debarred from submitting bids/proposals on contracts by the Town of Warrenton, nor are they an agent of any person or entity that is currently debarred from submitting bids/proposals on contracts by the Town of Warrenton; and

WHEREAS, the Town desires to award the contract for the furnishing of professional services to the Consultants as a suitable and qualified consultant and at a fair and reasonable price; and

WHEREAS, the consultants acknowledge and represent that the Town of Warrenton has made available to them, and they have inspected or examined, or have had the opportunity to inspect or examine the contents of all documents contained in this proposal, and all other equipment, environment or items of any kind or nature which is necessary to fulfill their responsibilities under this contract, and in consideration of which, both of the parties hereto fully understand the terms, conditions, scope, and responsibilities concerning the providing of the professional services of this contract.

NOW, THEREFORE, in consideration of the mutual promises, covenants, understandings, and agreements herein contained, as well as, in consideration of the sum of ONE DOLLAR (\$1.00) cash in hand paid by each of the parties hereto to the other, receipt whereof, at and before the signing and sealing of these presents, it is hereby acknowledged, the said parties to agree as follows:

1) PROFESSIONAL SERVICES

The **Consultants** will undertake furnish the following described professional services and necessary materials:

(A) _____ (B) _____ (C)
(D) _____ (E) _____ (F)

2) THE TOWN OF WARRENTON will provide the following:

(A) _____ (B) _____ (C)
(D) _____ (E) _____ (F)

3) TIME OF PERFORMANCE

A) All work is to be performed by _____ (Date)
in ____ () phases. The time of completion from the date the Town of Warrenton renders to the Consultants the authorization to proceed is as follows:

B) The parties hereto may extend or modify these completion times by subsequent agreement.

C) If consultants do not complete the work within the time limit(s) described herein, liquidated damages in the amount of \$ ____ per day will be assessed.

4) PRODUCT

The Consultants shall prepare the following:
(Description of "Product")

A) All plans, documentation, reports and or illustrations which constitute the "Product"

shall become the sole property of the Town of Warrenton; including, the right to obtain exclusive license or copyrights on said products as applicable. Consultants hereby waive, assign, and/or release to the Town of Warrenton any claim they may have, whether by common law or statutory rights, pertaining to the exclusive ownership, use, reproduction, assignment, sale or transfer of the products produced from this professional services contract or their rights to obtain copyrights and extensions, thereof and to prevent the infringement thereof or licenses for the exclusive ownership and control of the product. Consultant agrees to assign any rights and to cooperate with Town of Warrenton in connection with any suit or action threatened or instituted by or against the Town of Warrenton relating to the rights herein set out.

B) There shall be no restrictions placed on Consultant, for such normal usage of the product of his work, such as publication in journals, submission for design awards, or exhibiting the work to prospective clients as examples. Further, it is recognized that Consultant will be utilizing established principles and methods of the field of its professional services and may develop innovations in these techniques. No restriction is placed on his use of any techniques and/or innovations in any future work. Any stamped Engineering plans provided by Consultant and/or Sub-consultants within the aforesaid work product shall not be subject to transfer or assignment by the Town without written consent and/or release executed by the party whose professional stamp appears on the said plans. All parties acknowledge and recognize that the aforesaid stamped Engineer plans may not be used for any other purpose that what is intended within this Agreement and that any re-use or modification of the stamped Engineer plans must be done with the agreement and/or release of the party whose professional stamp appears on the said plans.

5) FEES AND PAYMENT

The Town of Warrenton shall pay to the Consultants the sum total not to exceed: _____ Dollars

(\$.00) for professional services rendered within the scope of this contract. The division of the fees pertaining to the professional services and materials are as follows:

| | |
|-------|---------------|
| _____ | \$.00 |
| _____ | _____ .00 |
| Total | <u>\$.00</u> |

A) The Consultant shall submit to the Town of Warrenton billings for work performed on a monthly basis. The billings shall itemize the work perform setting out any amounts due to subcontractors. The Town of Warrenton shall review the billings according to the payment schedule set out herein below:

B) The Town of Warrenton shall pay directly or reimburse to the Consultants, out of pocket expenditures for printing, photography, reproduction, communications, travel and supplementary meetings in an amount not to exceed _____Dollars (\$____.00).

i) Consultants agree not to incur any expenditure in excess of _____Dollars (\$____.00) or incur billings for professional services in excess of the _____ Dollars (\$____.00) without prior written consent of the Town of Warrenton.

C) The Town of Warrenton shall pay all amounts determined to be due and payable to Consultants within ten (10) days of receipt of the billing.

6) CONDITIONS

This agreement is specifically conditioned upon the following:

- A)
- B)
- C)
- D)
- E)

7) INSURANCE AND INDEMNIFICATION

A) The Consultant shall maintain such insurance as applicable, which will protect and indemnify the Town from claims under workmen's compensation acts and from claims for damages because of property damage or bodily injury, including death, which may arise from and during furnishing of the described professional service under this contract, whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by either of them.

B) The Consultant agrees to indemnify, defend and hold harmless, the Town of Warrenton, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from, or caused by, the use of any materials, goods, or equipment of any kind or nature furnished by the consultant; any services of any kind or nature furnished by the consultant, provided that such liability is not attributable to the sole negligence of the Town or the failure of the Town to use the materials, goods, or equipment in the manner already and permanently described by the consultant or the materials, goods, or equipment delivered.

8) TERMINATION OF CONTRACT AND REMEDIES

A) This contract shall automatically terminate upon the Contractor's loss of any license required to conduct its business or perform the services.

B) The Town shall have the right, at its sole discretion, to terminate the contract in the occurrence of any of the following events:

- i) If the Consultant/Contractor shall default in the performance of his duties

hereunder or in the completion of the work within the time specified, and the default shall not be corrected within ten (10) days after written notice by the Town to the Consultant/Contractor at its address set out herein, then and in that event.

ii) If the Consultant/Contractor shall become insolvent and/or file a petition of bankruptcy.

C) No failure of the Town of Warrenton, in its sole discretion, to seek termination of this contract/or legal redress of any defaults by the Consultant/contractor, shall constitute a waiver of future default or right to exercise any and all legal rights described herein.

D) In the event of termination of this contract pursuant to its terms and provisions, the Town may seek such legal remedies as may be available to it, including:

i) Procuring such services from any other sources and hold the contractor for any resulting additional purchase and administrative costs.

ii) Suit for all damages for breach of this agreement, which shall include, but not be limited to, administrative costs and reasonable attorney fees incurred.

9) INTERESTS OF CONSULTANTS

Consultants covenant and represent that they are aware of the provisions of the "Virginia State and Local Government Conflict of Interests Act" contained in Section 2.1-639.1 et seq of the Code of Virginia of 1950, as amended, and the "Ethics in Public Contracting" laws contained in Section 11-72 of the Code of Virginia of 1950, as amended, and Section 2-261 of the Code for the Town of Warrenton, as amended, pertaining prohibited conduct in regards to contracts by local government(s) and to which they specifically represent and covenants they are in compliance, including but not limited to:

A) That they have no interest or relationship, direct or indirect, to any member of the Town Council for the Town of Warrenton, employee or representative of the Town of Warrenton which would prohibit the award of this Contract or nor have they engaged in any conduct which would constitute prohibited conduct or a conflict of interest under the provisions of laws of the Commonwealth of Virginia or the Town of Warrenton.

B) Consultants covenant that they have not engaged in or participated directly or indirectly in any conduct prohibited by the provisions of Section 11-78 of the Code of Virginia of 1950, as amended, including, but not limited to, i) their having neither demanded, nor received from any other bidder/offeror, supplier, manufacturer, or subcontractor any kickback, payment, loan, subscription, advance, deposit of money, services or anything present or promised as an inducement for the award of their proposal, or any subcontract or order related to this professional services contract; ii) that their proposal is made without collusion or fraud; iii) that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan subscription, advance, deposit of money, services or loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or

promised unless consideration of substantially equal or greater value was exchanged.

10) NON-DISCRIMINATION

A) The Consultant(s) represents and certifies that they presently are, and will in the future, conform and comply with all provisions and requirements of law in all aspects pertaining to: the submission of the offer to perform professional services; the negotiation and execution of this contract; the performance of all professional services required by this contract; the furnishing of all materials required by this contract; and all its intents including, but not limited to compliance with all applicable provisions of Federal, State and local law including, but not limited to:

- 1) the Federal Civil Rights Act of 1964 as amended;
- 2) the "Virginia Fair Employment Act of 1975, as amended," [Section 2.1-376.1, **et. seq.**, of the Code of Virginia of 1950, as amended];
- 3) the "Americans with Disabilities Act of 1990 (ADA) [42 U.S.C. '12101, et seq., as amended];
- 4) the "Virginia Public Procurement Act" [Section 11-51 **et. seq.** of the Code of Virginia of 1950, as amended];
- 5) any non-discrimination regulations or requirements of law as placed by the United States and/or Commonwealth of Virginia in the performance of this contract.

B) In complying with the provisions of law, the Contractor agrees as follows:

1) The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Consultant. The Consultant will not discriminate against any employee or applicant for employment with a disability capable to perform the essential functions of any job, with or without reasonable accommodations, as defined as qualified or otherwise provided by the American with Disabilities Act of 1990.

(i) The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(ii) The consultant will include the provisions of A) above, in every subcontract or purchase order over Ten Thousand Dollars (\$10,000.00), in order that the provisions be binding upon each subcontractor or vendor.

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

(i) 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.

11) ASSIGNMENT

The obligations, and responsibilities of the Consultants under this Contract may not be assigned, either in whole or in part, without the written consent of the Town of Warrenton.

12) BINDING EFFECT:

All parties acknowledge that the binding effect of this agreement shall be specifically subject to full compliance with all applicable provisions and procedures concerning procurement of professional services contained in Section 11-37 **et. seq.** of the Code of Virginia of 1950, as amended, and Section 2-218 of the Code for the Town of Warrenton, as amended, and is subject to final approval through appeal procedures contained therein. In the event that this agreement is canceled due to any of the appeal procedure(s) contained in Section 11-37 **et. seq.** of the Code of Virginia of 1950, as amended, and Section 2-218 **et. seq.** of the Code for the Town of Warrenton, then in that event, this agreement will be deemed canceled without further obligation or claim on behalf of either party.

13) GOVERNING LAW AND COURTS:

The laws of the Commonwealth of Virginia shall govern this agreement. Any litigation with respect to this Contract shall be brought within the courts of the Commonwealth of Virginia. Additionally, both parties hereto acknowledge the Circuit Court of Fauquier County, Virginia to be the preferred venue for litigation on any issue pertaining to this agreement.

A) The Contractor shall comply with applicable federal, state, and local, laws and regulation.

B) Any invalidation of any term or provision of this Agreement shall not modify, impair or otherwise affect the validity of the remainder of this Agreement, and the remainder of this Agreement shall continue in full force and effect as fully as though the invalidated term or provision were not a part hereof.

14) ENTIRE UNDERSTANDING

A) The proposal for dated _____ submitted by the Consultants, where not in conflict with the provisions of this Contract, are incorporated herein and made a part hereof by reference. In the event of conflict with any provisions herein, the provisions of this contract will supersede and control. These documents constitute the entire understanding of the parties. It supersedes any and all prior agreements between them. There are no representations or warranties other than those expressly herein set forth.

i) No modification or waiver of any of the terms hereof, shall be valid unless in writing and signed by both of the parties. No waiver of any breach hereof or default hereunder shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

IN WITNESS WHEREOF, the parties have set their hands and seals to this agreement this ___ day of _____, 199_.

PARTIES OF THE FIRST PART:

(SEAL)
(CONSULTANT)

(SEAL)
(CONSULTANT)

PARTY OF THE SECOND PART:

TOWN OF WARRENTON, VIRGINIA

By _____
Town Manager

(190 PROFSERV.CNT. 4/29/92 ed.)

EXHIBIT J

CERTIFICATION OF

NO CRIMES AGAINST CHILDREN

Contractor acknowledges that the implementation of this Contract requires the Contractor, Contractor's employees, or other persons that will provide services under this Contract to have direct contact with minor children. Therefore, the Contractor hereby certifies that neither the Contractor, the Contractor's employees, nor any person that will provide services under this Contract, who will have direct contact with minor children, has been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child.

Contractor understands that, pursuant to Code of Virginia §22.1-296.1, making a materially false statement regarding offenses which are required to be included in the certification referenced above is a Class 1 misdemeanor and, upon conviction, the fact of such conviction shall be grounds for the revocation of the contract to provide such services and, when relevant, the revocation of any license required to provide such services. The Town of Warrenton, nor any of its employees, shall be liable for materially false statements regarding the certifications required under this Contract.

Contractor also certifies that employees between the ages of 16 and 18 have been investigated as thoroughly as possible and to the best of their Contractor's knowledge the aforementioned employees have no previous or existing problems of the type and /or nature mentioned in this certification.

TYPE or PRINT CONTRACTOR'S COMPANY NAME

TYPE or PRINT NAME of PERSON
AUTHORIZED to SIGN for CONTRACTOR

TITLE of AUTHORIZED SIGNER

SIGNATURE of AUTHORIZED SIGNER for CONTRACTOR

DATE

EXHIBIT K

SAMPLE ADVERTISEMENT FOR AN INVITATION FOR BID

**PUBLIC NOTICE
INVITATION FOR BID
TOWN OF WARRENTON, VIRGINIA**

Sealed bids will be accepted until May 99, 9999 at 2:00 P.M., and then publicly opened in the office of the Purchasing Agent, 18 Court Street, Warrenton, VA 20186, for:

TOWN OF WARRENTON PROJECT

Specifications and bid forms are available in the above office, by calling (540) 347-1102, by e-mail to staff@warrentonva.gov or on the Town's website at www.warrentonva.gov

The Town through its duly adopted policy may reject any or all bids and waive all informalities. All contracts are awarded by the Town Manager. In the event the Town Manager rejects all bids, the Town may re-advertise or make the purchase on the open market in conformance with state code and established Town procedures.

The Town of Warrenton does not discriminate on the basis of handicapped status in admission or access to its programs and activities. Accommodations will be made for handicapped persons upon prior request.

Memo:

Place in the following newspapers:

The Fauquier Times Democrat

April XX, 20XX

EXHIBIT L

SAMPLE ADVERTISEMENT FOR A REQUEST FOR PROPOSAL

**PUBLIC NOTICE
REQUEST FOR PROPOSAL
TOWN OF WARRENTON, VIRGINIA**

Sealed proposals will be accepted until 4:00 P.M. local time March 99, 9999 to provide the Town with the following:

TOWN OF WARRENTON SERVICES

Copies of the Request for Proposal are available at Town Hall, 18 Court Street, Warrenton, VA 20186, by calling (540) 347-1102, via e-mail to staff@warrentonva.gov or on the Town's website at www.warrentonva.gov

The Town through its duly adopted policy may reject any or all proposals and waive all informalities. All contracts are awarded by the Town Manager. In the event the Town Manager rejects all proposals, the Town may re-advertise or make the purchase on the open market in conformance with state code and established Town procedures.

The Town of Warrenton does not discriminate on the basis of handicapped status in admission or access to its programs and activities. Accommodations will be made for handicapped persons upon prior request.

Memo:

Place in the following newspapers:

The Fauquier Times-Democrat

Thursday, February 99, 9999